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Public Control of Land Subdivision in Michigan: Description and Critique

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Roger A. Cunningham

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PUBLIC CONTROL OF LAND SUBDIVISION IN MICHIGAN: DESCRIPTION AND CRITIQUE

Roger A. Cunningham*

ONE distinguished scholar has stated:¹

The original layout of an area will determine its character for an indefinite period of time. Even though another plan may be clearly more desirable, the cost of changing it once the area has been built up is almost prohibitive. Therefore, whether he realizes it or not the subdivider is setting the pattern for the future community. Many of the perplexing problems facing communities today—traffic congestion, high maintenance costs, cramped school areas, slums—are directly traceable to the manner in which they were originally laid out. Obviously the most practical and economic way of meeting these problems is to provide some method by which the original subdivision of raw land can be suited to the needs of the developing community.

Since this is so obviously true, and since 1967 witnessed the first successful attempt at substantial revision of one of the major Michigan subdivision control statutes,² this seems an appropriate time for a description and critique of the present system of public control of land subdivision in Michigan.³

I. THE MICHIGAN SYSTEM OF LAND SUBDIVISION CONTROL

A. *The Statutes: Historical Background*

Legislation to assure uniform methods of recording subdivision plats was adopted in the Michigan territory as early as 1821.⁴ The original legislation was thereafter amended and expanded in piecemeal fashion by almost a score of separate plat acts during the cen-

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1. Melli, *Subdivision Control in Wisconsin*, 1953 WIS. L. REV. 389, 392-93.

2. Subdivision Control Act of 1967, Pub. Act. No. 288 (approved by Governor Romney on August 1, 1967; effective January 1, 1968) (1967 MASON'S MICH. PUB. ACTS 392) [hereinafter cited as Subdivision Control Act of 1967].

3. For more general treatment of land subdivision control, see WEBSTER, URBAN PLANNING AND MUNICIPAL PUBLIC POLICY 436-88 (1958); Cunningham, *Land-Use Control—The State and Local Programs*, 50 IOWA L. REV. 367, 415-37 (1965); Reys, *Control of Land Subdivision by Municipal Planning Boards*, 40 CORNELL L.Q. 258 (1955); Reys and Smith, *Control of Urban Land Subdivision*, 14 SYRACUSE L. REV. 405 (1963); Note, 28 IND. L.J. 544 (1953).

4. 1 Terr. Laws 816 (1821).

ture which followed.⁵ This rather heterogeneous mass of legislation dealing with plats was finally drawn together, reorganized, and re-enacted in the Plat Act of 1929 (Plat Act).⁶ Two years later Michigan enacted the Municipal Planning Commission Act (Municipal Planning Act),⁷ which was based upon and nearly identical with the first fifteen sections of the Standard City Planning Enabling Act (Standard Act).⁸ Sections 13 through 15 of the Municipal Planning Act⁹ authorized "cities, villages and other incorporated political subdivisions"—after (1) establishing planning commissions, (2) adopting "that sort of a master plan relating to the major street system of the territory within its subdivision jurisdiction or part thereof," and (3) adopting subdivision regulations—to regulate land subdivision by requiring approval of subdivision plats prior to recordation. These sections of the Municipal Planning Act are practically identical with sections 13 through 15 of the Standard Act. The Michigan enactment, however, omitted section 12 of the Standard Act, which gave municipal planning commissions extraterritorial jurisdiction for five miles beyond municipal corporate limits.

The Municipal Planning Act as originally enacted conferred planning and subdivision control powers on planning commissions¹⁰ which "any municipality" was authorized to create,¹¹ and "municipality" was defined to include "cities, villages, and other incorporated political subdivisions."¹² Since for some purposes both townships and counties are municipal corporations in Michigan,¹³ it is arguable that

5. See Historical Note to MICH. STAT. ANN. § 26.431 (1953).

6. Pub. Act No. 172, [1929] Mich. Acts 467, codified as MICH. COMP. LAWS §§ 560.1-80 (1948).

7. Pub. Act No. 285, [1931] Mich. Acts 471, codified as MICH. COMP. LAWS §§ 125.31-45 (1948).

8. The STANDARD CITY PLANNING ENABLING ACT [hereinafter cited as the STANDARD ACT] was drafted by the Advisory Committee on Planning and Zoning of the United States Department of Commerce—substantially the same committee as that which drafted the STANDARD STATE ZONING ENABLING ACT. The STANDARD ACT was completed in 1928 and printed by the Government Printing Office. It is now out of print, but it provided the pattern for municipal planning and subdivision control legislation in many states.

9. Municipal Planning Act §§ 13-15, MICH. COMP. LAWS §§ 125.43-45 (1948).

10. "Planning" powers are conferred by the Municipal Planning Act §§ 6-11, MICH. COMP. LAWS §§ 125.36-41 (1948). "Subdivision control" powers are conferred by the Municipal Planning Act §§ 13-15, MICH. COMP. LAWS §§ 125.43-45 (1948).

11. Municipal Planning Act § 2, MICH. COMP. LAWS § 125.32 (1948).

12. Municipal Planning Act § 1, as originally enacted, MICH. COMP. LAWS § 125.31 (1948).

13. MICH. COMP. LAWS § 41.2 (1948) provides as follows:

The inhabitants of each organized township shall be a *body corporate*, and as such may sue and be sued, and may appoint all necessary agents and attorneys in that behalf; and shall have power to purchase and hold real and personal estate for the public use of the inhabitants, and to convey, alienate and dispose of the same; and to make all contracts that may be necessary and convenient for the

the legislative intent was to include both townships and counties under the heading "other incorporated political subdivisions." It is clear, however, that identical language used in the Standard Act was intended to exclude both townships and counties.¹⁴ Subsequent Michigan legislation indicates that the draftsmen of the later statutes believed the Municipal Planning Act authorized creation of county planning commissions¹⁵ but not township planning commissions,¹⁶ although the statutory language relating to the status of counties and townships as bodies "corporate" is substantially identical.¹⁷ At any rate, it appears that a number of Michigan counties and townships purported to establish official planning commissions under authority of the Municipal Planning Act.¹⁸

Any subdivision control powers vested in county planning commissions under the Municipal Planning Act were eliminated by the County Planning Commission Act of 1945,¹⁹ which is still in force.

exercise of their *corporate powers*, and any orders for the disposal of their *corporate property* which they may judge expedient. [Emphasis added.]

MICH. COMP. LAWS § 45.3 (1948) provides as follows:

Each organized county shall be a *body politic and corporate*, for the following purposes, that is to say: To sue and be sued, to purchase and hold real and personal estate for the use of the county; to borrow money for the purpose of erecting and repairing county buildings, and for the building of bridges, to make all necessary contracts, and to do all other necessary acts in relation to the property and concerns of the county. [Emphasis added.]

There can be no doubt that "charter townships" are "incorporated" under the Charter Township Act of 1947, MICH. COMP. LAWS §§ 42.1-34 (1948).

14. It is interesting to note that the language used in the Municipal Planning Act, as originally enacted, was an exact copy of the language in the STANDARD ACT. A committee footnote to the latter says that the phrase "other incorporated political subdivisions" was intended "to include all urban incorporated political subdivisions but not to include those types of political units, such as the county or, in most States, the township, which are administrative subdivisions of the State rather than separate urban incorporated communities," and that "those States in which the county or rural township is incorporated should insert express exclusion of such units." The Municipal Planning Act, as originally enacted, contained no such exclusion.

15. See County Planning Commission Act of 1945 § 1, MICH. COMP. LAWS § 125.101 (1948).

16. See Pub. Act No. 25, [1952] Mich. Acts 30, amending Municipal Planning Act § 1 to add "townships" and "charter townships" to the definition of "municipality."

17. See note 13 *supra*.

18. See [1943-1944] MICH. ATT'Y GEN. BIENNIAL REP. pt. 1, at 657, in answer to a letter from the now-defunct Michigan Planning Commission which commenced as follows: "Several counties and a few townships have informed us of the establishment of official planning agencies under this act [i.e., the Municipal Planning Act]." The Attorney General's opinion assumes, without any discussion, that the Municipal Planning Act did apply to counties and townships.

19. Pub. Act No. 282, [1945] Mich. Acts 471, now codified as MICH. COMP. LAWS §§ 125.101-.107 (1948). This statute recognized the existence of county planning commissions established under the Municipal Planning Act, but provided that such commissions should be reconstituted in accordance with the County Planning Commission Act, either immediately or "upon expiration of the terms of existing membership of county planning commissions constituted under" the Municipal Planning Act. Since the County Planning Commission Act also provided that the powers exercised by all

Questions as to the authority of townships to set up planning commissions under the Municipal Planning Act were finally resolved by an amendment to that act in 1952, which redefined "municipality" so as expressly to include "townships" and "charter townships," as well as "cities, villages," and "other incorporated political subdivisions."²⁰

Unfortunately, however, there was still doubt after 1952 as to the power of townships to consolidate planning and zoning functions in their planning commissions by virtue of the Municipal Planning Act provision conferring upon planning commissions "all powers *heretofore* granted by law to the zoning commission of the municipality."²¹ Although the Attorney General in 1954 issued an opinion to the effect that the 1952 amendment of the Municipal Planning Act eliminated the difficulty,²² it is hard to see any basis for this opinion.²³ Many lawyers continued to entertain strong doubts as to the authority of township planning commissions to assume the duties of a zoning commission as these duties were defined in the 1943 Township Rural Zoning Act.

Instead of dealing directly with the problem by amending the Municipal Planning Act to provide expressly that planning commissions established thereunder may assume the duties of zoning commissions under the applicable zoning enabling act, whether enacted before or after the Municipal Planning Act, the legislature ultimately responded by adopting a new Township Planning Act in 1959.²⁴ This act authorized all townships to create planning boards with

county planning commissions should "be those specified for . . . county planning commissions in the terms of" the Act, and since the Act conferred no power on county planning commissions to regulate land subdivision, it seems clear that since 1945 county planning commissions have had no such power, although they apparently had such power from 1931 to 1945.

20. Pub. Act No. 25, [1952] Mich. Acts 30, amending Municipal Planning Act § 1, MICH. COMP. LAWS § 125.31 (1948).

21. Municipal Planning Act § 12, MICH. COMP. LAWS § 125.42 (1948). (Emphasis added.)

22. See [1952-1954] MICH. ATT'Y GEN. BIENNIAL REP. 442. This opinion asserts that the reason why townships could not consolidate planning and zoning functions in a planning commission established under the Municipal Planning Act, prior to 1952, was that "said act did not apply to townships." This is at variance with the assumption made in [1943-1944] MICH. ATT'Y GEN. BIENNIAL REP. 657.

23. Adding "townships" and "charter townships" to the definition of "municipality" in § 1 of the Municipal Planning Act could hardly be deemed to make § 12 of the act "speak" as of 1952, so as to make the phrase "powers heretofore granted by law to the zoning commission of the municipality" apply to the powers conferred by the Township Rural Zoning Act of 1943. Attorney General's Opinion No. 1754, [1952-1954] MICH. ATT'Y GEN. BIENNIAL REP. 442, completely fails to address the real problem of construction.

24. Pub. Act No. 168, [1959] Mich. Acts 234, now codified as MICH. COMP. LAWS §§ 125.321-.333 (Supp. 1961).

from five to nine members,²⁵ whereas the Municipal Planning Act required a planning commission to have exactly nine members.²⁶ The Township Planning Act also authorized township planning commissions created thereunder to "make and adopt a basic plan as a guide for the development of unincorporated portions of the township"²⁷ in terms reminiscent of the "master plan" provisions of the Municipal Planning Act,²⁸ authorized transfer to the township planning commission of all the powers and duties of the township zoning board under the Township Rural Zoning Act of 1943,²⁹ and authorized the township planning commission to perform certain advisory functions in connection with land subdivision regulation.³⁰ It is interesting to note that the Township Planning Act was amended in 1963 to provide expressly that it should "not preclude the creation or continuance of a township planning commission created pursuant to" the Municipal Planning Act.³¹ It is therefore clear that a township may establish a planning commission under either the Municipal Planning Act or the Township Planning Act, with the subdivision control powers granted by one act or the other. But it remains doubtful whether a township planning commission established under the Municipal Planning Act can be authorized to exercise the powers of a zoning board under the Township Rural Zoning Act of 1943.

On the last day of its regular 1967 session, the Michigan legislature passed a new statute to be known as the Subdivision Control Act of 1967.³² This new statute, which will go into effect on January 1, 1968, repeals and replaces the Plat Act of 1929. It does not repeal, replace, or incorporate the Municipal Planning Act or the Township Planning Act.

25. Township Planning Act § 3, MICH. COMP. LAWS § 125.323 (Supp. 1961).

26. Municipal Planning Act § 3, MICH. COMP. LAWS § 125.33 (1948).

27. Township Planning Act §§ 6-8, MICH. COMP. LAWS §§ 125.326-329 (Supp. 1961).

28. Municipal Planning Act §§ 6-8, MICH. COMP. LAWS §§ 125.36-38 (1948).

29. Township Planning Act § 11, MICH. COMP. LAWS § 125.331 (Supp. 1961).

30. Township Planning Act § 12, MICH. COMP. LAWS § 125.332 (Supp. 1961).

31. Pub. Act No. 91, [1963] Mich. Acts 103.

32. See note 2 *supra*. This statute, originally entitled Proposed Plat Act of 1966 and drafted in the Administrative Division, Bureau of Local Government Services, Michigan Department of Treasury, was first introduced in the 1966 regular session of the legislature as Senate Bill 966. It was referred to the Committee on Municipalities, and, after substantial revision, was reported out of committee without recommendation on March 31, 1966. The revised bill, entitled "substitute for Senate Bill 966," was tabled, taken from the table on April 21, and then referred back to the Committee on Municipalities on April 23, 1966. It remained in committee during the rest of the 1966 legislative session. The bill was reintroduced in the 1967 regular session of the legislature as Senate Bill 216 (on February 21) and House Bill 2474 (on February 28), which were identical. A substitute for Senate Bill 216 was introduced on February 21, and this bill was ultimately enacted, with minor changes, on the final day of the regular 1967 session. It was approved by the Governor on August 1, 1967.

Michigan seems to be unique in having three separate subdivision control statutes. The Plat Act of 1929, like the Subdivision Control Act of 1967 which will soon replace it, is largely mandatory, prescribing standards and procedures required in all cases of land subdivision (as defined in the statute), whether the municipality in which the land is located has a planning commission or not. The Municipal Planning Act, on the other hand, is simply an enabling act, permissive both with respect to establishment of a planning commission and with respect to the exercise by that commission, once established, of the power to regulate land subdivision. When a municipality does establish such a commission and undertakes to control land subdivision within its corporate limits, subdividers still remain subject to the mandatory requirements of the Plat Act or (after January 1, 1968) the Subdivision Control Act of 1967 if their projects fall within the definition of "subdivision" in those acts, in addition to the municipal planning commission's regulations governing the subdivision of land within its jurisdiction. Unfortunately, however, there has been no attempt to integrate the Plat Act or the Subdivision Control Act of 1967 with the subdivision control sections of the Municipal Planning Act—indeed, neither makes any reference to the other—although in fact in many municipalities subdividers are subject to both types of regulation.

The Township Planning Act is also permissive, but the township planning commission plays a smaller role in control of land subdivision than does its counterpart commission under the Municipal Planning Act. Again, the legislature made no attempt at integration—either with the Plat Act or the Municipal Planning Act—when it enacted the Township Planning Act, and the new Subdivision Control Act of 1967, predictably, makes no reference whatever to the Township Planning Act.

B. *Local Utilization of Subdivision Control Powers*

On the basis of data presently available, it appears that at least 220 Michigan cities and villages and 113 Michigan townships have established planning commissions.³³ This represents 42.3% of the cities and villages in Michigan, but only 9% of the townships.³⁴ Presumably, the great majority of the city and village planning commissions have been created under authority of the Municipal Planning Act, with the subdivision control powers provided therein. A few cities and villages appear to have planning commis-

33. MICH. DEPT. OF ECONOMIC EXPANSION, LOCAL PLANNING AND ZONING AGENCIES IN MICHIGAN 1-3 (1965).

34. *Id.* at 3.

sions with power to regulate land subdivision which were created by ordinance, but not under the authority of the Municipal Planning Act,³⁵ and several others have planning commissions created by ordinances which neither invoke the Municipal Planning Act nor specifically authorize land subdivision regulation.³⁶ The writer has been unable to obtain any information as to the number of township planning commissions established under the Municipal Planning Act as compared to the number established under the Township Planning Act.³⁷

An admittedly incomplete sampling shows that at least seventy-eight Michigan cities and villages with planning commissions have adopted local subdivision regulations in some form.³⁸ In addition, at least twenty-nine cities and villages without planning commissions are regulating land subdivision under the Plat Act, supplemented by local ordinances.³⁹

Section 14 of the Municipal Planning Act⁴⁰ expressly provides that the municipal planning commission shall adopt "regulations governing the subdivision of land within its jurisdiction" before it exercises its plat approval power under the Act. The Municipal Planning Act gives the local governing body no role at all in the adoption of the subdivision regulations. Yet in the great majority of municipalities where subdivision control is carried out under the Municipal Planning Act, the subdivision regulations have been adopted by the local governing body in the form of an ordinance.⁴¹ No doubt this has

35. A study of the ordinance file of the Michigan Municipal League indicates that Center Line, Grandville, and Kalamazoo fall into this category. The statutory basis for such planning commissions and for their exercise of subdivision control power is not clear.

36. A study of the ordinance file of the Michigan Municipal League indicates that Beverly Hills, Flushing, Milford, Novi, and Oak Park fall into this category. In Novi and Oak Park, however, the commission is authorized to "advise" the governing body with regard to plat approval.

37. A letter to the author, dated September 16, 1966, from R. S. D'Amelio, Director, Administrative Division, Bureau of Local Government Services, Department of Treasury, State of Michigan, indicates that no information on this point is available. The ordinance file of the Michigan Municipal League contains no data on townships.

38. Information from ordinance files of Michigan Municipal League, Ann Arbor, Michigan [hereinafter cited as Municipal League files]. These files are admittedly incomplete, but they constitute the only relatively comprehensive collection of municipal ordinances presently available.

39. Municipal League files.

40. MICH. COMP. LAWS § 125.44 (1948).

41. Municipal League files indicate that out of seventy-eight cities and villages with a planning commission and with subdivision regulations in some form, only seven rely on regulations adopted by the planning commission only. In most of the other seventy-one cities and villages, the regulations (though presumably first adopted by the planning commission) have been enacted by the governing body in ordinance form. In some of these seventy-one cities and villages, there is both a subdivision ordinance and a set of subdivision regulations—the latter adopted by the planning commission only.

been done because, even in municipalities operating under the Municipal Planning Act, the mandatory provisions of the Plat Act are also in force. Section 17 of the Plat Act⁴² requires every plat of a "subdivision" (as defined in that Act) to be approved by the local governing body, and section 22⁴³ thereof gives the governing bodies of cities and villages the authority to amplify the minimal mandatory Plat Act requirements by ordinance. Consequently, it is desirable to make sure that all the requirements of the Plat Act, and any additional requirements the local governing body wishes to add, are included in the subdivision regulations adopted by the planning commission, so that unseemly conflict between commission and governing body may be avoided and approval of a plat by the planning commission will, as a practical matter, assure approval by the governing body. One way to achieve this goal, though not the only way, is to have the planning commission adopt the subdivision regulations and then, before certifying the regulations to the recorder of the county, to have them enacted by the governing body in ordinance form. In municipalities with a planning commission which has not adopted a major street plan, the commission has no statutory authority to adopt subdivision regulations or to exercise the plat approval power.⁴⁴ Therefore, the planning commission can be used only in an advisory capacity and all subdivision regulations *must* be adopted by the governing body.

Under the Plat Act, certain requirements are directly imposed on all subdividers by the statute, and in theory these requirements need not be included in the local subdivision ordinance, although in practice they usually are. Other powers conferred by the Plat Act can only be exercised by the local governing body if it adopts an "ordinance"⁴⁵ or "rules and regulations."⁴⁶ It would seem that the governing body could adopt "rules and regulations" by resolution, without enacting an ordinance; but in practice it appears that all the subdivision regulations authorized by the Plat Act are generally included in a subdivision ordinance or ordinances.⁴⁷ Similarly, where the Plat Act authorizes but does not require the local governing body to impose certain additional requirements on subdividers, and does not specify either an "ordinance" or "rules and regulations" to implement such

42. Plat Act § 17, MICH. COMP. LAWS § 560.17 (Supp. 1961).

43. Plat Act § 22, MICH. COMP. LAWS § 560.22 (1948).

44. See Municipal Planning Act § 13, MICH. COMP. LAWS § 125.43 (1948).

45. Plat Act § 22, MICH. COMP. LAWS § 560.22 (1948).

46. Plat Act § 30, MICH. COMP. LAWS § 560.30 (Supp. 1961).

47. See Municipal League files for numerous examples.

requirements,⁴⁸ it seems generally to be the practice to include such additional requirements in a subdivision ordinance.⁴⁹

In municipalities which do not have a planning commission, subdivision controls can be imposed only under the Plat Act. Since there is no planning commission, the regulations to be adopted by the governing body must originate with it. As indicated in the previous paragraph, the substantive requirements for plat approval seem generally to be embodied in an ordinance adopted by the governing body.⁵⁰

Under the Township Planning Act, "the township board . . . may request the planning commission to recommend regulations governing the subdivision of land,"⁵¹ but the board clearly is not required to seek any recommendation from the planning commission. Equally clearly, the planning commission has no authority to "adopt" the regulations it may recommend. Strangely enough, the Township Planning Act does not expressly provide that the governing body shall "adopt" any subdivision regulations; but it must do so, either by resolution or ordinance, to exercise many of the powers conferred by the Plat Act,⁵² which is presently the source of substantive subdivision control power in municipalities which are not operating under the Municipal Planning Act. Although no reliable data are currently available, it seems clear that few Michigan townships now have subdivision regulations adopted under the authority of either the Municipal Planning Act or the Township Planning Act, and that few have subdivision ordinances designed to implement the Plat Act.⁵³

48. Plat Act §§ 19, 20, 24, MICH. COMP. LAWS §§ 560.19-20, .24 (Supp. 1961); Plat Act § 22, MICH. COMP. LAWS § 560.22 (1948).

49. See Municipal League files for numerous examples.

50. *Id.*

51. Township Planning Act § 12, MICH. COMP. LAWS § 125.332 (Supp. 1961).

52. Plat Act § 30, MICH. COMP. LAWS § 560.30 (Supp. 1961); Plat Act § 22, MICH. COMP. LAWS § 560.22 (1948).

53. A questionnaire addressed to the directors of county or regional planning commissions in Bay County, Calhoun County, Genesee County, Jackson County, Kalamazoo County, Kent County, Muskegon County, Oakland County, and St. Clair County failed to elicit very much information on these points. It did indicate, however, that only nine townships have either a subdivision ordinance or subdivision regulations adopted by the township planning commission. Eight out of twenty-three townships in St. Clair County have both a subdivision ordinance and planning commission regulations. One township out of twenty in Calhoun County has planning commission subdivision regulations. None of the fourteen townships in Bay County, and none of the townships in Genesee, Kalamazoo, Kent, or Jackson Counties has either a subdivision ordinance or planning commission regulations. Muskegon and Oakland County were unable to supply any information at all. In the other counties queried, it would appear that at least forty townships are regulating land subdivision under the Plat Act, without enacting any local ordinance or regulations. It might be noted that some of the more urban townships in Jackson County have adopted resolutions that no final plat

When the Subdivision Control Act of 1967 becomes effective on January 1, 1968, the substantive power of townships to control land subdivision without complying with the Municipal Planning Act will be substantially enlarged. Many of the new subdivision control powers can only be exercised, however, if the township has an "ordinance or published rules . . . adopted to carry out the provisions of" the 1967 Act.⁵⁴ Consequently, a township planning commission established under the Township Planning Act will have greater scope in recommending "regulations governing the subdivision of land" to the township board.

C. Definition of "Subdivision"

Section 2 of the Plat Act⁵⁵ provides (*inter alia*) as follows:

The word "subdivide," when used in this act, shall mean the partitioning or dividing of a lot, tract or parcel of land into 5 or more lots, tracts or parcels of land. Any lot or piece of land the boundaries of which have been fixed in a recorded plat shall not thereafter be divided into more than 2 parts unless the lot or piece of land shall have been replatted pursuant to this act, *except* upon approval by resolution of the governing body of the municipality, a lot, the boundaries of which have been fixed in a recorded plat, may be divided into more than 2 parts and not more than 4 without replatting pursuant to this act. . . . The limitations of this act shall not apply to the partitioning or dividing of lands into tracts or parcels of land 10 acres or more in area.

The significance of this definition is apparent when it is read in connection with section 3 of the Plat Act,⁵⁶ which is as follows:

Any proprietor who shall hereafter subdivide any lands shall make and record a plat thereof in accordance with the provisions of this act, and said plat shall be made, approved, filed, recorded, altered and vacated in the manner hereinafter provided.

Failure to comply with this mandate exposes the subdivider to the penalties set forth in sections 77 and 78a of the Plat Act.⁵⁷

The definition of "subdivision" in the Subdivision Control Act of 1967 is substantially different from the definition in the Plat Act.

will be approved unless the preliminary plat has been approved by the Subdivision Advisory Committee of the Regional Planning Commission. The writer can find no statutory basis for such a requirement.

54. Subdivision Control Act of 1967 § 105(b).

55. Plat Act § 2, MICH. COMP. LAWS § 560.2 (Supp. 1961). (Emphasis added.)

56. Plat Act § 3, MICH. COMP. LAWS § 560.3 (Supp. 1961).

57. Plat Act § 77, MICH. COMP. LAWS § 560.77 (Supp. 1961), *amending* MICH. COMP. LAWS 560.77 (1948); Plat Act § 78a, MICH. COMP. LAWS § 560.78a (1948).

Section 102(d) of the 1967 statute⁵⁸ provides as follows:

“Subdivide” or “subdivision” means the partitioning or dividing of a parcel or tract of land by the proprietor thereof or by his heirs, executors, administrators, legal representatives, successors or assigns for the purpose of sale, or lease of more than one year, or of building development, where the act of division creates 5 or more parcels of land each of which is 10 acres or less in area; or 5 or more parcels of land each of which is 10 acres or less in area are created by successive divisions within a period of 10 years.

Section 103(1) of the 1967 Act⁵⁹ then provides: “Any division of land which results in a subdivision as defined in section 102 shall be surveyed and a plat thereof submitted, approved and recorded as required by the provisions of this act.” Failure to comply with this direction exposes the subdivider to the penalties set out in sections 264 through 267 of the 1967 Act.

In effect, then, subdivisions as defined in the Plat Act or (after January 1, 1968) the Subdivision Control Act of 1967 must be platted in accordance with the applicable statute, and they must be recorded. In order to be recorded they must first be approved by all the public agencies which have the power to impose requirements and conditions under the Plat Act or (after January 1, 1968) the Subdivision Control Act of 1967, as well as under the Municipal Planning Act in municipalities with a planning commission empowered to regulate land subdivision. The definition of “subdivision” in the Plat Act and in the Subdivision Control Act of 1967 is thus of crucial importance.

Neither the Municipal Planning Act nor the Township Planning Act purports to define “subdivision.” The Municipal Planning Act says, however, that “no plat of a subdivision . . . shall be filed or recorded until it shall have been approved by such planning commission”⁶⁰ Since there is no reference to the definition of “subdivision” in the Plat Act (nor, a fortiori, to the definition in the Subdivision Control Act of 1967), it would seem that municipal planning commissions may define “subdivision” as they please for the purpose of exercising the basic power granted to them by the Municipal Planning Act—that being the power to prevent recordation without planning commission approval of the subdivision plat.

In point of fact, at least twenty-four Michigan cities and villages⁶¹

58. Subdivision Control Act of 1967 § 102(d).

59. *Id.* § 103(1).

60. Municipal Planning Act § 13, MICH. COMP. LAWS § 125.43 (1948).

61. Adrian, Algonac, Beverly Hills, Big Rapids, Brighton, Charlotte, Dowagiac, Dundee, Fremont, Grosse Pointe Park, Howell, Imlay City, Lapeer, Manistee, Marine

have adopted subdivision regulations defining "subdivision" substantially as it is defined in section 1 of the Standard Act: "[t]he division of a lot, tract or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale or building development," including any "resubdivision." At least ten Michigan cities and villages draw the line at division into three or four lots,⁶² while a majority of those with regulations defining "subdivision" have adopted the Plat Act definition.⁶³ At least nineteen Michigan cities and villages have also included an alternative definition: any development that involves the establishment of a new street constitutes a subdivision.⁶⁴ In those municipalities with subdivision regulations which contain no definition of "subdivision," the Plat Act definition will presumably apply.

Township boards operating under the Township Planning Act may also have the power to define "subdivision," by virtue of the provision of that Act authorizing the board to "request the planning commission to recommend regulations governing the subdivision of land."⁶⁵ It is more likely, however, that township boards operating under the Township Planning Act are limited, in reviewing subdivision plats, by the definition of "subdivision" in the Plat Act or (after January 1, 1968) the Subdivision Control Act of 1967.⁶⁶

In any case, a subdivider who is willing to forego the advantages of recording his plat need not comply with subdivision regulations adopted under the Municipal Planning Act or the Township Planning Act unless he is subdividing within the meaning of that term as defined in the Plat Act or (after January 1, 1968) the Subdivision Control Act of 1967.⁶⁷

City, Marquette, Midland, Muskegon, Niles, Port Huron, Quincy, Roosevelt Park, Wayne, and Ypsilanti. Information from Municipal League files.

62. Three or more: Bay City, Huntington Woods, Kalamazoo, Oak Park, Owosso, and Rochester. Four or more: Alpena, Rogers City, and Saline. Information from Municipal League files.

63. Cities and villages adopting the Plat Act definition, expressly or by reference, include the following: Ann Arbor, Battle Creek, East Tawas, Escanaba, Farmington, Fenton, Flat Rock, Flushing, Fowler, Franklin, Grand Blanc, Grand Ledge, Grand Rapids, Holland, Holly, Inkster, Madison Heights, Manchester, Mount Pleasant, Plymouth, Pontiac, Riverview, Rockford, Romeo, Roseville, St. Louis, Southfield, Sturgis, Swartz Creek, Troy, Whitehall, Williamston, Wixom, and Wyoming. Information from Municipal League files.

64. See Municipal League files.

65. Township Planning Act § 12, MICH. COMP. LAWS § 125.332 (Supp. 1961).

66. It should be noted that the Township Planning Act does not expressly authorize the township board to reject subdivision plats, nor does it make approval a condition precedent to recordation. The power to reject or approve, therefore, must be sought in the Plat Act or (after January 1, 1968) in the Subdivision Control Act of 1967.

67. As previously indicated, there is no statutory requirement that a subdivision plat be recorded other than that found in § 3 of the Plat Act and (effective January 1, 1968) § 103 of the Subdivision Control Act of 1967.

D. Substantive Power To Control Land Subdivision

The substantive power of Michigan municipalities to control land subdivision rests upon the Plat Act and the Municipal Planning Act at present. After January 1, 1968, the Subdivision Control Act of 1967 will replace the Plat Act as a source of municipal power to control land subdivision.

Section 12 of the Township Planning Act⁶⁸ provides as follows:

The township board shall refer plats or other matters relating to land development to the planning commission before final action thereon by the township board and may request the planning commission to recommend regulations governing the subdivision of land. The recommendations may provide for the procedures of submittal, including recommendations for submitting a preliminary subdivision design, the standards of design and the physical improvements that may be required.

This section raises a serious problem of interpretation. Was it intended to confer upon the township board power to adopt regulations setting up design standards and requirements as to physical improvements beyond those it has power to impose under the Plat Act? It does not directly confer such power, although it can be argued that it does so by implication. My own conclusion is that it was not intended to expand the substantive subdivision control powers of townships. Consequently, I believe townships that elect to operate under the Township Planning Act rather than the Municipal Planning Act are limited to the substantive subdivision control powers given to townships by the Plat Act or (after January 1, 1968) the Subdivision Control Act of 1967.

Section 19 of the Plat Act⁶⁹ provides that "[t]he governing body [of the municipality] shall determine as to whether the lands are suitable for platting purposes," but sets down no standards by which "suitability" is to be determined. Section 19(a) of the Plat Act,⁷⁰ adopted in 1961, specifies two such standards: (1) "if the governing body determines that the lands proposed for platting lie either wholly or in part within the flood plain of a river, stream, creek or lake, then it shall reject all or that part of the proposed plat lying within the flood plain area"; (2) the lack of "adequate outlet storm drainage facilities . . . available adjacent" to the lands proposed for platting shall be grounds for rejecting the plat.⁷¹

The Subdivision Control Act of 1967 instead of directing the

68. Township Planning Act § 12, MICH. COMP. LAWS § 125.332 (Supp. 1961).

69. Plat Act § 19, § 560.19 (Supp. 1961).

70. Plat Act § 19a, § 560.19a (Supp. 1961).

71. *Id.*

local governing body to determine "whether the lands are suitable for platting purposes," substitutes direct controls with respect to development of flood plains and storm drainage. Section 194 of the 1967 Act⁷² provides as follows:

If any part of a proposed subdivision lies within the floodplain of a river, stream, creek or lake, approval of the final plat shall be conditioned on the following:

(a) No buildings for residential purposes and occupancy shall be located on any portion of a lot lying within a floodplain, unless approved in accordance with the rules of the water resources commission of the department of conservation.

(b) Restrictive deed covenants shall be filed and recorded with the final plat that the floodplain area will be left essentially in its natural state.

(c) The natural floodplain may be altered if its original discharge capacity is preserved and the stream flow is not revised so as to affect the riparian rights of other owners.

Section 192 of the 1967 Act⁷³ directs the county drain commissioner (if there is one) or the local governing body to require that the subdivider "provide for adequate storm water facilities within the lands proposed for platting and outlets thereto."

Beyond the power to control development of flood plains and to deal with storm drainage, the substantive subdivision control powers of Michigan municipalities under the Plat Act or (after January 1, 1968) the Subdivision Control Act of 1967, and the Municipal Planning Act fall into two general categories: (1) the power to control the spatial arrangement of subdivisions in terms of street patterns and lot sizes; (2) the power to require construction of certain physical improvements within subdivisions.

1. Control of Street Patterns and Lot Sizes

With respect to this first category, the powers of municipalities operating under the Municipal Planning Act are substantially greater than those of municipalities operating only under the Plat Act. Under section 14 of the Municipal Planning Act,⁷⁴ the planning commission's subdivision regulations "may provide for the proper arrangement of streets in relation to other existing or planned streets and to the master plan, for adequate and convenient open spaces for traffic, utilities, access of fire-fighting apparatus, recreation, light and air, and for the avoidance of congestion of population, including minimum width and area of lots." Under the Plat Act, municipalities

72. Subdivision Control Act of 1967 § 194.

73. *Id.* § 192.

74. Municipal Planning Act § 14, MICH. COMP. LAWS § 125.44 (1948).

"may require . . . that all highways, streets and alleys conform to the general plan that may have been adopted by the governing body," *provided* the subdivision lots "are platted of a width of 60 feet or less"⁷⁵—a curious restriction—and subject also to the restriction that "[n]o governing body shall have the right to require any plat to conform to a municipal plan that may conflict with any general plan that may have been adopted by the county or state for the location and width of certain streets and highways."⁷⁶ Presumably, planning commission regulations as to the "arrangement of streets" under the Municipal Planning Act are subject to the Plat Act provision which precludes municipal street requirements that may conflict with county or state plans, although this is not entirely clear. At any rate, "[t]he governing body may require streets and highways to be of greater width than shown on a county or state plan"⁷⁷

Under the Subdivision Control Act of 1967, the powers of the local governing body with respect to the street pattern will be substantially the same as under the Plat Act, except that the restriction to cases where lots "are platted of a width of 60 feet or less" will be eliminated. Section 182(1)(a) of the 1967 Act⁷⁸ provides that the governing body may require, as a condition to approval of a final plat, conformance of all streets, alleys, and roads in its jurisdiction to "the general plan, width and location requirements that it may have adopted and published, and greater width than shown on a county or state plan, but may not require conformance to a municipal plan that conflicts with a general plan adopted by the county or state for the location and width of certain streets, roads and highways."

A study of the subdivision regulations in the files of the Michigan Municipal League indicates that practically all Michigan cities and villages with subdivision regulations have mandatory requirements with respect to "the proper arrangement of streets," street widths (usually based on a functional classification of streets), angles of intersection, and the like. There is little doubt that reasonable regulations designed to make the street layout of a new subdivision fit in with the existing municipal street pattern, or with the municipality's major street plan, are valid under the usual constitutional tests, although there is little case law on the point. No doubt the courts will also sustain planning commissions and municipal governing bodies that refuse to approve plats "showing streets of abnormally steep grades, sharp curves, or dangerous acute-angle intersections,"

75. Plat Act § 20, MICH. COMP. LAWS § 560.20 (Supp. 1961).

76. Plat Act § 21, MICH. COMP. LAWS § 560.21 (1948).

77. Plat Act § 22, MICH. COMP. LAWS § 560.22 (1948).

78. Subdivision Control Act of 1967 § 182(1)(a).

which can usually be corrected "if the subdivider will make comparatively minor changes in his proposed layout."⁷⁹ It is less clear, however, whether a planning commission or governing body may substitute its own judgment for that of the subdivider with regard to the over-all design of the subdivision: for example, requiring the subdivider to change a rigid gridiron pattern to a design based on curvilinear streets. Most professional planners regard the power to require such major changes as an essential element in effective subdivision control.⁸⁰

If the subdivision is located outside the corporate limits of any city or village, the board of county road commissioners is empowered, under the Plat Act, to require that all highways, streets, and alleys shown on the plat "conform to the general plan that may have been adopted by the board . . . governing the width and location of highways, streets and alleys."⁸¹ If the platted land is within the corporate limits of any city or village but includes land on county roads, the board may require that "the highways and streets conform in width and location to plans on file in the office of the county road commission and make adequate provision for traffic safety in laying out drives which enter county roads"⁸² Section 183(1) of the Subdivision Control Act of 1967⁸³ contains a similar provision:

The county road commission may require the following as a condition of approval of [the] final plat for all highways, streets and alleys in its jurisdiction or to come under its jurisdiction and also for all private roads in unincorporated areas:

(a) Conformance to the general plan, width and location requirements that the board may have adopted and published.

(b) Adequate provision for traffic safety in laying out drives which enter county roads and streets, as provided in the board's current published construction standards.

The Plat Act also empowers the state highway commissioner, when the plat includes lands on state trunk line or federal aid roads, to require highways and streets shown on the plat to "conform in width and location to the plans on file for state trunk line and federal aid roads and make adequate provision for traffic safety in laying out drives which enter state trunk line and federal aided roads"⁸⁴

79. Reys, *Control of Land Subdivision by Municipal Planning Boards*, 40 CORNELL L.Q. 258, 265 (1955).

80. *Id.* at 265-66.

81. Plat Act § 15a, c, MICH. COMP. LAWS §§ 560.15a, .15c (Supp. 1961).

82. Plat Act § 33, MICH. COMP. LAWS § 560.33.

83. Subdivision Control Act of 1967 § 183(1).

84. Plat Act §§ 36, 37, MICH. COMP. LAWS §§ 560.36-.37 (1948).

Section 184(1) of the Subdivision Control Act of 1967⁸⁵ contains a similar provision:

The department of state highways may require, where a plat abuts a state trunk line highway . . . the following as a condition of approval for highways and streets shown on the final plat:

(a) Conformance in width and location to the plan on file at its main and district offices for state trunk line highways.

(b) Adequate provision for traffic safety in laying out roads, streets and alleys which enter state trunk line highways, as provided in the department's then currently published standards and specifications.

It is not clear whether the omission of any reference in the 1967 Act to "federal aid highways" is deliberate or inadvertent.

Municipal power to regulate lot sizes is curiously restricted by the Plat Act. The governing body has "the right to adopt rules and regulations as to the width and depth of lots" and "to reject any plat where the lots do not conform thereto,"⁸⁶ but it *must* reject a plat showing lots less than fifty feet wide, even if public sanitary sewer and water facilities are installed in the subdivision. Moreover, a plat showing lots from fifty to sixty feet wide may be approved only where "public sanitary sewer and water facilities are installed and ready for connection within the plat or where the proprietor has posted bond or other security with the municipality to assure the installation of such facilities after the approval of the plat."⁸⁷ It is not clear whether municipalities operating under the Municipal Planning Act are subject to these restrictions, but presumably they are. Also, even when minimum lot size and lot frontage requirements are set out in the municipal zoning ordinance rather than in the subdivision regulations, it would appear that the absolute minimum lot widths of fifty and sixty feet specified in the Plat Act are applicable whenever land is subdivided.

The Subdivision Control Act of 1967⁸⁸ will eliminate the Plat Act restrictions on municipal power to regulate lot sizes. Section 186 of the 1967 Act provides (*inter alia*) as follows:

. . . .

(b) No residential lot shall be less than 65 feet wide at the distance of 25 feet from its front line. If a lot diminishes in width from front to rear, it shall be no less than 65 feet wide at a distance of 50 feet from its front line.

85. Subdivision Control Act of 1967 § 184(1).

86. Plat Act § 30, MICH. COMP. LAWS § 560.30 (Supp. 1961).

87. *Id.*

88. Subdivision Control Act of 1967 § 186.

(c) No residential lot shall have an area of less than 12,000 square feet.

(d) Minimum width and area requirements for residential lots as set forth in this act may be waived in any subdivision where connection to a public water and a public sewer system is available and accessible or where the proprietor before approval of the plat has posted security with the clerk of the municipality [for construction of such facilities] . . . and where the municipality . . . has legally adopted zoning and subdivision control ordinances which include minimum lot width and lot area provisions for residential buildings.

In most jurisdictions it has long been settled that reasonable minimum lot size requirements are valid. The Michigan courts, however, were quite hostile to such requirements until the recent case of *Padover v. Farmington Township*⁸⁹ which clearly signalled judicial acceptance of minimum lot size requirements as an appropriate exercise of the police power. *Padover* and most of the similar cases in other jurisdictions involved minimum lot size requirements in zoning ordinances;⁹⁰ nevertheless, such requirements are obviously no less valid when set out in the municipality's subdivision regulations so long as there is no unconstitutional discrimination between subdivision land and other land within the municipality.

2. Required Physical Improvements

With respect to physical improvements in subdivisions, Michigan cities and villages appear to have substantially the same powers whether they operate under both the Plat Act and the Municipal Planning Act or only under the Plat Act. Michigan townships, however, have substantially less power in this regard when they operate only under the Plat Act (or under the Plat Act and the Township Planning Act), rather than under both the Plat Act and the Municipal Planning Act.

The Plat Act authorizes all municipalities (cities, villages, and townships) to require certain minimal street improvements⁹¹ and to require construction of "adequate storm drainage facilities . . . within the land proposed for platting" as a condition precedent to plat approval.⁹² In addition, "any city or village"—but *not* "any town-

89. 374 Mich. 622, 132 N.W.2d 687 (1965).

90. See, e.g., *Senior v. Zoning Comm'n*, 146 Conn. 531, 153 A.2d 415 (1959); *Simon v. Town of Needham*, 311 Mass. 560, 42 N.E.2d 516 (1942); *Flora Realty & Inv. Co. v. City of Ladue*, 362 Mo. 1025, 246 S.W.2d 771, *appeal dismissed*, 344 U.S. 802 (1952); *Fischer v. Bedminster Twp.*, 11 N.J. 194, 93 A.2d 378 (1952); *Dilliard v. Village of North Hills*, 276 App. Div. 969, 94 N.Y.S.2d 715 (1950); *Bilbar Constr. Co. v. Easttown Twp. Bd. of Adjustment*, 393 Pa. 62, 141 A.2d 851 (1958).

91. Plat Act § 19, MICH. COMP. LAWS § 560.19 (Supp. 1961).

92. Plat Act § 19a, MICH. COMP. LAWS § 560.19a (Supp. 1961).

ship"—may "provide by ordinance for the installation of other improvements" ⁹³ This grant of power to cities and villages seems substantially as broad as the grant to all municipalities under section 14 of the Municipal Planning Act, ⁹⁴ which authorizes any municipal planning commission to adopt subdivision regulations which "may include provisions as to the extent to which streets and other ways shall be graded and improved and to which water and sewer and other utility mains, piping, or other facilities shall be installed as a condition precedent to the approval of the plat."

Under the Plat Act alone (or under the Plat Act and the Township Planning Act), however, townships are not authorized to require subdivision street paving, although they may require "that all streets and private roads shall be gravelled or cindered, properly drained, and bridges and culverts installed where necessary." ⁹⁵ Moreover, under the Plat Act, townships may require installation of "public sanitary sewer and water facilities" only where "lots are platted of a width of less than 60 feet," and they may not require the paving of township roads, since this power is granted only to the county road commission. ⁹⁶

Under the Subdivision Control Act of 1967, ⁹⁷ the distinction between townships and other municipalities with respect to their powers to require subdivision improvements will be eliminated. Section 182 of the 1967 Act provides (*inter alia*) as follows:

(1) The governing body of a municipality in which the subdivision is situated may require the following as a condition of approval of [the] final plat, for all public and private streets, alleys and roads in its jurisdiction:

. . . .

(b) Proper drainage, grading and construction of approved materials of a thickness and width provided in its current published construction standards.

(c) Installation of bridges and culverts where it deems necessary.

(d) Submission of complete plans for grading, drainage and construction to be prepared and sealed by a civil engineer registered in the state.

(e) Completion of all required improvements relative to streets, alleys and roads or a deposit by the proprietor with the clerk of the municipality in the form of cash, a certified check or irrevocable bank letter of credit, whichever the proprietor selects, or a surety bond acceptable to the governing body, in an amount sufficient to insure completion within the time specified.

93. Plat Act § 22, MICH. COMP. LAWS § 560.22 (1948).

94. Municipal Planning Act § 14, MICH. COMP. LAWS § 125.44 (1948).

95. Plat Act § 19, MICH. COMP. LAWS § 560.19 (Supp. 1961).

96. Plat Act § 15c, MICH. COMP. LAWS § 560.15c (Supp. 1961).

97. Subdivision Control Act of 1967 § 182.

In addition, section 188 of the Subdivision Control Act of 1967⁹⁸ provides:

(1) If the subdivision includes or abuts certain improvements other than streets or alleys, such as county drains, lagoons, slips, waterways, lakes, bays or canals, which connect with or are proposed to connect with or enlarge public waters and such improvements are not in existence at the time of consideration by the governing body of the municipality, it may require, as a condition of approval of the final plat, the proprietor to enter into an agreement to construct such improvements within a reasonable time.

.
(3) Any municipality may provide by ordinance for the installation of other improvements in addition to those required by this act. The governing body of the municipality, as a condition of approval of the plat, may require the proprietor to enter into an agreement, as provided in this section.

Subsection (1), just quoted, substantially repeats the provisions of section 24 of the Plat Act.⁹⁹ Subsection (3) appears to authorize any municipality to require, under the Subdivision Control Act of 1967, as broad a range of subdivision improvements as it could require under the Municipal Planning Act.¹⁰⁰

Power to require construction of "adequate storm drainage facilities . . . within the land proposed for platting" is vested in the local governing body under the Plat Act, while under the Subdivision Control Act of 1967¹⁰¹ it is vested in the county drain commissioner, if there is one, and otherwise in the local governing body.

If the platted lands lie outside the corporate limits of any city or village, the Plat Act¹⁰² authorizes the board of county road commissioners to require that "all highways, streets, alleys and private roads shown on the plat shall be properly drained and properly constructed of approved materials of a thickness and width in accordance with the construction standards of the board . . . and that bridges and culverts be installed where necessary." Under the Subdivision Control Act of 1967, somewhat greater authority is granted to the county road commission by section 183(1),¹⁰³ which empowers the commission, as a condition of final plat approval "for all highways, streets and alleys in its jurisdiction or to come under its jurisdiction and also for all private roads in unincorporated areas," to require:

98. *Id.* § 188.

99. Plat Act § 24, MICH. COMP. LAWS § 560.24 (Supp. 1961).

100. Municipal Planning Act § 14, MICH. COMP. LAWS § 125.44 (1948).

101. Subdivision Control Act of 1967 § 192.

102. Plat Act § 15c, MICH. COMP. LAWS § 560.15c (1948).

103. Subdivision Control Act of 1967 § 183(1).

.

(c) Proper drainage, grading and construction of approved materials of a thickness and width provided in its current published construction standards.

(d) Submission of complete plans for grading, drainage and construction, to be prepared and sealed by a civil engineer registered in the state.

(e) Installation of bridges, culverts and drainage structures where it deems necessary.

The Plat Act¹⁰⁴ authorizes the state highway commissioner to require that "all streets and alleys be graded and surfaced in accordance with the specifications of the Michigan State Highway Department, insofar as they connect with and lie within the right of way of state trunk line or federal aid highways." The Subdivision Control Act of 1967¹⁰⁵ contains a similar provision authorizing the department of state highways to require that "those portions of connecting streets and roads within state trunk line highway right of way be graded and surfaced in accordance with the department's then currently published standards and specifications." Again, it is not clear whether omission of the Plat Act reference to "federal aid highways" is deliberate or inadvertent.

There is no doubt that state and local governments may constitutionally require subdividers to install specified street and utility improvements as a condition precedent to plat approval. The installation of paving, curbs, gutters, sanitary and storm sewers, water mains, and the like has a direct bearing on the cost to the municipality of street maintenance and the provision of public services in future years, and it also works to prevent irresponsible land development since it makes subdividers and investors consider all the costs of a proposed subdivision before embarking on the actual development. When the subdivider is required to construct such physical improvements, it can be argued that this is merely a method of accomplishing indirectly the same result the municipality could achieve directly by installing the improvements and imposing a special assessment upon the land benefited. Although special assessments have ordinarily been sustained as an exercise of the taxing power, they are not a property tax subject to the constitutional requirement of uniformity; furthermore, they have also been sustained as an exercise of the police power or on a quasi-contract theory. The indirect approach may be more desirable from the municipality's point of view: when the subdivider is required to construct necessary physical im-

104. Plat Act § 37a, MICH. COMP. LAWS § 560.37a (1948).

105. Subdivision Control Act of 1967 § 184(1)(c).

provements, he thereby bears the risk that the subdivision development scheme will fail, and thus the municipality is protected against the possibility that it will be left holding the bag in the form of unpaid special assessments for improvements installed by the municipality itself.¹⁰⁶

A requirement that subdividers grade and gravel streets and provide surface drains, concrete sidewalks, and sanitary sewers was sustained in Michigan in 1920.¹⁰⁷ At the present time, most municipalities impose much more onerous requirements,¹⁰⁸ which have generally been sustained by the courts in other states.¹⁰⁹

106. See CORNICK, PREMATURE SUBDIVISION AND ITS CONSEQUENCES (1938); N.J. STATE PLANNING BD., LAND SUBDIVISION IN NEW JERSEY (1938); N.J. STATE PLANNING BD., PREMATURE LAND SUBDIVISION (1941). The findings of the two New Jersey studies are summarized in *Lake Intervale Homes, Inc. v. Township of Parsippany-Troy Hills*, 28 N.J. 423, 147 A.2d 28 (1958). The Advisory Committee's footnote 72 to the STANDARD ACT, referring to required improvements, says:

Properly speaking, this is not a planning matter, as it is not a matter of location and extent, but rather a matter of construction. Both to protect persons who buy lots and to assure that the materials and locations of the improvements will conform to the proper standards, as well as to protect the city from the incurring of costs which should be borne by the original subdivider, this time of approval of the plat is the best one at which to require these features. This includes not only the paving, but also such items as sidewalks, curbs, gutters, and service connections to various utility mains placed in the streets.

For a good recent discussion of the rationale of subdivision improvement requirements, see Johnston, *Constitutionality of Subdivision Control Exactions: The Quest for a Rationale*, 52 CORNELL L.Q. 871, 896-903 (1967). The entire article is excellent.

107. *Allen v. Stockwell*, 210 Mich. 488, 178 N.W. 27 (1920).

108. Number of Michigan municipalities in which various subdivision improvements are or may be required:

<i>Paved streets</i>		<i>Sanitary sewers</i>	
Mandatory	64	Mandatory	93
May be required	1	May be required	0
<i>Gravelled streets</i>		<i>Water mains</i>	
Mandatory	24	Mandatory	86
May be required	1	May be required	1
<i>Curbs and gutters</i>		<i>Tree planting</i>	
Mandatory	57	Mandatory	28
May be required	3	May be required	12
<i>Sidewalks</i>		<i>Street lights</i>	
Mandatory	51	Mandatory	8
May be required	15	May be required	1
<i>Storm sewers</i>			
Mandatory	71		
May be required	1		

In at least eighteen Michigan cities and villages the cost of such improvements is to be financed by special assessments, and in at least sixteen Michigan cities and villages there are provisions for cost sharing between the subdivider and the municipality. Elsewhere, the subdivider must bear the entire cost of required improvements.

The information summarized in this note is drawn from the files of the Michigan Municipal League. Compare results of an earlier study tabulated in MICHIGAN MUNICIPAL LEAGUE, INFORMATION BULLETIN NO. 84, *Subdivision Control in Michigan* 36-44 (1959).

109. See, e.g., *Newton v. American Sec. Co.*, 201 Ark. 943, 148 S.W.2d 311 (1941); *Mefford v. Tulare*, 102 Cal. App. 2d 919, 228 P.2d 847 (1951); *Petterson v. Naperville*, 9 Ill. 2d 233, 137 N.E.2d 371 (1956).

3. *Compulsory Dedication or Reservation of Land for Public Use and Fees in Lieu of Compulsory Dedication*

It seems to be universally agreed that it is reasonable to require rights of way for new streets within subdivisions to be dedicated to public use. It is rather surprising, however, to find that only seven of the American subdivision control enabling acts expressly provide for compulsory dedication of subdivision streets.¹¹⁰ The Michigan subdivision control acts currently in force do not expressly require dedications for street purposes, although they clearly assume that subdivision streets will normally be dedicated to public use.¹¹¹ Section 182(4)(a) of the Subdivision Control Act of 1967¹¹² directs local governing bodies to reject a plat "which is isolated from or which isolates other lands from existing public streets, unless suitable access is provided," but does not state that "suitable access" may only be provided by "public" streets. Similarly, section 183(4)¹¹³ directs the county road commission to reject a final plat "isolating lands from existing public streets or roads, unless suitable access is provided," and to require that such access be "granted by easement or dedicated to public use."

Under section 259 of the Subdivision Control Act of 1967,¹¹⁴ it is clear that municipalities may, if they wish, require dedication to public use of all subdivision streets and streets providing access thereto: "The standards for approval of plats prescribed in this act are minimum standards and any municipality, by ordinance, may impose stricter requirements and may reject any plat which does not conform to such requirements." It seems rather peculiar that no such provision with respect to county road commissions is included in the 1967 Act; perhaps it was assumed by the draftsmen that, in general, highways and streets under the jurisdiction of the commission "or to come under its jurisdiction" will already be dedicated to public use. By way of contrast, however, it should be noted that section 184(1) of the Subdivision Control Act of 1967¹¹⁵ confers the following power (*inter alia*) on the state highway department:

110. See ALASKA COMP. LAWS ANN. § 40-15-030 (1962); ARK. STAT. ANN. § 19-2829(c) (Supp. 1965); IDAHO CODE ANN. § 50-2505 (1963); NEB. REV. STAT. § 14-115 (1962); N.M. STAT. ANN. § 14-2-25 (1953); MISS. CODE ANN. § 3374-123 (1956); ORE. REV. STAT. § 92.090(2)(b) (1963); cf. MASS. ANN. LAWS ch. 41, § 81Q (1966), which provides that a planning board cannot "impose, as a condition for the approval of a plan of a subdivision, that any of the land . . . be dedicated to the public use . . . as a public way . . . without just compensation."

111. See Plat Act § 12-13, MICH. COMP. LAWS §§ 560.12-.13 (Supp. 1961).

112. Subdivision Control Act of 1967 § 182(4)(a).

113. *Id.* § 183(4).

114. *Id.* § 259.

115. *Id.* § 184(1).

The department . . . may require, where a plat abuts a state trunk line highway, if the existing right of way was not previously dedicated to public use or acquired in fee simple, that there be included within the plat boundary and description the area within the existing right of way and that such area be dedicated to public use if it is the proprietor's land.

Most subdividers, of course, are quite willing to dedicate streets within the subdivision or along its boundaries to public use if agreement can be reached as to alignment and widths, for this enables the subdivider to shift the burden of street maintenance to the municipality or county. But when the municipality asserts the power to require dedication of streets of greater width than the subdivider is willing to dedicate, a more serious problem may arise.

In *Ridgefield Land Co. v. Detroit*,¹¹⁶ the Michigan Supreme Court sustained the action of the Detroit City Plan Commission in requiring, as a prerequisite to approving and recording a subdivider's plat, dedication of seventeen feet "in addition to the regular 33-foot dedication" for a subdivision boundary street. The court suggested two bases for such a requirement: (1) theoretically, the subdivider must be viewed as voluntarily dedicating sufficient land for streets in return for the privilege and advantage of recording his plat; (2) requirements that streets be of designated minimum widths are necessary to accommodate traffic and provide for the public safety, and are therefore within the police power of the municipality.

The first basis is no longer tenable in view of the recording requirement contained in section 3 of the Plat Act¹¹⁷—a requirement that will remain in force under section 103(1) of the Subdivision Control Act of 1967.¹¹⁸ The second basis of the decision is also unsatisfactory without some explanation as to why it was reasonable to require the subdivider to dedicate the extra seventeen feet of right of way without compensation, since the court conceded that, outside the context of a subdivision development, an existing street could not be widened without compensating the landowners whose land was taken for that purpose. The court referred to a self-evident relationship between street width and public safety and indicated that this relationship somehow justified the exercise of the police power to require dedication without compensation. But this really begged the question, for the court failed to explain how the "necessity" for a wider street right of way made it "reasonable" to impose

116. 241 Mich. 468, 217 N.W. 58 (1928).

117. Plat Act § 3, MICH. COMP. LAWS § 560.3 (Supp. 1961), amending MICH. COMP. LAWS § 560.3 (1948).

118. Subdivision Control Act of 1967 § 103(1).

the whole cost of providing the additional right of way upon the subdivider. If the extra seventeen feet of street width was really "necessary" to handle additional traffic generated by the subdivision, the required dedication would appear to be "reasonable." But if it was "necessary" merely to handle traffic generated elsewhere, it is far from clear that the required dedication was "reasonable" and it is strongly arguable that it constituted a taking of private property for public use without just compensation.¹¹⁹

At least forty Michigan cities and villages have subdivision regulations which relate to the dedication or reservation of land for public use other than for streets.¹²⁰ Many of these authorize the planning commission or governing body to require dedication or reservation of subdivision land for playgrounds, parks, or other designated public uses, but usually without any definition of "reser-

119. The same problem was before the California court in *Ayres v. City Council*, 34 Cal. 2d 31, 207 P.2d 1 (1949), where the planning commission required the dedication of additional land along a subdivision boundary street, both to provide additional right-of-way and to provide a planting strip to preclude access, and also required the widening of one of the interior streets, connecting two main streets which then ended on opposite sides of the tract, from sixty to eighty feet. The court upheld these requirements against the charge that they amounted to a "taking" of property without the constitutionally-required just compensation. The court said, *inter alia*, that conditions imposed upon the subdivider were lawful if "reasonably required by the subdivision type and use as related to the character of local and neighborhood planning and traffic conditions." Thus the court seems to have recognized the principle that subdivision dedication requirements should be reasonably related to the needs generated by the subdivision, although it is not clear whether on the facts of the case this principle was properly applied. Certainly the court failed to indicate very clearly what the test of reasonableness is in cases where the subdivider is required to dedicate streets within his subdivision to a width exceeding that of existing connecting streets and to dedicate additional right-of-way for subdivision boundary streets.

As an alternative explanation of the *Ayres* decision, it is possible to focus on the following statement by the court:

In fact, it may be said that the petitioner's position would seem to be greatly improved by this type of subdivision [cellular design] and its related requirements in conformity with neighborhood planning and zoning. [The regular design of subdivision] . . . would have required dedication and improvement by the petitioner of lateral service roads and lanes for diversion of the local traffic to and from the main artery which the evidence shows would have used more land than for the widening and planting strips, and would have increased the cost of the improvements to be installed by the petitioner. The record indicates that the so-called cellular design was generally adopted because it interfered less with the free flow of traffic, minimized the hazards on the main thoroughfares, and reduced land dedication and improvement expense In fact, the petitioner makes no objection to that design as such. It is to be presumed that he prefers it with the resulting savings in land and cost.

34 Cal. 2d at 41, 207 P.2d at 6.

If this is the key to the decision in *Ayres*, the reasonableness of subdivision exactions generally would presumably be determined by balancing the detriment imposed upon the subdivider against the benefit conferred upon the community. It is not surprising that the dedication requirements were upheld in *Ayres*, since the required design resulted in savings to the subdivider rather than imposing a burden upon him. See fuller discussion of the *Ayres* case in Johnston, *supra* note 106, at 889-94.

120. Municipal League files.

vation" and often without any standards to govern the exercise of the power to impose such requirements.

Some cities and villages provide that sites designated for public development on an official plan *must* be dedicated.¹²¹ Other cities and villages provide that dedication or reservation *may* be required if the master plan shows a proposed park or playground within the subdivision, or when the planning commission deems it essential to require dedication or reservation of land within the subdivision for park or playground use although no such site is shown on the master plan.¹²² A few cities and villages specify that the subdivider must dedicate at least 5% of the subdivision area for such public uses.¹²³ Several, on the other hand, provide that the subdivider shall be compensated for any land he is required to dedicate for such public uses beyond a fair and reasonable percentage.¹²⁴ Many cities and villages provide that, if the subdivider will not dedicate areas which the planning commission determines to be reasonably necessary for park, playground, or school purposes, the commission may "reserve" such areas for acquisition at the raw land cost.¹²⁵ Finally, a large number of cities and villages only provide that the subdivider shall give due consideration to the dedication or reservation of land for public uses,¹²⁶ or that the planning commission shall "discuss" with subdividers the dedication or reservation of land for public uses."¹²⁷

The validity of subdivision requirements for land dedication for playgrounds, parks, and school sites is currently a matter of sharp controversy. Although many of the subdivision control enabling acts, including the Michigan Municipal Planning Act, include the Standard Act provision that subdivision regulations "may provide for . . . adequate and convenient open spaces for . . . recreation,"¹²⁸ very few of the statutes expressly authorize any requirement of land dedication for playgrounds, parks, or schools, and fewer still authorize the exaction of fees in lieu of dedication.¹²⁹ Judicial reaction to both

121. Municipal League files. Bay City, *e.g.*, has such a requirement.

122. Municipal League files. Beverly Hills, Charlotte, Dowagiac, Flat Rock, Flint, Gibraltar, and Howell, *e.g.*, have such a provision.

123. Municipal League files. Fremont and Lapeer, *e.g.*, have such a requirement.

124. Municipal League files. Charlotte, Dowagiac, and Marine City, *e.g.*, have such a provision.

125. Municipal League files. Holland, Kalamazoo, Muskegon, Owosso, St. Louis, and Sturgis, *e.g.*, have such a provision.

126. Municipal League files. Fowler, Milan, Negaunee City, New Buffalo, Whitehall, and Ypsilanti, *e.g.*, have such a provision.

127. Municipal League files. Grandville and Hudsonville, *e.g.*, have such a provision.

128. STANDARD ACT § 14.

129. Arkansas has the broadest enabling provision. ARK. STAT. ANN. § 19-2829 (Supp. 1965):

When a proposed subdivision does not provide an area or areas for a community

the dedication requirement and the fee requirement has been mixed. In a majority of the cases, both types of exaction have been struck down, but usually as ultra vires under the enabling act rather than as unconstitutional.¹³⁰ The constitutionality of such exactions has re-

or public facility based on the [community] plan or plans in effect, the regulations may provide for reasonable dedication of land for such . . . facilities, or for a reasonable equivalent contribution in lieu of dedication of land, such contribution to be used for the acquisition of facilities that serve the subdivision.

Presumably "community or public facilities" includes both recreational facilities (parks and playgrounds) and schools.

N.Y. GEN. CITY LAW § 33 (Supp. 1967) provides as follows:

[S]uch plat shall also show in proper cases and when required by the planning board a park or parks suitably located for playground or other recreation purposes. If the planning board determines that a suitable park or parks of adequate size cannot be properly located in any such plat or is otherwise not practical, the board may require as a condition to approval of any such plat a payment to the city of a sum to be determined by the common council or other governing board of such city, which sum shall constitute a trust fund to be used by the common council or other governing board of such city exclusively for neighborhood park, playground or recreational purposes including the acquisition of land.

N.Y. TOWN LAW § 277 (Supp. 1967) and N.Y. VILLAGE LAW § 179-1 (Supp. 1967) contain provisions identical in substance with the quoted provision of N.Y. GEN. CITY LAW § 33 (Supp. 1967).

Dedication requirements for parks and playgrounds are authorized by MONT. REV. CODE ANN. § 11-602(9) (1957); N.H. REV. STAT. ANN. § 36:21 (1955) (semble); WASH. REV. CODE ANN. § 58.16.110 (1958) (semble). The Montana statute not only authorizes dedication requirements, but provides that each proposed plat "must show that at least one-ninth of the platted area, exclusive of streets, alleys, avenues, and highways, is forever dedicated to the public for parks and playgrounds." Each municipality is then empowered to reduce the area to be dedicated to not less than one-twelfth "for good cause shown," and to waive the requirement entirely where the platted area consists of less than twenty acres. The New Hampshire and Vermont statutes contain language identical with the first sentence in the provision from N.Y. GEN. CITY LAW § 33 (Supp. 1967) quoted above. Since the New York provision has been held to authorize required dedication of subdivision land, the New Hampshire and Vermont provisions will probably be construed in the same manner.

Authority to require "provision for recreational facilities" is conferred on the local plat approval agency by IND. ANN. STAT. § 53-747 (1964); ORE. REV. STAT. § 92.044 (1965); W. VA. CODE ANN. § 8-5-30 (1966). All of these could be construed to authorize land dedication requirements, or even payments in lieu of dedication, to provide for "recreational facilities."

Illinois formerly had a statute, ch. 24, § 53-3, 2 [1941] Ill. Laws 19, which provided that the municipal plan might "establish reasonable standards of design for subdivisions . . . including reasonable requirements for public streets, alleys, ways for public service facilities, *parks, playgrounds, school grounds*, and other public grounds." (Emphasis added.) This provision was construed in *Pioneer Trust and Savings Bank v. Village of Mount Prospect*, 22 Ill. 2d 375, 176 N.E.2d 799 (1961), as authorizing land dedication requirements for "parks, playgrounds [and] school grounds." Subsequently, however, it was repealed and replaced by ILL. REV. STAT. ch. 24, § 11-12-8 (1961), which provides only for "reservation" of land for such purposes.

Wis. STAT. ANN. § 236.45(1) (1957) authorizes municipalities and counties to condition plat approval on compliance with regulations adopted to accomplish the purpose, *inter alia*, of facilitating "adequate provision for . . . *schools, parks, playgrounds* and other public requirements." (Emphasis added.) In *Jordan v. Menomonee Falls*, 28 Wis. 2d 608, 137 N.W.2d 442 (1965), this provision was construed as authorizing both dedication and fee (in lieu of dedication) requirements.

130. See, e.g., *Kelber v. Upland*, 155 Cal. App. 2d 631, 318 P.2d 561 (1958) (fees for park and school site fund and for subdivision drainage fund); *Rosen v.*

cently been upheld by the highest courts of Montana, Wisconsin, and New York.

In *Billings Properties, Inc. v. Yellowstone County*,¹³¹ the Montana Supreme Court sustained a statute expressly requiring dedication of subdivision land for park and playground purposes, rejecting the subdivider's contention that the required dedication constituted a taking for public purposes without just compensation. In *Jordan v. Menominee Falls*,¹³² the Wisconsin Supreme Court first determined, as a matter of statutory construction, that compulsory dedication of land or payment of a cash equivalent (called an "equalization fee") for school and recreational purposes was authorized by the state enabling act. Then the court sustained the exaction of an "equalization fee" of \$200 per lot as against the subdivider's contention that this was a taking of property for public use without just compensation. And in *Jenad, Inc. v. Scarsdale*,¹³³ the New York Court of Ap-

Downers Grove, 19 Ill. 2d 448, 167 N.E.2d 230 (1960) (dedication of land or fees in lieu thereof to provide schools); *Gordon v. Wayne*, 370 Mich. 329, 121 N.W.2d 823 (1963) (fee requirement for "park fund"); *Ridgemont Dev. Co. v. East Detroit*, 358 Mich. 387, 100 N.W.2d 301 (1960) (required conveyance of lots for playground use); *Haugen v. Gleason*, 226 Ore. 99, 359 P.2d 108 (1961) (fee in lieu of land for parks)—all holding the subdivision exactions ultra vires. But see *Jenad, Inc. v. Scarsdale*, 18 N.Y.2d 78, 218 N.E.2d 673 (1966); *Jordan v. Menominee Falls*, *supra* note 129—both holding dedication and fee (in lieu of dedication) requirements to be authorized by the enabling act. In *Gulest Associates v. Town of Newburgh*, 25 Misc. 2d 1004, 209 N.Y.S.2d 729 (Sup. Ct. 1960), *aff'd*, 15 App. Div. 2d 815, 225 N.Y.S.2d 538 (1962), N.Y. TOWN LAW § 277 (referred to *supra* note 129) was held unconstitutional, but this decision was overruled by *Jenad, Inc. v. Scarsdale*, *supra*.

In *Pioneer Trust & Sav. Bank v. Mt. Prospect*, 22 Ill. 2d 375, 176 N.E.2d 799 (1961), without passing on the constitutionality of the Illinois statute authorizing "reasonable requirements for . . . parks, playgrounds, school grounds, and other public grounds," the court held unconstitutional an ordinance requiring dedication of land for school and recreational use on the ground that the need for new facilities was a result of the total development of the community and not specifically and uniquely attributable to the subdivider's activity. The court said: "[O]n the record in this case the school problem which allegedly exists here is one which the subdivider should not be obliged to pay the total cost of remedying, and to so construe the statute would amount to an exercise of the power of eminent domain without compensation." *Id.* at 381-82, 176 N.E.2d at 802. For justified criticism of the decision, see *Johnston*, *supra* note 106, at 908-09.

131. 144 Mont. 25, 394 P.2d 182 (1964).

132. 28 Wis. 2d 608, 137 N.W.2d 442 (1965), *appeal dismissed*, 385 U.S. 4 (1966).

133. 18 N.Y.2d 78, 218 N.E.2d 673 (1966). The *Jenad* decision, as previously noted, *supra* note 130, overruled the earlier decision in *Gulest Associates v. Newburgh*. For earlier decisions in New York sustaining compulsory dedication of subdivision land for parks, see *Reggs Homes v. Dickerson*, 16 Misc. 2d 732, 179 N.Y.S.2d 771 (Sup. Ct. 1958) (dictum); *In re Lake Secor Dev. Co.*, 141 Misc. 913, 252 N.Y. Supp. 809 (Sup. Ct. 1931), *aff'd*, 235 App. Div. 627, 255 N.Y. Supp. 853 (1932).

In *Rosen v. Downers Grove*, *supra* note 130, the court viewed sympathetically "provisions of the statute with respect to reasonable requirements for . . . school grounds and the like," which were "based upon the theory that the developer of a subdivision may be required to assume those costs which are specifically and uniquely attributable to his activity and which would otherwise be cast upon the public." But the ordinance under attack in that case was held invalid because it was broader than

peals held that the enabling act authorized the exaction of a cash contribution in lieu of required land dedication for park and playground purposes, and sustained the exaction of \$250 per lot as against a constitutional attack by the subdivider.

It is clear that Michigan municipalities operating under the Municipal Planning Act are the only ones that have an arguable statutory basis for requiring dedication or reservation of land within subdivisions for park or playground use. It was correctly decided in *Ridgemont Development Co. v. East Detroit*¹³⁴ and in *Gordon v. Wayne*¹³⁵ that the Plat Act does not authorize municipalities to require conveyance or dedication of land for public recreational use, or to exact cash payments in lieu thereof. But neither case decided (or could decide) that subdivision requirements to provide land for public recreational use are ultra vires under the Municipal Planning Act, which provides additional authority for subdivision control in those municipalities operating under it.

Section 14 of the Municipal Planning Act¹³⁶ expressly states that subdivision regulations adopted by municipal planning commissions "may provide for . . . adequate and convenient open spaces for . . . recreation." Arguably, this authorizes planning commissions to require a subdivider to dedicate land within his subdivision for playground or park use. Indeed, the provision just quoted might even be construed as empowering planning commissions to impose a cash fee requirement in lieu of land dedication in cases where good planning calls for location of a park or playground near, but not within,

the statutory authorization and because it failed to fix standards to govern the planning commission in determining the amount of land to be dedicated. For an excellent general discussion of the cases, see Johnston, *supra* note 106, at 906-21.

134. 358 Mich. 387, 100 N.W.2d 301 (1960). To the same effect, see [1955-1956] MICH. ATT'Y GEN. BIENNIAL REP. 446.

135. 370 Mich. 329, 121 N.W.2d 823 (1963). The *East Detroit* and *Wayne* cases were cited and relied on in the recent case of *Enchanting Homes, Inc. v. Rapanos*, 143 N.W.2d 618 (Mich. App. 1966), which was, in part, an action by a real estate developer against the city to recover the value of those parts of the developer's subdivision which the city had required the developer to dedicate to public use for park purposes. The City of Midland has a planning commission, established under the Municipal Planning Act, which has adopted subdivision regulations; but the regulations contain no provision requiring dedication of subdivision land for parks or playgrounds. The city, nevertheless, "had a policy of requiring proprietors of proposed subdivisions to contribute ten per cent of the land area in the proposed plat or its money equivalent to the city for park purposes as a condition to plat approval by the city." Relying on the *East Detroit* and *Wayne* cases, but without observing that the result might be different under § 14 of the Municipal Planning Act if the subdivision regulations required dedication of land for park or playground use, the court of appeals held "that the city cannot do legally what it attempted to do in this case," and consequently (since "reconveyance [of the park land] was not possible because of the rights of the individual plaintiffs to the park land promised to them when they purchased their lots") that the developer was entitled to recover the full value of the park land.

136. Municipal Planning Act § 14, MICH. COMP. LAWS § 125.44 (1948).

a particular subdivision. In any case, the quoted provision would seem to authorize planning commissions to require that designated areas within a subdivision be "reserved" for a reasonable time (though not dedicated) for future park or playground use.

One Pennsylvania decision¹³⁷ held unconstitutional a statute which authorized "official mapping" of proposed parks and playgrounds with a "reservation" of mapped park and playground areas for three years, during which time no improvements were to be allowed within such areas. But the decision is hardly a precedent on the issue of constitutionality of "reservation" provisions in subdivision regulations, since the Pennsylvania statute did not require any subdivision of land to trigger its "freeze" on building development within mapped park or playground areas and the three-year moratorium on construction may well be deemed unreasonably long. A provision for a "reservation" of proposed park or playground areas within new subdivisions for a one-year period, with a requirement that the local governing body either initiate appropriate action aimed at the acquisition of the "reserved" areas within that period or permit building development,¹³⁸ would appear likely to withstand constitutional attack.¹³⁹

It should be noted that the Subdivision Control Act of 1967 contains no authorization for municipalities to require either dedication or reservation of subdivision land for recreational use, and that neither the Plat Act nor the Subdivision Control Act of 1967 nor the

137. *Miller v. Beaver Falls*, 368 Pa. 189, 82 A.2d 34 (1951).

138. N.J. REV. STAT. § 40:55-1.20 (Supp. 1953) provides, in part, as follows:

The governing body or the planning board shall be permitted to reserve the location and extent of school sites, public parks and playgrounds shown on the master plan or any part thereof for a period of one year after the approval of the final plat or within such further time as agreed to by the applying party. Unless during such one-year period or extension thereof the municipality shall have entered into a contract to purchase or instituted condemnation proceedings according to law, for said school site, park or playground, the subdivider shall not be bound by the proposals for such areas shown on the master plan.

Compare N.J. REV. STAT. § 40:55-1.32 (Supp. 1953), which provides for reservation "for future public use the location and extent of public parks and playgrounds shown on the official map . . . and within the area of said plat for a period of one year after the approval of the final plat or within such further time as agreed to by the applying party." It is unclear why the latter section omits any mention of school sites.

Under N.J. REV. STAT. § 40:55-1.38 (Supp. 1953), the owner may use the "reserved" area for any purpose other than construction of buildings during the one-year period; no building permit may be issued for construction of buildings during the period unless the zoning board of adjustment finds that the parcel subject to the "reservation" cannot otherwise "yield a reasonable return to the owner."

139. By analogy, this conclusion is supported by cases upholding street "reservations" under official map statutes, e.g., *Headley v. Rochester*, 272 N.Y. 197, 5 N.E.2d 198 (1936); *Miller v. Manders*, 2 Wis. 2d 365, 86 N.W.2d 469 (1957). It is also supported by cases upholding "interim" zoning ordinances, e.g., *Walworth County v. Elkhorn*, 27 Wis. 2d 30, 133 N.W.2d 257 (1965). A thirteen-month "reservation" period was held reasonable in *Segarra v. Iglesias*, 71 P.R.R. 139 (1950).

Municipal Planning Act authorizes subdivision exactions for the purpose of providing school sites.¹⁴⁰

4. *Agreements With the Subdivider and "Cluster" Developments*

It is clear, of course, that only municipalities regulating land subdivision under the Municipal Planning Act can take advantage of the provisions in section 15 of that Act¹⁴¹ which authorize municipal planning commissions to agree with applicants for plat approval "upon use, height, area or bulk requirements or restrictions governing buildings and premises within the subdivision, provided such requirements or restrictions do not authorize the violation of the then effective zoning ordinance of the municipality." Requirements and restrictions thus agreed upon have "the same force of law and . . . [are] enforceable in the same manner and with the same sanctions and penalties and subject to the same power of amendment or repeal as though set out as a part of the zoning ordinance or map of the municipality." The meaning of this language, which is taken verbatim from section 15 of the Standard Act, is somewhat obscure. The intent of the draftsmen of the Standard Act seems to have been merely to permit the planning commission to "agree" with the subdivider to raise such standards as the minimum permissible lot width and the minimum total lot area above those set out in the local zoning ordinance or subdivision regulations, and to make the agreement enforceable against the lot owners by the municipality.¹⁴² Yet

140. It might be argued that the authorization in § 14 of the Municipal Planning Act, MICH. COMP. LAWS § 125.44 (1948), whereby subdivision regulations may "include provisions as to the extent to which . . . other facilities shall be installed as a condition precedent to the approval of the plat" covers this, but the argument is weak. Under the principle of *ejusdem generis*, "other facilities" will almost certainly be construed to include facilities similar to those enumerated—street improvements, and "water and sewer and other utility mains, [and] piping."

141. Municipal Planning Act § 15, MICH. COMP. LAWS § 125.45 (1948).

142. Footnote 82 to the STANDARD ACT states that "cases will arise in which, in the course of the negotiations between the subdivider and the [planning] commission, the subdivider will himself offer to impose certain building restrictions, and the commission's final approval of the plat will be based upon the assurance that such restrictions will be placed upon the land and carried out. This portion of the text of the act enables such agreements to be carried out by giving the agreed restrictions the force of law." Further explanation of the intended meaning of the quoted language may be found in the original footnote 71 to the STANDARD ACT, which contains the following statement:

Planning commissions should have the power to cooperate and agree with the subdivider upon restrictions as to height, area, and even use of buildings, so long as these do not authorize violation of the zoning ordinance. In other words, the planning commission and the subdivider may cooperate to bring about development of the territory of the subdivision in accordance with high standards of health and convenience. The commission is peculiarly well fitted for this, because it is, in most places, the maker of the original zone plan and passes upon all changes in that plan and, consequently, is well qualified to mutually adjust the

it has been suggested recently that the provision in question furnishes a basis for regulation of what are now generally termed "cluster" or "planned unit" developments.¹⁴³ The core of the cluster or planned unit concept is the substitution of the entire residential development for the individual lot as the subject of regulation. As a leading writer has put it:¹⁴⁴

Current subdivision controls . . . assume that the entire site (excepting streets and drainage rights of way) will be distributed in lots for the individual enjoyment of each home. In fact, however, the lots are frequently used in common by the children and sometimes even by the adults. It may be appropriate to ask why we do not allow the developer to borrow a part of each lot and assemble some areas for common use and recreation from the start.

There is much to be gained by a fresh approach. By recognizing the need for common recreation, the homes can be designed, and sited for greater privacy and the home owner need not be put to the choice between suffering daily invasion or becoming an outcast. The ability to use a portion of the entire site as a common open space will give the developer "play" in the siting of his homes so that if he is forced to use one design he can cluster them around cul-de-sacs instead of stringing them out like matchboxes in a row. If we abandon the idea that the automobile must have access to the lot and allow the developer to use interior lots, walkways and common parking facilities, a whole range of interesting site planning possibilities would become available. From here, why not escape the matchbox effect entirely, by encouraging the developer to use a combination of different housing types? By adding neighborhood stores, the variety and convenience which makes for an interesting community might be supplied.

Although it is far from clear that the draftsmen of the Standard Act had the modern cluster or planned unit development in mind when they inserted the language in section 15 as to agreements on "use, height, area and bulk requirements," it would seem that this language does indeed provide a basis for authorizing and regulating such developments. Assuming that the municipal zoning ordinance or subdivision regulations will set up relatively high lot size requirements for "ordinary" development, they might then provide in the alternative for cluster or planned unit development (at the de-

standards of subdivisions and the general standards of the zone plan. These building restrictions, however, are so unmistakably legislative in their nature and so integrally related to the zoning ordinance that the planning commission should not have the power to impose these building restrictions upon the subdivider.

143. Krasnowiecki, *Planned Unit Development: A Challenge to Established Theory and Practice of Land Use Control*, 114 U. PA. L. REV. 47, 83-85 (1965).

144. *Id.* at 47.

veloper's option, of course), with the planning commission authorized to reduce lot size requirements in return for assurances from the developer as to the location and extent of open space to be preserved for common use by residents of the development. In addition, the zoning ordinance might authorize the planning commission, in cases where the developer opts for a cluster or planned unit development, to permit a combination of different housing types instead of just single-family houses, or even to permit neighborhood stores properly sited within the development. All this seems to be permissible under the planning commission's power to "agree with the applicant upon use, height, area or bulk requirements," provided that the requirements agreed upon are not in "violation of the then effective zoning ordinance of the municipality." Any violation of the zoning ordinance can be avoided, as suggested above, by providing expressly in the zoning ordinance for cluster or planned unit developments under the planning commission's supervision. The lot-size requirements for "ordinary" development could either be set out in the zoning ordinance or in the subdivision regulations.

The Subdivision Control Act of 1967 does not contain any provisions designed to facilitate the regulation of cluster or planned unit developments. The 1967 Act does, however, contemplate that plat approval agencies may in some instances utilize restrictive covenants as a device to control land use in subdivisions. For example, as we have already seen,¹⁴⁵ where any part of a proposed subdivision lies within the flood plain of a river, stream, creek or lake, approval of the final plat is conditioned upon the filing and recording of "restrictive deed covenants . . . that the floodplain area will be left essentially in its natural state." And section 254 of the Subdivision Control Act of 1967¹⁴⁶ provides as follows:

Any restriction required to be placed on platted land by a public body given the authority to review or approve plats . . . or which names the public body as grantee, promisee or beneficiary, shall vest in the public body the right to enforce the restriction . . . against anyone who has or acquires an interest in the land subject to the restriction. The restriction may be released or waived in writing but only by the public body having the right of enforcement.

5. *Variances or Exceptions*

A majority of the Michigan cities and villages which have subdivision regulations adopted under the Municipal Planning Act include a provision for variances or exceptions from the usual re-

145. See text following note 72 *supra*.

146. Subdivision Control Act of 1967 § 254.

quirements.¹⁴⁷ In general, the basis for a variance or exception is the same as for a zoning variance: proof of "practical difficulties or unnecessary hardship in the way of carrying out the strict letter of" the subdivision regulations.¹⁴⁸ Sometimes a more elaborate formula is employed, under which a variance may be granted only if the following conditions are met: (a) special circumstances or conditions affect the subdivision so that a strict application of the regulations would deprive the subdivider of the reasonable use of the land; (b) the variance is necessary for preservation of a substantial property right of the subdivider; and (c) the variance will not be detrimental to the public welfare or injurious to other land in the same area.¹⁴⁹ Several cities and villages also provide for variances or exceptions where there is a large-scale subdivision development,¹⁵⁰ and a few provide for variances or exceptions where the subdivision is very small.¹⁵¹ At least three municipalities provide, in effect, for a standing exception or exemption from most of the usual subdivision requirements when a subdivision falls within the ordinance definition of a "minor" subdivision.¹⁵² And, of course, many municipalities, in effect, provide a complete exemption for small subdivisions by defining "subdivision" so as to exclude subdivisions which do not involve five or more lots.¹⁵³

E. *Procedure for Obtaining Subdivision Plat Approval*

1. *Approvals at the Municipal Level*

In states other than Michigan, under enabling acts based upon the Standard Act, the procedure for securing subdivision plat approval from the municipal planning commission generally is divided into three stages: (1) the "preapplication" stage; (2) the "tentative

147. Municipal League files.

148. *Id.* The quoted portion of the text is from § 5(d) of the Michigan City and Village Zoning Act, MICH. COMP. LAWS § 125.585 (Supp. 1961).

149. Municipal League files. Big Rapids, Fenton, Grand Ledge, Grand Rapids, Grandville, Holland, Hudsonville, Marshall, Roseville, St. Louis, Southfield, South Haven, Sturgis, and Whitehall have such a provision.

150. Municipal League files. Big Rapids, Fenton, Flat Rock, Holly, Howell, Kalamazoo, Manistee, Muskegon, Saline, and Wayne, *e.g.*, have such a provision.

151. Municipal League files. Manistee and Muskegon have such a provision.

152. *See* Algona, Grosse Pointe Park, and Marine City ordinances in Municipal League files.

153. Ordinances which so define "subdivision" expressly or by reference to the Plat Act include those of Battle Creek, East Tawas, Escanaba, Farmington, Fenton, Flat Rock, Flushing, Fowler, Franklin, Grand Blanc, Grand Ledge, Grand Rapids, Holland, Holly, Inkster, Iron Mountain, Madison Heights, Manchester, Mt. Pleasant, Plymouth, Pontiac, Riverview, Rockford, Romeo, Roseville, St. Louis, Southfield, Sturgis, Swartz Creek, Troy, Whitehall, Williamston, Wixom, and Wyoming. In some cases, "subdivision" is also defined to include any division into two or more lots if a new street is involved—*e.g.*, in the Battle Creek, Farmington, Holly, Inkster, and Troy ordinances. *See* Municipal League files.

approval" stage; and (3) the "final approval" stage.¹⁵⁴ Although the practice varies to some extent, the same three stages are generally to be found in those Michigan municipalities which control land subdivision under both the Plat Act and the Municipal Planning Act.

a. Preapplication procedure. The preapplication stage, though not expressly provided for by either the Plat Act or the Municipal Planning Act, is usually required by the local subdivision regulations in municipalities with a planning commission.¹⁵⁵ Section 120(3) of the Subdivision Control Act of 1967¹⁵⁶ does not require a preapplication stage, but it expressly provides that nothing contained in that section "shall prohibit a proprietor from submitting a pre-preliminary plat to a governing body for their information and review."

The purpose of the preapplication stage or "pre-preliminary plat" submission is to afford the subdivider an opportunity to confer with the municipal planning staff and other interested public officials on his subdivision plans in advance of the preparation of his "preliminary plat" and before formal application is made for the tentative approval thereof.¹⁵⁷ The subdivider usually prepares a preliminary sketch plan and location map showing the relationship of the proposed subdivision to the existing community facilities which would have to serve it or which would have an influence on it.¹⁵⁸ The preliminary sketch plan and location map are usually reviewed by the professional planning staff (if any) and other officials,

154. A more detailed discussion will be found in D. WEBSTER, *URBAN PLANNING AND MUNICIPAL PUBLIC POLICY* 476-81 (1958).

155. Michigan cities and villages which provide for a preapplication procedure include Algona, Alpena, Ann Arbor, Bay City, Beverly Hills, Big Rapids, Charlotte, Dowagiac, Farmington, Flat Rock, Flint, Flushing, Grand Ledge, Grand Rapids, Grandville, Grosse Pointe Park, Holland, Holly, Howell, Hudsonville, Inkster, Kalamazoo, Lapeer, Madison Heights, Manistee, Marine City, Marshall, Midland, Muskegon, Niles City, Owosso, Oxford, Pontiac, Port Huron, Riverview, Rogers City, Roosevelt Park, Roseville, St. Louis, Southfield, South Haven, Sturgis, Swartz Creek, Troy, Wayne, Wixom, and Ypsilanti. See Municipal League files.

156. Subdivision Control Act of 1967 § 120(3).

157. In most of the cities and villages listed in note 155 *supra*, the preapplication procedure is mandatory; but in some it is only "recommended," e.g., in Bay City, Charlotte, Flint, Flushing, Grand Rapids, Grandville, Hudsonville, Lapeer, Marine City, Owosso, Oxford, St. Louis, Southfield, Sturgis, and Troy. See Municipal League files. The Ann Arbor Land Development Regulations in § 1:6-1, provide as follows:

This is the basic policy stage, during which the subdivider shall meet informally with the Planning Department. In the course of the discussion the subdivider shall make known his tentative plans for development and shall exhibit sketch plans and shall be apprised by the Planning Department of specific public objectives which the City may have for the area in question. The purpose of the Pre-Application stage, insofar as possible, is to guide and assist the subdivider in his future decisions with a view to avoiding later difficulties and delays.

158. This is either required or recommended in many of the cities and villages listed in note 155 *supra*—e.g., in Ann Arbor, Farmington, Flat Rock, Flint, Flushing, Grandville, Holland, Holly, Hudsonville, Madison Heights, Manistee, Marshall, Muskegon, Pontiac, St. Louis, South Haven, Sturgis, and Wixom.

such as the municipal engineer, to determine whether the proposed subdivision fits into the comprehensive land-use plan (if any) of the municipality, whether it is consistent with the zoning ordinance, whether it satisfies subdivision design standards and improvement requirements, and whether the site is suitable for subdivision development from the point of view of topography, drainage, soil character, and so forth. The results of this review are then discussed with the subdivider, who is informed of any changes necessary to comply with the subdivision regulations and the comprehensive plan. Suggestions for improvement of the subdivision design are often made at this stage, along with suggestions that the subdivider should carefully investigate market demand and financing arrangements before proceeding further. In municipalities which do not have a planning commission, it appears that the preapplication procedure is usually not required.¹⁵⁹

b. Preliminary plat and tentative approval. After agreement has been reached during the preapplication conferences, the subdivider is ordinarily required to prepare and submit a "preliminary plat" together with such supplementary data as the planning commission or local governing body may require.¹⁶⁰ The Municipal Planning Act does not expressly require this, but it does authorize the planning commission to provide for tentative approval of subdivision plats,¹⁶¹ and the plat submitted for tentative approval is generally termed a "preliminary plat" in the subdivision regulations. Section 4 of the Plat Act¹⁶² requires the filing of a "proposed plat" of every subdivision (as defined in the Plat Act) with the local governing body, but the section is poorly drafted and has apparently not been generally understood to require the filing of a preliminary plat. Nevertheless, it appears that municipalities controlling land subdivision under the Plat Act alone, as well as those controlling land subdivision under both the Plat Act and the Municipal Plan-

159. This appears to be true, *e.g.*, in Armada, Bangor, Birmingham, Bridgman, Brooklyn, Buchanan, Capac, Cedar Springs, Dundee, Fenton, Fowler, Fowlerville, Frankenmuth, Grand Blanc, Harrison, Hart, Imlay City, Iron Mountain, Lowell, Manchester, Marlette, Mason, Milan, Mt. Clemens, Negaunee City, New Baltimore, New Buffalo, New Haven, Orchard Lake, Rockford, Romeo, Saline, Traverse City, Trenton, Vassar, Wayland, and Williamston. See Municipal League files. But some cities or villages with planning commissions do not have any preapplication procedure —*e.g.*, Adrian, Battle Creek, Bridgton, Concord, East Tawas, Escanaba, Franklin, Fremont, Gibraltar, Huntington Woods, Livonia, Mt. Pleasant, Oak Park, Perry, Plymouth, Quincy, Rochester, Whitehall, and Wyoming.

160. Eighty-two of the 107 sets of city or village subdivision regulations in the ordinance files of the Michigan Municipal League require the submission of a preliminary plat.

161. Municipal Planning Act § 14, MICH. COMP. LAWS § 125.44 (1948).

162. Plat Act § 4, MICH. COMP. LAWS § 560.4 (Supp. 1961).

ning Act, generally do require submission of a preliminary plat and a tentative or conditional approval on the basis of that plat.¹⁶³

When the Subdivision Control Act of 1967 goes into effect on January 1, 1968, submission of a preliminary plat to the local governing body and to the county plat board will become mandatory whenever land is subdivided within the definition of "subdivide" in the 1967 Act.¹⁶⁴ In addition, a preliminary plat will have to be submitted in specified cases to one or more of the following plat approval agencies: the county drain commissioner,¹⁶⁵ the county road commission,¹⁶⁶ the health department having jurisdiction,¹⁶⁷ the department of state highways,¹⁶⁸ and the state conservation department.¹⁶⁹

Neither the Plat Act nor the Township Planning Act expressly requires a public hearing as a condition of the exercise of the plat approving power by the local governing body. The Municipal Planning Act states that "no plat shall be acted on by the commission without affording a hearing thereon."¹⁷⁰ Unfortunately, the Municipal Planning Act does not indicate whether the hearing is to occur prior to the tentative approval, or only prior to the final approval. The hearing is likely to be most useful at the "tentative approval" stage, and it would seem that a hearing at that stage should satisfy the requirement of the Municipal Planning Act. At any rate, it appears that some Michigan municipalities provide a hearing at the tentative approval stage, while others provide a hearing only at the final approval stage.¹⁷¹ The Subdivision Control Act of 1967,

163. Sixty of the eighty-two cities and villages requiring submission of a preliminary subdivision plat appear to be operating under the Municipal Planning Act. See Municipal League files.

164. Subdivision Control Act of 1967 §§ 111, 112, 119.

165. *Id.* § 114.

166. *Id.* § 113.

167. *Id.* § 118.

168. *Id.* § 115.

169. *Id.* §§ 116 and 117. Section 116(1) requires submission "to the conservation department for information purposes, if the land proposed to be subdivided abuts a lake or stream, or abuts an existing or proposed channel or lagoon affording access to a lake or stream where public rights may be affected." Section 117 requires submission "to the water resources commission of the department of conservation, if any of the subdivision lies wholly or in part within the floodplain of a river, stream, creek or lake." It is not clear whether two copies of the preliminary plat must be submitted to satisfy both § 116 and § 117, or whether a single submission to the water resources commission will suffice.

170. Municipal Planning Act § 15, MICH. COMP. LAWS § 125.45 (1948).

171. At least seventeen cities and villages provide only for a hearing prior to "tentative approval" while at least thirteen provide only for a hearing prior to "final approval." The hearing prior to "tentative approval" is before the planning commission in Alpena, Beverly Hills, Big Rapids, Brighton, East Tawas, Inkster, Manistee, Muskegon, Niles, Port Huron, Riverview, Southfield, Swartz Creek, and Wixom. The

unfortunately, will not do anything to clarify the issues as to when the hearing should be provided and before what body it should be held, since the 1967 Act makes no reference whatever to hearings prior to either preliminary plat or final plat approval.

In the interval between submission of the preliminary plat and the hearing, or municipal action on the plat where no hearing is provided, the plat is reviewed by the professional planning staff (if any) of the municipality and other municipal officials (such as the engineer) who are concerned with the enforcement of municipal subdivision requirements.¹⁷² After such review, and the public hearing (if any), the planning commission (or local governing body, where the municipality is not operating under the Municipal Planning Act) may approve or disapprove the preliminary plat, or approve it subject to designated changes which the subdivider is required to make.¹⁷³ In many municipalities in which planning commission approval of the preliminary plat is required, governing body approval is also required.¹⁷⁴ In a few municipalities, strangely enough, the subdivision ordinance requires approval of preliminary plats only by the governing body, although the municipality has a planning commission.¹⁷⁵ Perhaps, in these municipalities, the planning commission has either failed to adopt a major street plan or failed to adopt subdivision regulations.

Approval of the preliminary plat constitutes the tentative approval provided for by the Municipal Planning Act.¹⁷⁶ As a general rule, tentative approval authorizes the subdivider to proceed with the installation of required public improvements, subject to ob-

hearing prior to "tentative approval" is before the governing body in Grand Ledge, Roosevelt Park, and Saline. *See* Municipal League files.

172. It appears that at least six cities and villages require review by the planning director or technical staff. At least eighteen require review by the city engineer. At least eleven require review by various other municipal officials or departments. At least four require review by the school board or school superintendent. At least three require review by the county road commission. At least two require review by the state highway commission. At least two require review by the county planning commission. At least two require review by the county health officer. At least one requires review by the county plat committee, and at least one requires review by the zoning board. *See* Municipal League files.

173. At least sixty-two cities and villages require approval of the preliminary plat by the planning commission. *See* Municipal League files.

174. This is true in at least twenty-eight cities and villages. *See* Municipal League files. There seems to be no statutory basis for this practice.

175. This appears to be true in Buchanan, Cedar Springs, Charlotte, Flushing, Mason, and Negaunee City. Of course, many cities and villages regulate land subdivision only under the Plat Act, which does not require creation of a planning commission.

176. This is true whether the municipal subdivision regulations refer to it as "tentative approval," or "conditional approval," or "preliminary approval."

taining permits from the appropriate municipal departments, and to proceed with preparation of a final plat of all or a portion of the subdivision.¹⁷⁷ The tentative approval also guarantees, in most municipalities, that the general terms and conditions upon which the tentative approval was granted will not be changed during a stated period of time (usually six months to two years), and that a final plat of all (or part) of the subdivision may be submitted for approval at any time within that period.¹⁷⁸ This guarantee, rather surprisingly, is not based upon any authorizing language in the subdivision control statutes currently in force, but its desirability is obvious. Provisions authorizing the subdivider to submit a final plat of any part of the subdivision included in the preliminary plat are apparently designed to allow the subdivider to develop his tract in sections on the basis of an approved preliminary plat of the entire tract, but in most instances, in practice, the time limit in the local subdivision ordinance or regulations is too short to permit this.¹⁷⁹

Under the new Subdivision Control Act of 1967,¹⁸⁰ a rather confusing terminology is introduced. Section 112(2) requires the local governing body, within ninety days from the date of submission of a preliminary plat, either to "tentatively approve" it or to "set forth in writing its reasons for rejection and requirements for tentative approval." Section 112(4) further provides that "[t]entative approval . . . shall confer upon the proprietor for a period of 1 year from date, approval of lot sizes, lot orientation and street layout," with a provision for extension upon application by the proprietor. So far, so good; but the 1967 Act¹⁸¹ also contemplates that, after tentative approval of the preliminary plat has been granted by the local governing body, the preliminary plat will be submitted to one or more county or state plat approval agencies. When the preliminary plat has been approved by all of the latter whose approval is required, the preliminary plat is returned to the local governing body for final approval, which, under section 120(1) of the 1967 Act,¹⁸² "shall confer upon the proprietor for a period of two years from date of approval, the conditional right that the general terms and conditions under

177. See Municipal League files. In Adrian, Ann Arbor, Battle Creek, Dowagiac, Flint, Midland, Muskegon, and Oak Park, *e.g.*, the subdivider is expressly authorized to proceed with preparation of a final plat for either all or part of the subdivision.

178. In at least forty-nine cities and villages the time limit is one year. In at least nine it is two years; in at least four it is six months; and in at least three it is nine months. See Municipal League files.

179. See note 178 *supra*.

180. Subdivision Control Act of 1967 §§ 112(2) & (4).

181. *Id.* §§ 113-19.

182. *Id.* § 120(1).

which preliminary approval was granted will not be changed," with provision for extension upon application by the proprietor.

Sections 112 and 120 of the Subdivision Control Act of 1967,¹⁸³ which deal respectively with tentative approval and final approval of the preliminary plat, include no clarifying reference to the Municipal Planning Act. Hence it is impossible to tell whether the tentative approval provided for in the Municipal Planning Act¹⁸⁴ is to be equated with the tentative approval or the final approval of the preliminary plat under the Subdivision Control Act of 1967.¹⁸⁵ It seems likely, however, that it will be equated with final approval of the preliminary plat, since the subdivider is not authorized under the Municipal Planning Act to proceed with the construction of required physical improvements until he has obtained tentative approval. Presumably, it is the intent of the Subdivision Control Act of 1967 that the subdivider will not be authorized to proceed with construction of required improvements until final approval of the preliminary plat is granted, although this is nowhere explicitly stated in the 1967 Act.

c. Final plat and final approval. Under the Municipal Planning Act, the subdivider may submit his final plat of all or a portion of the subdivision for final approval at any time within the tentative approval period. The final plat must be drawn in accordance with the detailed requirements of the Plat Act as to form, and it must conform to the preliminary plat as tentatively approved.¹⁸⁶ The final plat is usually reviewed again by the professional planning staff (if any), the appropriate municipal officials, and the planning commission (if there is one). In some municipalities the regulations require a public hearing prior to action on the final plat by the planning commission.¹⁸⁷ This would be necessary under the Municipal Planning Act if the regulations did not provide for a hearing at the tentative approval stage.¹⁸⁸ Even under the Plat Act, the Township

183. *Id.* §§ 112, 120.

184. Municipal Planning Act § 14, MICH. COMP. LAWS § 125.44 (1948).

185. Subdivision Control Act of 1967 §§ 112, 120.

186. As to form of the final plat, see Plat Act §§ 2, 4-15, MICH. COMP. LAWS §§ 560.2, 4-15 (Supp. 1961).

187. A majority of the subdivision regulations of cities and villages with an active planning commission require the hearing at the "tentative approval" stage. *See* note 171 *supra*. A planning commission hearing only at the "final approval" stage is required in Ann Arbor, Flat Rock, Gibraltar, Marquette, Mt. Pleasant, Plymouth, Rogers City, and Whitehall. Brighton requires a hearing before the planning commission at both stages. But many city and village subdivision regulations make no mention of a hearing, despite the clear requirement of § 15 of the Municipal Planning Act, MICH. COMP. LAWS § 125.45 (1948). *See* Municipal League files.

188. *See* Municipal Planning Act § 15, MICH. COMP. LAWS § 125.45 (1948).

Planning Act, and the Subdivision Control Act of 1967, which do not require any hearing at all, constitutional due process would seem to demand a hearing at the final approval stage if none is provided at the tentative approval stage (or prior to final approval of the preliminary plat under the 1967 Act).¹⁸⁹

The final plat may not be approved under the Municipal Planning Act,¹⁹⁰ the Plat Act,¹⁹¹ or the Subdivision Control Act of 1967¹⁹² unless the subdivider has either constructed all the physical improvements required by the applicable statute and the local subdivision ordinance or regulations, or given adequate security for their completion within a specified time. Under the Plat Act (and presumably under the Township Planning Act as well), the subdivider has the option of giving security in the form of a cash deposit, certified check, or surety bond.¹⁹³ Under the Municipal Planning Act, however, "a bond with surety" is the only security specified.¹⁹⁴ It is not clear whether this limitation is binding on the subdivider in a municipality which controls subdivision under the Municipal Planning Act, or whether he may still exercise his option under the Plat Act. The Subdivision Control Act of 1967, unfortunately, contributes nothing to the clarification of this question. Under the 1967 Act,¹⁹⁵ security for "completion of all required improvements" may consist of "a deposit by the proprietor . . . in the form of cash, a certified check or irrevocable bank letter of credit, whichever the proprietor selects, or a surety bond acceptable to the governing body."

As previously indicated, final approval by the planning commission is required by the Municipal Planning Act before the plat may be recorded. But planning commission approval is not sufficient to enable the subdivider to record his plat, since the local, county, and state agency approvals specified by the Plat Act are still required. And after January 1, 1968, the local, county, and state agency ap-

189. Strangely enough, most of the subdivision ordinances of cities and villages operating under the Plat Act do not provide for any hearing. Fowler, Negaunee City, and Rockford require a hearing by the governing body prior to "final approval" of the plat, and Saline requires a hearing before the governing body at both stages. A hearing before the governing body at the "tentative approval" stage only is required in Grand Ledge and Roosevelt Park. See Municipal League files.

190. Municipal Planning Act § 14, MICH. COMP. LAWS § 125.44 (1948).

191. Plat Act §§ 23, 24, 30, MICH. COMP. LAWS §§ 560.23, .24, .30 (Supp. 1961).

192. Subdivision Control Act of 1967 §§ 182(1)(e), 183(1)(f), 184(1)(d), 188, 192(a) & (b).

193. Plat Act §§ 23, 24, 30, MICH. COMP. LAWS §§ 560.23, .24, .30 (Supp. 1961).

194. Municipal Planning Act § 14, MICH. COMP. LAWS § 125.44 (1948).

195. Subdivision Control Act of 1967 §§ 182(1)(e), 183(1)(f), 184(1)(d), 188, 192(a) & (b).

provals specified by the Subdivision Control Act of 1967 will be required. Thus, at the local level, approval by the governing body is a condition precedent to recording, whether or not prior approval by a municipal planning commission is required.¹⁹⁶

Presumably, however, a local governing body is not justified at the present time in withholding its final approval of the final plat after the planning commission has given its final approval in the exercise of its powers under the Municipal Planning Act, unless the planning commission has failed to impose some requirement which is mandatory under the Plat Act or a subdivision ordinance (or resolution) duly enacted by the governing body under authority of the Plat Act.¹⁹⁷ And the same principle will be applicable when the Subdivision Control Act of 1967 becomes effective on January 1, 1968.¹⁹⁸

The substantive standards for final approval of the final plat by the local governing body are set out at some length in the Subdivision Control Act of 1967.¹⁹⁹ Although no substantive standards are expressly set out to govern the tentative approval and final approval of the preliminary plat, it seems clear that the same standards are to be applied by the governing body when it passes on the preliminary plat as when it passes on the final plat. In any case, the subdivider is protected against arbitrary application of higher or different standards by the provision in section 120(1) of the 1967 Act²⁰⁰ guarantee-

196. See Subdivision Control Act of 1967, §§ 142(g), 148, 167, 182; Plat Act §§ 16-19, MICH. COMP. LAWS §§ 560.16-19 (Supp. 1961). A few of the subdivision ordinances in the Michigan Municipal League ordinance files do not expressly provide for final plat approval by the governing body—e.g., the ordinances of Flint, Holly, Howell, Plymouth, Wayne, Wyoming, and Ypsilanti.

197. For such requirements, see Plat Act §§ 19-24, 30, MICH. COMP. LAWS §§ 560.19-24, .30 (Supp. 1961). Section 17 of the Plat Act, MICH. COMP. LAWS § 560.17 (Supp. 1961), provides as follows:

The clerk of a municipality shall present any plat received by him to the governing body at its next regular meeting. If no regular meeting is to be held within 2 weeks, the clerk shall notify the governing body of the receipt of any plat and a meeting to consider the plat shall be held within 2 weeks after such receipt by the clerk. The governing body shall approve or reject a plat within 30 days after it is filed with the clerk of the municipality: Provided, That if it rejects the plat for not conforming to the provisions of this act, written notice of such rejection and its reason therefor shall be given to the proprietor within such 30-day period.

198. Substantive requirements for plat approval by the local governing body are set out in §§ 182(1)(e) & (2), 183(1)(f) & (2), 184(1)(d) & (2), 192(b). See also *id.* § 188. Section 167 provides (in part) as follows: "At its next regular meeting, or at a meeting called within 20 days of the date of submission, the governing body shall: (a) Approve the plat if it conforms to all of the provisions of this act and instruct the clerk to certify on the plat to the governing body's approval . . . [and] the approval of the health department, when required . . . or (b) Reject the plat, instruct the clerk to give the reasons in writing as set forth in the minutes of the meeting, and return the plat to the proprietor."

199. See note 198 *supra*.

200. Subdivision Control Act of 1967 § 120(1).

ing "that the general terms and conditions under which preliminary approval was granted will not be changed."

2. Approvals at the County Level

Under the Plat Act, a subdivision plat must be submitted to the county treasurer prior to submission to the local governing body, in order that the treasurer may certify that no tax liens or titles are held against the land by the state or any individual and that all taxes due thereon have been paid for the five years preceding execution of the plat.²⁰¹ If the proposed subdivision is located outside the corporate limits of a city or village (that is, under township jurisdiction), or if, although the subdivision is within the corporate limits of a city or village, it appears to include land on roads under the jurisdiction of the county road commission, the plat must be submitted to and approved by the county road commission.²⁰² The substantive powers of the county road commission under the Plat Act have already been discussed and need not be repeated here. In any case, the plat must also be approved by the county plat board.²⁰³

It would seem that the county plat board ought to exercise a general supervisory authority to assure that at least the mandatory requirements of the Plat Act have been complied with. The Plat Act itself, however, merely authorizes the county plat board to make sure that the caption of the plat does not conflict with the caption of any other plat previously recorded, that the streets and alleys in the subdivision conform to those in adjoining subdivisions, that street names are not duplicated, and that highways shown on the plat "conform in location and width to plans for state trunk lines and federal aid roads on file in said office."²⁰⁴ In addition, in counties employing a county plat engineer, the plat board may be authorized by the county board of supervisors to determine "whether the lands are suitable for platting purposes, with the right to reject any plat in which the land does not conform to the requirements adopted by the county plat board relative thereto."²⁰⁵ *Sed quare* what standards are to govern the county plat board in determining "whether the lands are suitable for platting purposes" and in adopting "requirements . . . relative thereto." In any event, only four counties out of eighty-three in

201. Plat Act § 14, MICH. COMP. LAWS § 560.14 (1948).

202. Plat Act §§ 15a, c, MICH. COMP. LAWS § 550.15a, c (Supp. 1961).

203. Plat Act §§ 26-29, MICH. COMP. LAWS §§ 560.26-29 (Supp. 1961).

204. Plat Act § 28, MICH. COMP. LAWS § 560.28 (1948).

205. Plat Act § 29, MICH. COMP. LAWS § 560.29 (Supp. 1961).

Michigan have taken advantage of this permissive authority to enlarge the plat approval power of the county plat board.²⁰⁶

The preceding outline of required approvals at the county level is based on the language of the Plat Act. In at least one county, however, the procedure for plat approval in township areas is more complicated in practice than the above outline would indicate. In Washtenaw County,²⁰⁷ subdividers of township land generally follow the same kind of three-stage procedure which is characteristic of city and village subdividers. First, the subdivider discusses the proposed development with the township supervisor and with the county planning commission staff to determine general acceptability, site conditions, relation to surrounding properties, zoning, compliance with county plans, and required improvements. Second, the subdivider submits a preliminary plat to the county planning commission staff and it is then formally approved or disapproved by the subdivision advisory committee of the county planning commission. Third, the subdivider submits his final plat to the county treasurer and to the county road commission for approval, as indicated above, and then to the county planning commission, the township board, and the county plat board.

It should be noted that there is no statutory authority for the county planning commission to play any role in subdivision control, but township subdividers, in Washtenaw County at least, have accepted the procedure as just outlined. It is the writer's understanding that neither the township boards nor the county plat board will approve a township plat in Washtenaw County unless it has been approved by the county planning commission.

Under the Subdivision Control Act of 1967, the number of required approvals at the county level will be substantially increased. The preliminary plat must be approved by the county road commission "if the proposed subdivision includes or abuts roads under the commission's jurisdiction,"²⁰⁸ by the county drain commissioner "if

206. BUREAU OF LOCAL GOVERNMENT SERVICES (Dept. of the Treasury), SYNOPSIS OF SIGNIFICANT PROVISIONS OF PROPOSED PLAT ACT AND COMPARISON TO PRESENT ACT 12 [hereinafter cited as SYNOPSIS].

207. For detailed treatment of the procedure in Washtenaw County, see WASHTENAW COUNTY METROPOLITAN PLANNING COMMISSION, A SUBDIVISION GUIDE FOR PREPARING PLATS IN TOWNSHIP AREAS OF WASHTENAW COUNTY. Somewhat similar provisions are contained in JACKSON METROPOLITAN AREA REGIONAL PLANNING COMMISSION, SUBDIVISION GUIDE FOR JACKSON COUNTY. See also KALAMAZOO METROPOLITAN COUNTY PLANNING COMMISSION, MODEL SUBDIVISION REGULATIONS; ST. CLAIR REGIONAL PLANNING COMMISSION, SUBDIVISION REGULATIONS: A MANUAL TO ASSIST PLANNING COMMISSIONS, ZONING BOARDS AND LOCAL LEGISLATIVE BODIES IN THE PREPARATION OF REGULATIONS FOR THE SUBDIVISION OF LAND, THE PORT-HURON-ST. CLAIR COUNTY METROPOLITAN REGION.

208. Subdivision Control Act of 1967 § 113.

there is a county drain commissioner,"²⁰⁹ and by the county health department if the state department of public health authorizes the county health department "to carry out the provisions of . . . [the] act relating to the suitability of soils for subdivisions not served by public water and public sewers" and "if public water and public sewers are not available and accessible to the land proposed to be subdivided."²¹⁰ In addition, the preliminary plat must be submitted to the county plat board and to the public utilities serving the area "for informational purposes."²¹¹

The final plat must bear the certificate of the county treasurer under the Subdivision Control Act of 1967,²¹² as under the Plat Act, and it must be approved by the county plat board²¹³ as well as by all the county plat approval agencies that are required to approve the preliminary plat. The county plat board's function is to review the final plat "for conformance to all provisions of the act and certify their approval on all copies."²¹⁴ This will give the board a significantly larger role than it presently has under the Plat Act. The county plat board will also apparently have power under the 1967 Subdivision Control Act²¹⁵ to publish rules "adopted to carry out the provisions of this act," but this does not appear to give the board any increased substantive power. No reference is made in the Subdivision Control Act to county planning commissions, and they are given no role in the plat approval process.

3. Approvals at the State Level

Plats approved by the county plat board are required by the Plat Act to be forwarded to the auditor general.²¹⁶ Any plats of subdivisions which include or abut state trunk line highways or federal aid highways must be forwarded at once to the state highway commission by the auditor general.²¹⁷ The substantive powers of the state highway commission under the Plat Act have already been discussed and need not be repeated here. Plats approved by the state highway commission are returned to the auditor general for final approval under the Plat Act. The auditor general has no choice but to approve

209. *Id.* § 114.

210. *Id.* §§ 105(g), 118.

211. *Id.* § 119.

212. *Id.* §§ 142(c), 145(1).

213. *Id.* §§ 142(h), 149.

214. *Id.* § 149(2), which provides for review "by the county plat board, by the county engineer, or both."

215. *Id.* § 105(c).

216. Plat Act § 34, MICH. COMP. LAWS § 560.34 (Supp. 1961).

217. Plat Act § 35, MICH. COMP. LAWS § 560.35 (1948).

any plat which conforms to the requirements of the Plat Act and has endorsed upon it all the certificates of approval required by that Act.²¹⁸ The auditor general is also responsible under the Plat Act for distributing copies of the final plat to various individuals and agencies.²¹⁹

The number of state level plat approval agencies is considerably increased under the Subdivision Control Act of 1967. The *preliminary plat* must be approved by the department of state highways "if any of the proposed subdivision includes or abuts a state trunk line highway, or includes streets or roads that connect with or lie within the right of way of state trunk line highways,"²²⁰ by the water resources commission of the department of conservation "if any of the subdivision lies wholly or in part within the floodplain of a river, stream, creek or lake,"²²¹ and by the state department of public health if it has not authorized local city, county, or district health departments to perform its functions under the Act and "if public water and public sewers are not available and accessible to the land proposed to be subdivided."²²² In addition, the preliminary plat must be submitted to the conservation department for information purposes "if the land proposed to be subdivided abuts a lake or stream, or abuts an existing or proposed channel or lagoon affording access to a lake or stream where public rights may be affected."²²³

Under the Subdivision Control Act of 1967, the *final plat* must be approved by the state highway commission "when the subdivision includes or abuts state trunk line highways,"²²⁴ and by the state treasurer,²²⁵ who will (in general) perform the duties performed by the auditor general under the Plat Act. However, the state treasurer is to approve the final plat only if the plat "conforms, in his opinion,

218. Plat Act § 38, MICH. COMP. LAWS § 560.38 (Supp. 1961).

219. One copy is sent to the county register of deeds to be recorded, Plat Act § 39, MICH. COMP. LAWS § 560.39 (1948); the county road commission or the municipal planning board receives one copy, Plat Act § 42, MICH. COMP. LAWS § 560.42 (Supp. 1961); the county treasurer receives one copy, Plat Act § 41, MICH. COMP. LAWS § 560.41 (Supp. 1961); the clerk of the municipality having jurisdiction receives one copy, Plat Act § 42, MICH. COMP. LAWS § 560.42 (Supp. 1961); the subdivider ("proprietor" of the plat) receives one copy if he forwards six rather than five copies of the final plat to the auditor general, Plat Act § 43, MICH. COMP. LAWS § 560.43 (Supp. 1961); and the auditor general retains one copy, which is filed and indexed in his office, Plat Act §§ 41, 44, MICH. COMP. LAWS §§ 560.41 (Supp. 1961), 44 (1948). The register of deeds is required to maintain a plat book or plat file, and to maintain an index of plats. Plat Act §§ 45, 47, MICH. COMP. LAWS §§ 560.45, 47 (Supp. 1961).

220. Subdivision Control Act of 1967 § 115.

221. *Id.* § 117.

222. *Id.* § 118.

223. *Id.* § 116.

224. *Id.* §§ 142(i), 150.

225. *Id.* §§ 142(j), 171.

to all of the requirements of this act and to the published rules and regulations of the department of treasury relative to plats."²²⁶ The state treasurer is also responsible for distribution of copies of an approved final plat.²²⁷

II. CRITIQUE OF CURRENT MICHIGAN SUBDIVISION CONTROL LEGISLATION

The principal Michigan subdivision control statutes now in force, the Plat Act and the Municipal Planning Act, were enacted in 1929 and 1931, respectively. Neither of these statutes makes any reference to the other, and neither has been amended very substantially since the date it was enacted. Consequently, Michigan's current subdivision control legislation is seriously out of date in many respects and is also characterized by overlapping or conflicting provisions relating to the same subject matter. The adoption of new county and regional planning legislation acts in 1945 made no direct contribution to more effective subdivision control in Michigan, and adoption of the Township Planning Act in 1959 made only a minimal contribution. The recently adopted Subdivision Control Act of 1967 embodies many improvements with regard to matters now dealt with by the Plat Act, but even the original draftsmen of the 1967 Act regarded it as "only a moderate step in the direction of improved control of land subdivision in Michigan."²²⁸ It makes no contribution at all to the problem of integrating and harmonizing its own provisions with those of the Municipal Planning Act, to which in fact it makes no reference.

A. *Lack of Integration of Current Statutes*

The Plat Act makes the municipal governing body the sole plat approval agency at the local level, and also, to the extent that it authorizes adoption of local subdivision regulations, makes it the sole local legislator with respect to subdivision control. The Municipal Planning Act, however, purports to make the municipal planning commission both administrator and legislator in the field of subdivision control, without any mention of the municipal governing body at all.

226. *Id.* §§ 151(2), 171.

227. *Id.* § 173 provides as follows:

When notification of recording of 1 copy of plat has been received by the state treasurer, he shall: (a) Transcribe the certificate of recording on all other copies. (b) Retain 1 copy of his files. (c) Mail 1 copy of the plat to the county treasurer, 1 copy to the clerk of the municipality in which the plat is located, 1 copy to the county road commission or the city planning commission, and 1 copy to the proprietor if he has submitted an extra copy for certification and mailing.

228. See SYNOPSIS 4.

Consequently, it has been difficult for municipal legislative bodies to determine just what the relationship between themselves and their municipal planning commissions should be in regard to subdivision control.

The Municipal Planning Act could perhaps be construed as substituting the planning commission for the governing body in the performance of all duties assigned to the latter by the Plat Act. In fact, however, the Municipal Planning Act has been uniformly construed by local governing bodies as merely adding another requirement of plat approval—approval by the planning commission—to those plat approvals already required by the Plat Act.²²⁹ Indeed, in some municipalities the planning commission is required to approve only the preliminary plat, while approval of the final plat is the sole prerogative of the local governing body.²³⁰ It is far from clear that the latter procedure complies with section 13 of the Municipal Planning Act,²³¹ which requires that plats be approved by the planning commission before recordation, since approval of the preliminary plat can obviously be no more than a tentative approval.

It should also be noted that, although section 14 of the Municipal Planning Act²³² expressly authorizes and requires the local planning commission to “adopt regulations governing the subdivision of land within its jurisdiction,” and apparently does not contemplate any role for the municipal governing body in connection with the formulation and adoption of subdivision regulations, the governing bodies of most Michigan cities and villages with planning commissions established under the Municipal Planning Act have seen fit to adopt subdivision regulations in ordinance form.²³³ But it is not clear how far the governing body may go in rejecting subdivision regulations adopted by the planning commission, or in adopting additional subdivision regulations.

In addition to the major ambiguities and doubts arising under the Plat Act and the Municipal Planning Act, there are many other

229. The municipal subdivision regulations almost invariably provide for final plat approval to be given by both the planning commission and the governing body. In some cases, the approval of the planning commission takes the form of a “recommendation” that the governing body approve. See Municipal League files. Although a few of the subdivision regulations do not expressly provide for final approval by the governing body, it is likely that other municipal ordinances do so provide. Approval by the governing body whenever there is a subdivision of land as defined in § 2 of the Plat Act and is required by § 17 thereof.

230. This is the case in, *e.g.*, Escanaba, Farmington, Grand Rapids, Grandville, Holland, Hudsonville, Pontiac, Port Huron, St. Louis, Southfield, South Haven, and Sturgis. See Municipal League files.

231. Municipal Planning Act § 13, MICH. COMP. LAWS § 125.43 (1948).

232. Municipal Planning Act § 14, MICH. COMP. LAWS § 125.44 (1948).

233. Note 41 *supra*.

points of overlap or conflict. For example, the provisions relating to security for required subdivision improvements are different,²³⁴ and it is difficult to know which provision controls in a municipality with a planning commission exercising plat approval power under the Municipal Planning Act.

Unfortunately, the Subdivision Control Act of 1967 does nothing to clear up any of these ambiguities and uncertainties. There is no reference in the Subdivision Control Act of 1967 to the Municipal Planning Act or to planning commissions, and since the subdivision control powers of the local governing body are substantially increased under the 1967 act, the areas of overlap and potential conflict between the Municipal Planning Act and the Subdivision Control Act of 1967 are larger than between the Municipal Planning Act and the Plat Act.

For example, section 105 of the Subdivision Control Act of 1967²³⁵ provides that approval of preliminary and final plats shall be conditioned upon compliance with any "ordinance or published rules of a municipality . . . adopted to carry out the provisions of this act." Since planning commission regulations adopted under authority of section 14 of the Municipal Planning Act²³⁶ are presumably adopted to carry out the provisions of that Act, it is doubtful that they can be considered as "published rules" adopted to carry out the provisions of the 1967 Act. Thus, the obvious question is raised: Why didn't the draftsmen of the 1967 Act say "adopted to carry out the provisions of this Act or the Municipal Planning Act"?

The failure of the Subdivision Control Act of 1967 to recognize the municipal planning commission's role as a plat approval agency under the Municipal Planning Act also raises new problems with respect to the increased number of municipal approvals required by the 1967 Act. Must, or should, the planning commission as well as the local governing body grant tentative and final approval to the preliminary plat? Must, or should, the planning commission as well as the local governing body grant final approval to the final plat? Can the local governing body delegate any of its powers with respect to approvals of the preliminary plat to the planning commission? And to what extent does the local governing body have the power to override a decision of the planning commission approving or rejecting a subdivision plat either at the preliminary or final stage? It is indeed to be regretted that the Subdivision Control Act of 1967 does not address these questions at all.

The Township Planning Act clearly gives township planning

234. See text accompanying notes 193-95 *supra*.

235. Subdivision Control Act of 1967 § 105.

236. Municipal Planning Act § 14, MICH. COMP. LAWS § 125.44 (1948).

commissions established thereunder a merely advisory role, both with regard to subdivision regulations and plat approval.²³⁷ Although the language of the Act is rather obscure, it appears that no additional substantive power to control land subdivision is conferred on townships by the act and, consequently, that a township which establishes a planning commission thereunder is at present still limited to the rather meager powers conferred on townships by the Plat Act. But, as previously noted, the Subdivision Control Act of 1967 by enlarging the substantive power of townships to control land subdivision will also enlarge the township planning commission's role in recommending "regulations governing the subdivision of land" to the township board.

B. *Types of Land Development Covered by Current Statutes:
Definition of Subdivision*

The concept of "subdivision control" embodied in the Michigan statutes presently in force is seriously outmoded.²³⁸ Large-scale land development raises substantially the same problems whether it involves any division of the land into "lots" or not. For example, an apartment development on a fifty-acre tract raises the same, if not more acute, problems in regard to drainage, street patterns and improvements, water mains, sanitary sewers and open space as does a single-family housing development on a fifty-acre tract. Yet under the present Michigan subdivision control legislation, the latter is subject to public control and the former may not be. This is clearly a serious defect in the present legislation.²³⁹

237. Township Planning Act § 12, MICH. COMP. LAWS § 125.332 (Supp. 1961).

238. For discussion of the scope of the Municipal Planning Act as originally adopted, and the effect of enactment of the County Planning Act of 1945 on the subdivision control powers of county planning commissions created under the Municipal Planning Act, see text accompanying notes 11-20 *supra*.

239. The Ann Arbor City Code attempts to correct this defect by providing as follows:

No building permit shall be issued for the construction of any building or structure on a lot or parcel of land in the City of Ann Arbor, for which no recorded plat exists, and which is not part of a recorded plat, until the final site plan therefor has been approved by the [Planning] Commission and the Council, except in those districts zoned . . . as One or Two Family Dwelling Districts.

ANN ARBOR, MICH., CODE ch. 57, § 5.127(2).

The term "site plan" is defined to "mean the plan of development of a lot, tract, or parcel of land for which no recorded plat exists and which is not a part of a recorded plat." ANN ARBOR, MICH., CODE ch. 57, § 5.121(2). The Planning Commission is "vested with the power and duty to approve or disapprove site plans or to recommend the revision thereof" and to "make and adopt Land Development Regulations governing the presentation, review, approval, recommended revision or disapproval of site plans," with such regulations to "provide for sketch plans and preliminary and final site plans and the requirements thereof." ANN ARBOR, MICH., CODE ch. 57, § 5.127(1). The Ann Arbor Land Development Regulations, § 1.11, require that site plans "shall

Moreover, even within the confines of the traditional concept of subdivision control as involving a "partitioning or dividing" of land, the current Michigan subdivision control legislation leaves much to be desired with respect to the land developments which are subject to control.

The Plat Act, in substance, defines "subdivide"²⁴⁰ as the dividing of a tract of land into five or more lots each of which is less than ten acres in area, with a proviso that any lot the boundaries of which have been fixed in a recorded plat may be further divided into two parts—or, with the approval of the local governing body, into four parts—"without replatting pursuant to [the] act." This definition is of prime importance because the Plat Act requirement that plats of subdivisions shall be made and recorded applies only to subdivisions as defined in the Plat Act. Unfortunately the definition is quite loose and ambiguous.

It is reasonably clear that a mere conveyance of land may constitute subdividing within the meaning of the Plat Act, without any fencing off or staking out or other physical marking off of the parcel conveyed, and hence that the Plat Act requirements cannot be evaded by the simple expedient of using metes and bounds descriptions in conveyances.²⁴¹ But, since there is no reference to any time period in the Plat Act definition of subdivide, the question arises whether approval of platting and replatting is required if, at successive times, a landowner divides a tract of land into four lots of less than ten acres, and then re-divides each lot into four smaller lots.

An attempt to answer this question was made by the Attorney General in 1955:²⁴²

[W]hen a lot, tract or parcel of land has been divided into 5 or more lots, tracts or parcels of land it has been subdivided, regardless of how long the process of dividing requires Thus, if over a period of a year or more, a lot, tract or parcel of land is divided into lots, when and if the time comes that 5 or more lots have been sold from it, it has been subdivided.

conform to the requirements and procedures . . . established for plat approval [in the Regulations]."

It is obvious that these "site plan" requirements are designed to give the Planning Commission and City Council the same control over large-scale development whether it involves "subdivision" of land or not. But without any enabling act authorization, it is far from clear that "site plan" requirements are within the police power of Ann Arbor or any other Michigan municipality.

240. Plat Act § 2, MICH. COMP. LAWS § 560.2 (Supp. 1961).

241. [1955-1956] MICH. ATT'Y GEN. BIENNIAL REP. pt. 1, 413. This opinion is contrary to an earlier opinion reported in [1939-1940] MICH. ATT'Y GEN. BIENNIAL REP. pt. 1, 447.

242. [1955-1956] MICH. ATT'Y GEN. BIENNIAL REP. pt. 1, 223.

But this does not meet the problem which arises when the original proprietor conveys each of the first four lots to a different person, and the grantee of each lot then divides his lot into four smaller lots and conveys each of them to a different person, and so on. In such a case, it appears that no single landowner would be subdividing within the Plat Act definition, and therefore that no platting or recording would be required under the Plat Act. The present Attorney General so held in 1962.²⁴³ The opportunity for avoidance of the Plat Act requirements is obvious when one considers the possibility that the original proprietor may convey each of his first four lots to relatives, or to corporations controlled by him and specially formed for the purpose.²⁴⁴

Moreover, even when the original division into four lots is platted and the plat is recorded (which can be done without subjecting the proprietor to the mandatory control provisions of the Plat Act), the proprietor may then lawfully resubdivide each of his four lots into two smaller lots—or, with approval of the local governing body, into four smaller lots—without replatting.²⁴⁵ Thus the mandatory subdivision controls provided by the Plat Act are not applicable to subdivisions of land by a single proprietor into eight lots or even (with local governing body approval) into sixteen lots, each less than ten acres in area.

A recent study of the operation of the Plat Act concludes that the loose definition of subdivision in section 2 of the Act makes it “virtually unenforceable” and that, consequently, there have been “thousands of subdivisions of land [in Michigan] without recording of plats, with resulting serious problems to the community, road commissions, and fire departments” because of “roads too narrow or too poorly designed to permit entry of snow plows and fire vehicles and inadequate storm water and sanitary drainage.”²⁴⁶

In drafting the Subdivision Control Act of 1967, an effort was

243. [1961-1962] MICH. ATT'Y GEN. BIENNIAL REP. pt. 1, 333.

244. See SYNOPSIS 7: “[U]nder the present act, a 40-acre tract can be subdivided . . . almost indefinitely without platting by means of transferring ownership between separate corporations or members of a group or family by issuing quitclaim deeds.” See also LEFCOE, LAND DEVELOPMENT LAW 335 (1966):

A common avoidance device in cities which declare subdivisions to be divisions of land into five or more lots within one year is this: the subdivider divides his parcel into four smaller ones, perhaps conveying title to corporations which he controls or to friends or relatives. Then each of those owners divides his interest into four more lots. . . . [T]his device [is] sometimes called the ‘4 x 4’

See Note, *Prevention of Subdivision Control Evasion in Indiana*, 40 IND. L.J. 445 (1965).

245. Plat Act § 2, MICH. COMP. LAWS § 560.2 (Supp. 1961).

246. SYNOPSIS 7-8.

made to tighten up the definition of subdivision. Section 102(d) of the 1967 Act²⁴⁷ provides as follows:

"Subdivide" or "subdivision" means the partitioning or dividing of a parcel or tract of land by the proprietor thereof or by his heirs, executors, administrators, legal representatives, successors or assigns for the purpose of sale, or lease of more than one year, or of building development, where the act of division creates 5 or more parcels of land each of which is 10 acres or less in area; or 5 or more parcels of land each of which is 10 acres or less in area are created by successive divisions within a period of 10 years.

It should be noted at the outset that this provision still leaves outside the definition of "subdivision" all large-scale apartment developments where the developer intends to retain ownership of the entire development or transfer it as a single unit, and where all apartments are to be occupied under leases of one year or less. In such cases, there is obviously no actual "partitioning or dividing" of the land for "building development," and there will be no leases "of more than one year." Hence the developer will not be subject to the development controls imposed on subdivision by the Subdivision Control Act of 1967.

The language of section 102(d) of the 1967 Act,²⁴⁸ standing alone, does make it reasonably clear that resubdivision by "successors" of the original "proprietor" will come within the definition of subdivision when the total number of lots ten acres or less in area reaches five. But it is not at all clear who would then have the duty to record a plat—which would require compliance with the control provisions of the 1967 Act—or how much of the original tract would have to be included in the plat.²⁴⁹ Moreover, although the provision of the Plat Act permitting resubdivision of any lot shown on a recorded plat into two (or, with the approval of the local governing body, four) smaller lots without replatting was not included in section 102(d) of the Subdivision Control Act of 1967,²⁵⁰ a similar provision was slipped into the 1967 Act as section 263:²⁵¹

No lot, outlot or other parcel of land in a recorded plat shall be further partitioned or divided unless in conformity with the ordi-

247. Subdivision Control Act of 1967 § 102(d).

248. *Id.*

249. Suppose, for example, the original proprietor divides his tract into four parcels and conveys each parcel to a different corporation and then each of these corporations resubdivides into four smaller lots. Does each corporation have to record a plat of its parcel? Or is the proposed statutory provision satisfied when the resubdivision of the first parcel is platted?

250. Subdivision Control Act of 1967 § 102(d).

251. *Id.* § 263.

nances of the municipality. The municipality may permit the partitioning or dividing of lots, outlots or other parcels of land into not more than 4 parts; however, any lot, outlot or other parcel of land not served by public sewer and public water systems shall not be further partitioned or divided if the resulting lots, outlots or other parcels are less than the minimum width and area provided for in this act.

This language is very hard to interpret. Although it is not expressly stated that "further" division "in conformity with the ordinances of the municipality" is permitted without replatting, it can hardly be assumed that the legislature intended to require replatting in cases where the recorded plat involved a subdivision within the definition contained in section 102(d) and the original subdivision was therefore subject to all the control provisions of the Subdivision Control Act of 1967.²⁵² But if "further" division "in conformity with the ordinances of the municipality" is permitted without replatting, it will be possible to subdivide a parcel into four lots and record the plat without obtaining any plat approvals under the 1967 act and then to resubdivide each lot into four smaller lots without replatting if a municipal ordinance permits this. Thus, if the resubdivision under section 263 does not require replatting, a parcel could be subdivided into sixteen lots of less than ten acres without ever becoming subject to the mandatory control provisions of the Subdivision Control Act of 1967.²⁵³

Moreover, an absolute limit of four smaller lots when a lot shown on a recorded plat is resubdivided seems arbitrary, since the original lot might be very large and section 263 provides adequate safeguards against resubdivision into lots of substandard size by requiring that, where the land is not served by public sewer and water, the lots resulting from resubdivision must meet the minimum width and area requirements of the Subdivision Control Act of 1967.²⁵⁴ What the draftsmen of section 263 should have done was to permit resubdivision without replatting, subject to these minimum width and area requirements, when the original subdivision plat was not only recorded but also approved in accordance with the provisions of the 1967 Act, and to require replatting and submission of a plat for approval under the 1967 Act²⁵⁵ when the original subdivision plat, though recorded, was not approved in accordance with the Act.

A further obvious defect in the Subdivision Control Act of 1967²⁵⁶

252. *Id.* § 102(d).

253. *Id.* §§ 102(d), 263.

254. *Id.* § 102(d).

255. *Id.*

256. *Id.*

is that it does not authorize planning commissions operating under the Municipal Planning Act or local governing bodies operating under the 1967 Act to define subdivision more restrictively than the 1967 Act does. Moreover, the 1967 Act does not require recordation of plats except where the subdivision falls within the definition in the 1967 Act. Yet many Michigan municipalities have in fact defined subdivision more restrictively than does either the Plat Act or the Subdivision Control Act of 1967, so as, for example, to include the division of land into two or more lots.²⁵⁷ A subdivider whose development falls within such a restrictive definition, but not within the definition in the 1967 Act, is not subject to any governmental control at all if he simply withholds his plat from record, or does not prepare a plat at all.

C. Other Deficiencies in Current Statutes

1. The Municipal Planning Act

When the Municipal Planning Act is considered by itself, a number of deficiencies become apparent.

a. *Allocation of the cost of improvements.* The Municipal Planning Act fails to set up any standards for allocation of costs in cases where good community planning calls for a subdivider to construct improvements which are larger and more expensive than are needed to service his subdivision alone, or which will clearly benefit the owners of land outside his subdivision in a substantial way. Although detailed standards probably should not be put into the enabling act, the statute ought to contain at least a statement of the applicable general principle upon which allocation of costs is to be based.²⁵⁸

b. *Land for recreational use or cash payments in lieu thereof.* The language of section 14 of the Municipal Planning Act with regard to provision of "adequate and convenient open spaces for . . . recreation"²⁵⁹ is inexcusably vague. Although, as previously indicated, this language can be construed to authorize municipalities to require dedication (or at least reservation) of land within a subdivision for park or playground use, or even cash payments in lieu of dedication, the proper construction of this language will remain in doubt unless and until the Michigan Supreme Court undertakes to interpret it. A clearer statement of the legislative intent could surely be drafted.

²⁵⁷ See text accompanying notes 57-59 *supra*.

²⁵⁸ See *Lake Intervale Homes, Inc. v. Parsippany-Troy Hills*, 28 N.J. 423, 147 A.2d 28 (1958).

²⁵⁹ Municipal Planning Act § 14, MICH. COMP. LAWS § 125.44 (1948).

c. *Agreements with subdividers and "cluster" developments.* The language in section 15 of the Municipal Planning Act with respect to agreements with subdividers "upon use, height, area or bulk requirements"²⁶⁰ is, if anything, more cryptic than the language in section 14 about "open space for . . . recreation." If it was merely intended to permit subdividers by agreement with the planning commission voluntarily to adopt *higher* standards for the development of subdivisions than would be required under the existing zoning ordinance and subdivision regulations, and to give such agreements the force of law, this should have been made clear. If, on the other hand, it was the legislative intent to authorize what is now termed "cluster" or "planned unit" developments, with the planning commission as the regulatory agency, this should have been made clear.

d. *Tentative and final plat approval—procedure.* The procedure to be followed in order to secure tentative approval of a subdivision plat is not spelled out in section 14 of the Act²⁶¹ even in general outline, and the provisions requiring the planning commission to "approve, modify or disapprove a plat within 60 days after the submission thereof to it" and requiring a hearing before the plat is "acted upon by the commission"²⁶² are quite obscure. Do these latter provisions, for instance, apply both to the plat submitted for tentative approval and the plat submitted for "final approval," or only to the latter?

e. *Tentative and final plat approval—effect.* The Municipal Planning Act makes no provision as to the effect of either a tentative or final approval of the subdivision plat, although it can be implied from the language of section 14 that a subdivider will be authorized to construct required improvements after obtaining tentative approval. The Act contains no guarantee that the general terms and conditions upon which the tentative approval was granted will remain unchanged for a specified time, nor is there any provision permitting the subdivider, after obtaining tentative approval of his entire subdivision, to submit plats of smaller sections thereof for final approval at different times. Indeed, the Act contains no guarantee that even final approval of the plat will protect the subdivider against zoning ordinance amendments that modify the use regulations or lot size requirements applicable to the subdivision and thereby make it impossible for the subdivider to obtain building permits.

260. Michigan Planning Act § 15 MICH. COMP. LAWS § 125.45 (1948).

261. Municipal Planning Act § 14, MICH. COMP. LAWS § 125.44 (1948).

262. Michigan Planning Act § 15, MICH. COMP. LAWS § 15, MICH. COMP. LAWS § 125.45 (1948).

It should be noted, however, that the Subdivision Control Act of 1967 does guarantee to the subdivider, for a period of two years after final approval of the preliminary plat, that "the general terms and conditions under which preliminary approval was granted will not be changed;"²⁶³ and the 1967 Act also guarantees, after a mere tentative approval of the preliminary plat, that lot size, lot orientation, and street layout requirements will not be changed for a period of one year.²⁶⁴ These guarantees will apply to subdividers in municipalities with planning commissions regulating land subdivision under the Municipal Planning Act. But there is no guarantee against changes in use regulations or lot size requirements after final approval of the final plat which might prevent the subdivider from obtaining building permits.

2. *The Township Planning Act*

The Township Planning Act also exhibits important deficiencies.

a. *Role of the planning commission.* With respect to subdivision control, the major deficiency of the Township Planning Act is its failure to indicate just what role the township planning commission should play. Section 12 of the Act²⁶⁵ states that "[t]he township board shall refer plats or other matters relating to land development to the planning commission before final action thereon by the township board," but fails to indicate what weight, if any, the township board is to give to the planning commission's recommendations with respect to the final action to be taken by the board. And, although section 12 further provides that the planning commission *may* be requested to recommend "regulations governing the subdivision of land" which "*may* provide for the procedure of submittal, including recommendations for submitting a preliminary subdivision design," the Act does not *require* submission of a preliminary plat to the planning commission. This is an unfortunate omission in view of the fact that it has become the usual practice in most municipalities to require the subdivider to submit a preliminary plat and such submission will be required in every case under the Subdivision Control Act of 1967.

More broadly, section 12 of the Act seems deficient in not requiring the township board to request the planning board to recommend subdivision regulations, and in not indicating what weight the governing body should give to such recommendation.

263. Subdivision Control Act of 1967 § 120(1).

264. *Id.* § 112(4).

265. Township Planning Act § 12, MICH. COMP. LAWS § 125.332 (Supp. 1961).

b. Design standards. Section 12 of the Act, as indicated above, authorizes the township board to request the planning commission to recommend subdivision regulations, which may include (*inter alia*) "the standards of design and the physical requirements that may be required." The quoted phrase is far from clear, since it does not seem to empower the township board to impose any requirements not authorized by other subdivision control legislation. It hardly seems necessary to state that the planning commission may list, in its recommended subdivision regulations, those few requirements which the township board has power to impose under the Plat Act. However, the powers of townships are substantially enlarged by the Subdivision Control Act of 1967, and presumably the requirements which may be recommended by the township planning board under the Township Planning Act are correspondingly enlarged.

It might also be noted that the reference to "standards of design" in the Township Planning Act is confusing, since this phrase is nowhere defined and is not used either in the Plat Act or the Subdivision Control Act of 1967. Presumably what is meant is that the planning commission may include recommendations as to location and width of streets, lot sizes, and the provision of adequate drainage, which are the "design" features over which townships have control under the Plat Act and the Subdivision Control Act of 1967.

c. No need for a separate enabling act for townships. Finally, and most important, the Township Planning Act is subject to criticism on the ground that it is unnecessary and tends to increase the existing confusion resulting from the lack of integration of the other Michigan subdivision control statutes. It would have been better, instead of adopting a separate Township Planning Act, simply to have amended the Municipal Planning Act to accomplish the major objectives sought—which, I take it, were (1) to make it crystal clear that township planning commissions may assume all the powers of township zoning boards,²⁶⁶ and (2) to permit flexibility in determining the composition of the township planning commission by giving township boards the choice of any number of members from five to nine.²⁶⁷ To the extent that the "basic plan" provisions of the Township Planning Act²⁶⁸ may be considered an improvement upon the "master plan" provisions of the Municipal Planning Act, they should have been made applicable to cities and villages by amendment of the Municipal Planning Act itself.

266. Township Planning Act § 11, MICH. COMP. LAWS § 125.331 (Supp. 1961).

267. Township Planning Act § 4, MICH. COMP. LAWS § 125.324 (Supp. 1961).

268. Township Planning Act §§ 6-9, MICH. COMP. LAWS § 125.326-.329 (Supp. 1961).

3. *Deficiencies in the Plat Act Corrected by the Subdivision Control Act of 1967*

a. *Preliminary plats.* Although section 4 of the Plat Act²⁶⁹ seems to require the filing of a preliminary plat (called a "proposed plat") of every subdivision (as defined in the act) with the local governing body, the section is poorly drafted and has apparently not been generally understood to have that effect. The Subdivision Control Act of 1967 will clarify and strengthen the Plat Act provision by requiring that "before making or submitting a final plat for approval, the proprietor shall make a preliminary plat and submit copies to" designated plat approval authorities.²⁷⁰ However, as we have already noted, the new preliminary plat requirement is likely to cause some confusion because of the failure of the draftsmen expressly to equate the tentative approval of the plat authorized by the Municipal Planning Act²⁷¹ with either the tentative approval or the final approval of the preliminary plat required by the Subdivision Control Act of 1967.

b. *Suitability of land for platting.* The Plat Act establishes no standards by which the local governing body or county plat board is to determine "whether the lands are suitable for platting purposes,"²⁷² except that "the governing body shall give due consideration to adequate storm water drainage facilities . . . within the lands proposed for platting and to the outlet drainage facilities to carry storm water from the land as platted," and "if the governing body determines that the lands proposed for platting lie either wholly or in part within the flood plain of a river, stream, creek or lake, then it shall reject all of that part of the proposed plat lying within the flood plain area."²⁷³ Presumably, other factors ought to be considered in determining whether land is suitable for subdivision development—for example, the topography and character of the soil, suitability of the soil for septic tanks, existence of public water and sanitary sewer facilities in the area, and so on—but the Plat Act makes no attempt to detail such factors. Indeed, it fails even to define a "flood plain," although it purports to require rejection of a plat when the proposed subdivision lies within a "flood plain."

The Subdivision Control Act of 1967 will remedy these deficiencies, at least in part, by conditioning approval of both preliminary

269. Plat Act § 4, MICH. COMP. LAWS § 560.4 (Supp. 1961).

270. Subdivision Control Act of 1967 §§ 111-19.

271. Municipal Planning Act § 14, MICH. COMP. LAWS § 125.44 (1948).

272. Plat Act § 19, MICH. COMP. LAWS § 560.19 (1961 Supp.).

273. Plat Act § 19a, MICH. COMP. LAWS § 560.19a (1961 Supp.).

and final plats upon compliance (*inter alia*) with "rules of the water resources commission of the state department of conservation, adopted for the determination and establishment of floodplain areas of rivers, streams, creeks or lakes, . . . as published in the state administrative code,"²⁷⁴ and with "rules of the department of public health as published in the state administrative code relating to suitability of soils for subdivisions not served by public water and public sewers."²⁷⁵ The department of public health is further empowered to require "percolation tests and boring tests to determine the suitability of soils."²⁷⁶

c. *Subdivision ordinance or regulations.* The Plat Act fails to provide that the rather limited powers specifically delegated to the local governing body and the county road commission to require street and road improvements²⁷⁷ shall be exercised in accordance with a published subdivision ordinance or set of regulations setting forth the improvements to be constructed, although cities and villages (but not townships) are expressly authorized to "provide by ordinance for the installation of other improvements."²⁷⁸

The Subdivision Control Act of 1967 corrects this deficiency and precludes ad hoc and discriminatory requirements by stating that approval of preliminary and final plats shall be conditioned upon compliance with the provisions of the statute and "any ordinance or published rules of a municipality or county [or other plat approval agency] adopted to carry out the provisions of this act," and that "no approving authority or agency having the power to approve or reject plats shall condition approval upon compliance with, or base a rejection upon, any requirement other than those" just enumerated.²⁷⁹ It is clear, however, that the local legislative power with respect to subdivision requirements is intended to be ample, for a subsequent section of the Subdivision Control Act of 1967²⁸⁰ provides that "the

274. Subdivision Control Act of 1967 § 105(f). *Id.* § 102(w) defines a "floodplain."

275. *Id.* § 105(g), which also expressly empowers the state department of public health to "authorize local city, county or district health departments to carry out the provisions of this act relating to suitability of soils for subdivisions not served by public sewers." For the definition of "health department" as used in the act, *see id.* § 102(s).

276. *Id.* § 105(g), which further provides: "When such tests are required, they shall be conducted under the supervision of a registered engineer, registered land surveyor, or registered sanitarian in accordance with uniform procedures established by the department of public health."

277. Plat Act §§ 15c, 19, 20, MICH. COMP. LAWS §§ 560.15c, .19, .20 (Supp. 1961).

278. Plat Act § 22, MICH. COMP. LAWS § 560.22 (1948).

279. Subdivision Control Act of 1967 §§ 105, 106. The approving authorities therein listed are the municipality, the county drain commissioner, the county road commission, the county plat board, the department of state highways, the department of treasury, the water resources commission, and the department of public health.

280. *Id.* § 259.

standards for approval of plats prescribed in this act are minimum standards and any municipality, by ordinance, may impose stricter requirements and may reject any plat which does not conform to such requirements." But the authority of a county to adopt a subdivision control ordinance is left rather obscure, since the 1967 Act does not make the county board of supervisors a plat approval agency.

d. Minimum lot-size requirements. Section 30 of the Plat Act²⁸¹ gives the local governing body "the right to adopt rules and regulations as to the width and depth of lots and . . . to reject any plat where the lots do not conform thereto," but no residential lot may be less than fifty feet wide even where "public sanitary sewers and water facilities are installed and ready for connection within the plat or where the proprietor has posted bond or other security . . . to assure the installation of such facilities," and no residential lot may be less than sixty feet wide where such facilities are not installed or their installation by the subdivider assured. It is not clear that an absolute minimum of fifty feet is reasonable in every instance where public water and sanitary sewer facilities are installed or their installation assured. Certainly such a minimum may make it very difficult for subdividers to construct so-called town houses or row houses, or the currently much-discussed cluster or planned unit developments. Unfortunately, the Plat Act makes no provision for any variance or exception to be granted in appropriate cases, although the board of zoning appeals clearly has power to grant variances and exceptions from lot-size requirements where no subdivision is involved.²⁸²

The Subdivision Control Act of 1967²⁸³ will deal with this problem by providing a minimum residential lot width of sixty-five feet and a minimum residential lot area of 12,000 square feet, and then further providing as follows:

minimum width and area requirements for residential lots . . . may be waived in any subdivision where connection to a public water and sewer system is available and accessible, or where the proprietor before approval of the plat has posted security with the clerk of the municipality [for installation of such facilities] . . . and where the municipality in which the subdivision is proposed has legally adopted zoning and subdivision control ordinances which include minimum lot width and lot area provisions for residential buildings.

The way is thus left open for municipalities to adopt their own

281. Plat Act § 30, MICH. COMP. LAWS § 560.30 (Supp. 1961).

282. City and Village Zoning Act §§ 5(a) & (d), MICH. COMP. LAWS § 125.585(a) & (d) (Supp. 1961).

283. Subdivision Control Act of 1967 § 186(b), (c), & (d).

standards for lot width and area in new subdivisions, provided public water and sanitary sewer service in the new subdivision is assured. And by placing such standards in the zoning ordinance and incorporating them by reference into the subdivision regulations, the variance and exception provisions of the zoning ordinance could be made applicable to the subdivision lot width and area regulations. Thus any municipality that wished to do so could introduce a good deal of flexibility into its lot area and width regulations and make possible the construction of town houses, cluster developments, and the like.

The increase in the minimum lot width from sixty to sixty-five feet where public sewers and water supply are not available is hardly of major importance. But the provision of a minimum lot size of 12,000 square feet in such areas is highly desirable.²⁸⁴ The purpose of this provision, of course, is to require the subdivider to supply adequate space for installation of a septic tank and drain field plus a well-site sufficiently far removed to minimize the danger of contamination of the water supply. Where the land abuts a lake, it is also important to require an area large enough so that contamination and fertilization of the lake by septic tank effluent will be kept to a minimum. The new minimum lot area requirement, together with elimination of the provision in section 2 of the Plat Act permitting resubdivision of a lot shown on a recorded plat without replatting,²⁸⁵ would effectively preclude, in areas without a public water supply and sewer system, the current practice of splitting a sixty-by-one hundred foot lot into two thirty-by-one hundred foot lots and selling them for building development without replatting.

e. Required street improvements. Section 20 of the Plat Act²⁸⁶ authorizes local governing bodies to require "that concrete or gravel walks . . . be built, and that all highways, streets and alleys conform to the general plan that may have been adopted by the governing body for the width and location of highways, streets and alleys" *only* "where lots are platted of a width of sixty feet or less." It is not clear whether the limitation imposed by the last quoted phrase also applies to the subsequent authorization for cities and villages to "provide by ordinance for the installation of other improvements." In any case, such an arbitrary limitation on local governmental power seems un-

284. See SYNOPSIS 9, for a comment on § 186(c) of the proposed Plat Act of 1966 (now the Subdivision Control Act of 1967), from which the discussion in the text is drawn.

285. Plat Act § 2, MICH. COMP. LAWS § 560.2 (Supp. 1961).

286. Plat Act § 20, MICH. COMP. LAWS § 560.20 (Supp. 1961).

justified. This limitation will be removed by the Subdivision Control Act of 1967.²⁸⁷ But, unfortunately, the 1967 Act, like the Plat Act, fails to provide any standards for the allocation of costs where a subdivider is required to install "oversize" improvements designed to serve an area larger than his own subdivision.

f. Private recreational facilities. Many subdivision plats show areas labeled "park," "playground," "lake," "lagoon," or "canal," with a reservation of such facilities for the private use of the residents of the subdivision. Section 24 of the Plat Act²⁸⁸ authorizes the local governing body, where "a plat shall show certain improvements . . . such as lagoons, slips, waterways, lakes, bays or canals which are not actually in existence at the time of consideration by the governing body, . . . as a condition for the approval of the plat, [to] require the platator to enter into an agreement providing for the construction of such . . . improvements within a reasonable time," and to require security for "the faithful performance of the agreement." But the Plat Act contains no provisions as to maintenance of such "private" facilities, or "private" parks and playgrounds. The contracts of sale of lots in subdivisions containing such "private" facilities may or may not include any provisions as to maintenance; it appears that in many cases no provision for maintenance is made and the responsibility for maintenance is not fixed. Since the subdivider cannot be held to verbal representations or promises of a sales agent, the community often inherits a maintenance problem which might have been avoided by timely inquiry before approval of the plat.

The Subdivision Control Act of 1967²⁸⁹ would make a modest attack on this problem by authorizing the local governing body or the county road commission to "require copies of agreements, covenants or other documents showing the manner in which areas to be reserved for the common use of the residents of the subdivision are to be maintained." Presumably the local governing body or the county plat board, by adopting a suitable ordinance or published rule, could make the failure to provide adequately for maintenance of such areas a ground for rejecting the subdivision plat.²⁹⁰

g. Placement of survey monuments. Section 11 of the Plat Act requires the final plat to bear a surveyor's certificate that all survey monuments have been placed.²⁹¹ But in many instances grading and

287. Subdivision Control Act of 1967 § 182(1). *See also id.* § 259.

288. Plat Act § 24, MICH. COMP. LAWS § 560.24 (Supp. 1961).

289. Subdivision Control Act of 1967 § 258.

290. *See id.* § 259.

291. Plat Act § 11, MICH. COMP. LAWS § 560.11 (1948).

road construction operations have not been completed at the time of final plat approval, and monuments are subsequently uprooted and destroyed by grading and road construction. The Subdivision Control Act of 1967 will correct this defect by permitting the local governing body to accept a bond to assure the proper later placement of survey monuments.²⁹²

h. The county drain commissioner's role. The Plat Act does not provide for review of subdivision plats by the county drain commissioner except as a member of the county plat board,²⁹³ where his objections or recommendations may be over-ridden by a majority vote of the board. The local governing body makes the initial determination as to adequacy of storm water drainage from the new subdivision.²⁹⁴ But the logical time for the drain commissioner to review the adequacy of storm water drainage is while the plat is before the local governing body, not after it reaches the county plat board. The Subdivision Control Act of 1967²⁹⁵ will effect a desirable improvement by requiring, when the subdivision is located in an unincorporated area, that the preliminary and final plats be approved by the drain commissioner (if there is one)—both as to drainage within the subdivision and drainage from it—before that plat is submitted to the county plat board. It should be noted that the county drain commissioner, like other plat approving authorities, is authorized under the Subdivision Control Act of 1967 to require compliance with “published rules . . . adopted to carry out the provisions of” the Act.²⁹⁶

i. Remuneration of members of plat approval agencies. One of the significant reasons for inadequate administration of the Plat Act at the local and county levels is that the fee for inspection of the land by the local governing body and for meeting to consider the plat is limited to a maximum of sixty dollars;²⁹⁷ in addition, there has been no provision whatever for payment of members of the county plat board. This clearly makes it impossible for many township boards to employ a plat engineer, and imposes an unreasonable burden, in many counties, upon the clerk, treasurer, and register of deeds who make up the plat board.

The Subdivision Control Act of 1967 attempts to remedy this deficiency by permitting local governing bodies to adopt by ordinance “a reasonable schedule of fees, based on the number of lots

292. Subdivision Control Act of 1967 § 125(9).

293. Plat Act § 2, MICH. COMP. LAWS § 560.2 (Supp. 1961).

294. Plat Act § 19a, MICH. COMP. LAWS § 560.19(a) (Supp. 1961).

295. Subdivision Control Act of 1967 §§ 114, 142(e), 146, 192.

296. *Id.* § 105(c).

297. Plat Act § 16, MICH. COMP. LAWS § 560.16 (Supp. 1961).

in the proposed subdivision, . . . for the examination and inspection of plats and the land proposed to be subdivided and related expenses," with a maximum fee of one hundred dollars until such a schedule is adopted,²⁹⁸ and by requiring that the same compensation and mileage be paid each member of the county plat board as are paid to members of the county board of supervisors for attendance at board meetings.²⁹⁹ The latter provision appears to be especially important and desirable in view of the enlarged responsibilities of the county plat board under the Subdivision Control Act of 1967.³⁰⁰

j. Assessor's plats. Section 51 of the Plat Act³⁰¹ provides for the making and recording of assessor's plats in certain cases. In many cases, however, the making and recording of an assessor's plat, at municipal expense, has been used as a means of evading the Plat Act requirements for recording a subdivider's plat, since the statute provides that an assessor's plat "shall not be rejected for the reason that any lot shown thereon lacks a means of ingress or fails to meet minimum requirements as to width as prescribed in this Act."³⁰² An amendment adopted in 1955³⁰³ seeks to prevent an assessor's plat from being used as a substitute for a subdivider's plat, but the amendment has apparently not been very effective in achieving its purpose.³⁰⁴ A recent study found that sixty per cent of the assessor's plats filed during the preceding two years should not have been approved by the municipality or county plat board because they were used to cover up violations of the Plat Act by developers who should have been required instead to file subdivider's plats.³⁰⁵

The Subdivision Control Act of 1967 substantially revises the provisions for an assessor's plat and requires that the entire cost thereof "shall be charged to the land so platted in the proportion that the area of each parcel bears to the total area of all lands in-

298. Subdivision Control Act of 1967 § 246.

299. *Id.* § 247.

300. See text accompanying notes 214 & 215 *supra*.

301. Plat Act § 51, MICH. COMP. LAWS § 560.51 (Supp. 1961).

302. *Id.* See SYNOPSIS 7, comment on proposed Plat Act of 1966 (now Subdivision Control Act of 1967) § 209.

303. Pub. Act No. 130, 1955 Mich. Pub. Acts 194, which provides as follows:

That no lands subdivided, as such term is defined in section 2 of this Act, subsequent to the effective date of this amendment and not included in a plat made and recorded in accordance with the provisions of this act, shall be included in such assessor's or supervisor's plat: Provided further, That no such plat shall divide any parcel of land in anticipation of the future subdivision of such parcel where such subdivision of the parcel, if made subsequent to the recording of such plat, would require the owner under the provisions of this act to make and record a plat thereof.

304. See SYNOPSIS 7, comment on proposed Plat Act of 1966 (now Subdivision Control Act of 1967) §§ 201-20.

305. *Id.*

cluded in the assessor's plat, as a special assessment on such land."³⁰⁶ The 1967 Act does not expressly seek to prohibit the use of an assessor's plat as a substitute for a proprietor's plat, but presumably has this effect as a result of (1) the very limited authorization to order preparation of an assessor's plat,³⁰⁷ and (2) the much tighter definition of "subdivide" in the proposed 1967 Act.³⁰⁸ Since the provisions as to making an assessor's plat really have little to do with subdivision control, however, it is not clear that it is desirable to continue such provisions in a statute which deals primarily with subdivision control.

k. Reference to recorded plats in instruments filed for record. Section 3 of the Plat Act requires recordation of a plat of any subdivision as defined in the statute,³⁰⁹ but it does not require any reference to the book and page where the plat is recorded when an instrument conveying property in a subdivision by lot number is subsequently recorded. This means, in practice, that a deed conveying property in an unrecorded subdivision by lot number is freely admitted to record, although the sale of land in an unrecorded subdivision is both illegal and voidable under the Plat Act.³¹⁰

The Subdivision Control Act of 1967 will correct this defect by forbidding the register of deeds to accept for record any instrument purporting to convey land by lot number unless a plat showing the lot has previously been recorded.³¹¹ In effect, this will require the instrument to refer to the recorded plat by book and page, since otherwise the register will not accept the instrument for record.

l. Violation of the Act. Section 77 of the Plat Act makes any person, firm, or corporation which sells any "lot, piece or parcel of land" without having first recorded a plat, when required to do so by the act, "guilty of a misdemeanor" and punishable by "a fine of not more than 25% of the consideration involved or \$500.00, whichever is the greater amount," for each parcel of land so sold, and

306. Subdivision Control Act of 1967 § 203; *id.* §§ 201-13.

307. *Id.* § 201(1) provides as follows:

An assessor's plat . . . may be ordered if the following conditions exist: (a) When a parcel or tract of land is owned by 2 or more persons. (b) When the description of 1 or more of the different parcels within the area cannot be made sufficiently certain and accurate for the purposes of assessment and taxation without a survey or resurvey.

308. Subdivision Control Act of 1967 § 102(d).

309. Plat Act § 3, MICH. COMP. LAWS § 560.3 (Supp. 1961).

310. Plat Act §§ 77, 78a, MICH. COMP. LAWS §§ 560.77, .78a (Supp. 1961). Section 79 makes any register of deeds or any person employed by a board of supervisors in connection with a register of deeds liable to a penalty not to exceed \$100 for "wilfully" violating any provision of the Plat Act. But recording a deed conveying property in an unrecorded subdivision by lot number is clearly not a "wilful violation" of the Plat Act unless the recording official knows there is no recorded subdivision plat.

311. Subdivision Control Act of 1967 § 252.

further makes it the duty of the county prosecutor to prosecute such violations.³¹² But most county prosecutors have a heavy load of criminal and other cases which they consider more urgent than prosecutions for violation of the Plat Act. Moreover, in the counties where most of the violations occur, the prosecutors are paid very low salaries and consequently are allowed to continue in private legal practice. Since their private practice usually involves drafting land contracts and conveyances and examination of titles, they are often placed in a position where, to enforce the Plat Act, they would have to prosecute a client. It is not surprising, in view of this fact and the ambiguous definition of "subdivide" in the Plat Act, that there has apparently never been a successful prosecution for violation of the statute.³¹³

The Subdivision Control Act of 1967 effects a much needed improvement in authorizing prosecutions by the Attorney General as well as by the county prosecutor,³¹⁴ and in authorizing the Attorney General, the prosecuting attorney, the municipality, the county road commission, and the county plat board to bring an action "to restrain or prevent any violation of this act or any continuance of any such violation."³¹⁵ In addition, the 1967 Act expands the definition of "violation" and increases the penalties for violation of the Act.³¹⁶

312. Plat Act § 77, MICH. COMP. LAWS § 560.77 (Supp. 1961).

313. See SYNOPSIS 7, comment on proposed Plat Act of 1966 (now Subdivision Control Act of 1967) § 102(d). See also *id.* at 13-14, comment on §§ 261-67.

314. Subdivision Control Act of 1967 § 266.

315. *Id.* §§ 265-66.

316. *Id.* § 264 provides as follows:

Any person, firm or corporation who shall hereafter sell or agree to sell, any lot, piece or parcel of land without first having recorded a plat thereof when required by the provisions of this act, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000.00, or imprisonment in the county jail not to exceed 180 days, or both, for the first offense and for each subsequent offense a like fine or imprisonment in the county jail not to exceed 1 year, or both: Provided, however, That agreement to sell does not include an option to buy extended from the seller for a money consideration to the prospective buyer. Any person who violates any other provision of this act is guilty of a misdemeanor and upon conviction he shall be punished as provided by law.

The peculiar exception for "an option to buy extended from the seller for a money consideration to the prospective buyer" raises the obvious question whether such an "option to buy" becomes an "agreement to sell" at the instant when the buyer accepts the seller's offer. If so, the seller who has not recorded a plat of the land "when required by the provisions of" the act will at once become guilty of a violation; if not, the attempt to make an "agreement to sell" prior to recording a required plat becomes a dead letter.

Id. § 267 provides that: "Any sale of lands subdivided in violation of the provisions of this act shall be voidable at the option of the purchaser thereof, and shall subject the seller thereof to the forfeiture of any and all consideration received or pledged therefor, together with any damages sustained by said purchaser thereof, recoverable in an action at law."

4. *Deficiencies in the Plat Act Not Corrected by the Subdivision Control Act of 1967*

a. *Hearings.* The Plat Act fails to make any provision for a hearing at any stage of the subdivision plat approval process, in contrast to the Municipal Planning Act which requires a public hearing before the plat is "acted on" by the municipal planning commission.³¹⁷ Since a hearing may well be required to afford due process, and since a hearing at some stage would seem highly desirable in any case, it is disappointing to find that the Subdivision Control Act of 1967 makes no provision for a hearing at any stage of the plat approval process.

b. *Access to subdivision and land beyond subdivision.* The Plat Act does not require dedication of any subdivision street to public use, nor that every lot within a subdivision should have direct access to a public street, nor even that the subdivision as a whole should be accessible by way of a public street.³¹⁸ Many municipalities, of course, have ordinances prohibiting construction of dwellings on private roads. But there are instances in rural and resort areas where private roads for access are desirable to lot purchasers. Thus it is probably wise not to impose an absolute statutory requirement of access to each lot within a subdivision by way of a public street or highway. Yet it also seems clear that the subdivider should be required to provide access to the subdivision as a whole by way of a public street or highway, and that he not be permitted to isolate land beyond his own subdivision from existing public streets and highways.

It is therefore unfortunate that the Subdivision Control Act of 1967³¹⁹ merely directs the local governing body to reject "a plat which is isolated from or which isolates other lands from existing public streets, unless suitable access is provided." The 1967 Act³²⁰ also contains a similar directive in connection with plat approvals by the county road commission. These directives leave the local governing body and the county road commission with the power to determine, in particular cases, that "suitable access" to an entire subdivision or to the lands beyond it can be provided by private roads. It would have been preferable to provide (1) that there be access to

317. Municipal Planning Act § 15, MICH. COMP. LAWS § 125.45 (1948).

318. Plat Act § 7, MICH. COMP. LAWS § 560.7 (Supp. 1961), merely says, "All roads or streets which are not dedicated to public use, shown in the plat, shall be marked 'private roads'" See also Plat Act § 12, MICH. COMP. LAWS § 560.12 (Supp. 1961).

319. Subdivision Control Act of 1967 § 182(4)(a).

320. *Id.* § 183(4).

the subdivision as a whole and to lands beyond the subdivision by way of a public street or highway, and (2) that there be access to every lot within the subdivision either by way of a private road or a public street.

Moreover, purchasers should be informed in advance if the roads within their subdivision are to remain undedicated and, therefore, are not to be publicly maintained. Under section 7 of the Plat Act, all roads and streets shown on a plat which are not dedicated to public use must be marked "private roads."³²¹ But this requirement has apparently not been an effective means of giving notice to lot purchasers. County road commissions in many parts of Michigan have been plagued for years with complaints from lot owners who find "private" subdivision roads impassable at times.³²² Road commissions, of course, cannot maintain such roads with public funds.

The Subdivision Control Act of 1967 attempts to deal with the notice problem by means of the following provision:³²³

No person shall sell any lot in a recorded plat or any parcel of unplatted land in an unincorporated area if it abuts a street or road which has not been accepted as public unless the seller first informs the purchaser in writing on a separate instrument to be attached to the instrument conveying any interest in such lot or parcel of land of the fact that the street or road is private and is not required to be maintained by the board of county road commissioners. In addition, any contract or agreement of sale entered into in violation of this section shall be voidable at the option of the purchaser.

Unfortunately, this provision fails to distinguish between the undedicated "private" road and the dedicated road which has not yet been accepted by the appropriate public agency as a public road. There are likely to be many instances in which all subdivision roads are dedicated to public use, final plat approval is given, and lots are sold prior to completion of required road improvements which are a prerequisite to governmental acceptance of the roads. Hence it would appear desirable to require the seller to state in writing whether the street or road abutting the lot sold is dedicated or undedicated, and, if dedicated, whether it has or has not been accepted as a public road which will be maintained at public expense.

c. Land for public recreational use. The Plat Act contains no authorization for local governing bodies to require either dedica-

³²¹ Plat Act § 7, MICH. COMP. LAWS § 560.7 (Supp. 1961).

³²² See SYNOPSIS 15, comment on proposed Plat Act of 1966 (now Subdivision Control Act of 1967) § 267.

³²³ Subdivision Control Act of 1967 § 261.

tion or reservation of land within subdivisions for public recreational use, although the desirability of such an authorization (if carefully framed) seems clear. As we have seen,³²⁴ the Municipal Planning Act contains language³²⁵ which could be construed as such an authorization, but after thirty-five years on the statute books this language has still not been construed by the appellate courts of Michigan. The Subdivision Control Act of 1967, unfortunately, contains no provision with respect to dedication or reservation of land for public recreational use, thus leaving municipalities which do not have a planning commission operating under the Municipal Planning Act without any statutory basis whatever for requiring dedication or reservation of land for such use.

d. County plat boards and planning commissions. The Plat Act fails to endow the county plat board with a really significant role in the plat approval process,³²⁶ and it fails to give the county planning commission (where there is one) any role at all.

The Subdivision Control Act of 1967 substantially enlarges the role of the county plat board, but still ignores the county planning commission completely. As we have seen, the Subdivision Control Act of 1967 charges the county plat board with responsibility for review of the final subdivision plat "for conformance to all provisions of the act,"³²⁷ and also seems to authorize the board to condition approval of the final plat on compliance with its own "published rules . . . adopted to carry out the provisions of" the Act.³²⁸ In addition, the 1967 Act provides that approval of preliminary and final plats shall be conditioned upon compliance with (*inter alia*) "any ordinance or published rules of a . . . county adopted to carry out the provisions of this act."³²⁹ Since the county board of supervisors is not expressly given any power to review subdivision plats, it is not clear who is to review plats for compliance with the county subdivision ordinance or "published rules" as to subdivisions, if any. Perhaps the county plat board is intended to perform the review function.

In those counties which have a county planning commission, it would seem that the commission, or a subdivision committee drawn from the commission, should be the plat reviewing agency and that it should review both preliminary and final plats. If this suggestion

324. See text accompanying note 136 *supra*.

325. Municipal Planning Act § 14, MICH. COMP. LAWS § 560.14 (1948).

326. See text accompanying notes 204-05 *supra*.

327. Subdivision Control Act of 1967 § 168(2)(a).

328. See *id.* § 105(c).

329. *Id.* § 105(b).

were adopted, there would be no need for a county plat board in counties with planning commissions. Where there is no county planning commission, the county plat board would still serve a useful function; however, it should probably be required to approve both the preliminary and the final plat, rather than just the final plat as provided in the Subdivision Control Act of 1967.

e. Effect of final approval of preliminary plat. The Plat Act contains no provision as to the effect of approval of a preliminary plat. Indeed, the provisions of section 4 of the Plat Act³³⁰ relative to filing of a proposed plat have not generally been understood to require filing of a preliminary plat at all. The Subdivision Control Act of 1967, however, expressly requires the filing of a preliminary plat of every subdivision (if it is a "subdivision" as defined in the Act),³³¹ and expressly provides for both tentative approval³³² and final approval³³³ of the preliminary plat. The effect of tentative approval is clearly stated:³³⁴ "tentative approval . . . shall confer upon the proprietor for a period of 1 year from date, approval of lot sizes, lot orientation and street layout." But the effect of final approval of the preliminary plat is not so clear.

Section 120(1) of the 1967 Act³³⁵ says: "final approval of the preliminary plat approval [sic] . . . shall confer upon the proprietor for a period of two years from date of approval, the conditional right that the general terms and conditions under which preliminary approval was granted will not be changed." But what does the term "conditional right" mean? Is it a right that may be withdrawn at will or for cause by one or another of the plat approval authorities during the two-year period? And what are "the general terms and conditions under which preliminary approval was granted"? Case law in other jurisdictions suggests some answers to the latter question,³³⁶ but it is unfortunate that the legislature did not make some attempt to spell out the meaning of terms like "conditional right" and "general terms and conditions under which preliminary approval was granted."

330. Plat Act § 4, MICH. COMP. LAWS § 560.4 (Supp. 1961).

331. Subdivision Control Act of 1967 §§ 111-19.

332. *Id.* § 112(2).

333. *Id.* § 120.

334. *Id.* § 112(4).

335. *Id.* § 120(1).

336. In New Jersey, N.J. REV. STAT. § 40:55-1.18 (1953), provides that "tentative approval shall confer upon the applicant . . . for a 3-year period from the date of the tentative approval" the right (*inter alia*) "that the general terms and conditions upon which tentative approval was granted will not be changed." No doubt the New Jersey provision was the model for § 120(1) of the Subdivision Control Act of 1967.

In New Jersey it has been held that specifications for street paving are not

f. *Effect of approval of "final plat."* Many sections of the Subdivision Control Act of 1967 are devoted to setting out the requirements for approval of the subdivider's final plat. But the Act—like the Plat Act—says nothing as to the effect of such approval with respect to guaranteeing the subdivider against changes in use regulations, lot size requirements, or other matters that would affect his ability to obtain building permits after obtaining approval of the final plat. It may perhaps be inferred that the subdivider will be protected against any change in "the general terms and conditions" upon which the final plat was approved for a reasonable period of time. But it would obviously have been much better if the legislature had spelled out the content of the guarantee to the subdivider and how long it is to be effective.³³⁷ Experience in other states indicates that failure to do so can cause serious problems.³³⁸

"general terms and conditions" guaranteed against change (*Pennyton Homes, Inc. v. Planning Board*, 41 N.J. 578, 584, 197 A.2d 870, 873 (1964); *Levin v. Livingston*, 35 N.J. 500, 173 A.2d 391 (1961)), but that minimum lot size requirements are (*Hilton Acres v. Klein*, 35 N.J. 570, 174 A.2d 465 (1961)). The change permitted after tentative subdivision approval in *Levin* was from "penetration macadam" street surfacing to "bituminous concrete." In *Pennyton Homes*, the municipality was allowed to change the required width of pavement within the right of way from thirty to thirty-four feet and to add a requirement that four-foot sidewalks be installed on both sides of the right of way.

In *Pennyton Homes*, the court said:

Tentative approval must fix the more basic items . . . from which the developer may determine whether his project is fundamentally feasible, such as over-all suitability, general design, street layout and right of way width, number and location of lots, minimum lot size, yard requirements, underlying drainage adequacy, and temporary land reservation for schools, parks and playgrounds. Not frozen will be the particular items specified in N.J.S.A. 40:55-1.21 [improvements which may be required as a condition of final plat approval], as to which the developer is put on notice that any of those not required by the local ordinance at the time of tentative approval may be thereafter compelled.

This legislative determination gives the municipality the salutary opportunity to compel additional improvements which time demonstrates to be necessary or desirable from the public standpoint. For instance, it was suggested in the instant case that sidewalks were found essential in the last section of the development for safety reasons because a school had been erected adjacent to that section and large numbers of children living in the other sections had to walk in the streets of this final section to reach the school unless sidewalks were provided. Again, at the time of tentative approval individual septic tanks may appear sufficient, but subsequent events may demonstrate that to be an inadequate method and dictate the requirement of a sewer system as a condition of final approval.

337. See, e.g., CONN. GEN. STAT. ANN. § 8-26a (1960); MASS. ANN. LAWS ch. 40A, § 7A (1961)—both precluding any change in subdivision and zoning regulations for three years after final plat approval and recording. See also N.Y. GEN. CITY LAW § 83a (McKinney Supp. 1967), which precludes any increase in minimum requirements for lot areas or front, side, and backyard setbacks; the time limit is three years if the city had both a zoning ordinance and a planning board when the final plat was filed. And see CAL. BUS. & PROF. CODE § 11619 (West 1964), which precludes any change in lot sizes but has no time limit. The Massachusetts statute was construed in *Ward & Johnson v. Planning Bd.*, 343 Mass. 466, 179 N.E.2d 331 (1962), and in *Smith v. Board of Appeals*, 339 Mass. 399, 159 N.E.2d 324 (1959). With respect to the problem of the subdivider who files separate final plats of various sections of his tract, see *Telimar Homes v. Miller*, 14 App. Div. 586, 218 N.Y.S.2d 175 (1961).

338. In the absence of a statute, practically all the decided cases refuse to protect

g. Alteration, amendment, and vacation of plats. Under the Plat Act a recorded plat may be altered or vacated or corrected or revised pursuant to a court order, without the necessity of filing an amended or new plat.³³⁹ Hence it is necessary to determine from a reading of the court's order what part of a land subdivision is affected and how. The Subdivision Control Act of 1967 will correct this deficiency by requiring that an amended plat be filed and recorded whenever the circuit court orders "a change in any of the dimensions of a recorded plat,"³⁴⁰ and that a "new plat" be filed and recorded whenever the circuit court orders "a recorded plat, or any part of it to be corrected, altered or revised."³⁴¹

The change effected by the Subdivision Control Act of 1967 is clearly desirable, on the whole. But the language of the 1967 Act provisions leaves room for litigation as to the difference between "amending" and "vacating, correcting, altering or revising" a recorded plat. None of these terms is defined in the Subdivision Control Act of 1967, and the persons who may seek to "vacate, correct, alter or revise a recorded plat, or any part of it,"³⁴² are not identical with those who may seek to "amend a recorded plat."³⁴³

Moreover, it should be noted that "proper court action . . . to vacate the original plat or the specific part thereof" as a condition precedent to approval and recording of "a replat of all or any part of a recorded subdivision plat" is not required in the case of properly approved and recorded assessors' plats, or "urban renewal plats authorized by the governing body of a municipality," or "when all the parties in interest agree in writing thereto and record the agreement . . . and the governing body . . . has adopted a resolution or

the subdivider unless he has actually begun construction or made an equivalent change of position. See Repts & Smith, *Control of Urban Land Subdivision*, 14 SYRACUSE L. REV. 405, 412 n.31 (1963) and cases cited therein. See also *Gruber v. Raritan Township*, 39 N.J. 1, 186 A.2d 489 (1962); *Elsinore Property Owner's Ass'n v. Morwand Homes*, 286 App. Div. 1105, 146 N.Y.S.2d 78 (1955); cf. *Hilton Acres v. Klein*, 35 N.J. 570, 174 A.2d 465 (1961); *Levin v. Livingston*, 35 N.J. 500, 173 A.2d 391 (1961).

339. Plat Act §§ 59-64a, MICH. COMP. LAWS §§ 560.59-.64a (Supp. 1961).

340. Subdivision Control Act of 1967 § 229(1).

341. *Id.* § 229(2).

342. *Id.* § 222(2) authorizes application to the "appropriate circuit court" to "vacate, correct, alter or revise a recorded plat or any part of it" by "the proprietor of a subdivision or any lot in a subdivision; the governing body of a municipality which considers it necessary or advisable in the interests of the welfare, health or safety of its citizens; $\frac{2}{3}$ of the proprietors collectively, of lands in the subdivision, and who also own $\frac{2}{3}$ by area of the lands [in the subdivision]." The provision for application by $\frac{2}{3}$ of the proprietors, collectively, seems purposeless, since the proprietor of any lot in the subdivision may apply to the circuit court without the concurrence of other lot owners.

343. *Id.* § 222(1) authorizes "the proprietor of the subdivision or any lot in the subdivision" to "apply to the appropriate circuit court" to "amend a recorded plat."

other legislative enactment vacating all areas dedicated to public use."³⁴⁴ But it is not clear who "all the parties in interest" would be in various situations—for example, where the subdivision is (1) undeveloped, (2) partly developed, or (3) wholly developed.

III. A TENTATIVE PROPOSAL FOR IMPROVEMENT OF MICHIGAN SUBDIVISION CONTROL LEGISLATION

It is clear that the current Michigan subdivision control legislation needs further revision. The Subdivision Control Act of 1967,³⁴⁵ although it has certain defects, embodies many improvements. The writer would like to see further statutory revision that would substitute the broader concept of "land development control" for the concept of "subdivision control." A modern land development control statute would define "land development" to include both land subdivision and large-scale land development not involving the subdivision of land into separate parcels, and would provide a basis for regulation of the latter type of development by requiring approval of a site plan before issuance of building permits. Municipal, county, and state agencies would be given the same powers with respect to such things as the regulation of street patterns and the requirement of improvements in all cases where "land development" takes place, whether the proposed development involves subdivision into separate parcels or not.

Even if the writer's proposal to substitute land development control for subdivision control is not adopted, the three current subdivision control statutes should not only be revised but should be consolidated into a single statute³⁴⁶ covering at least the following matters:

(1) the powers of a municipality which has a planning commission, with a clear statement as to the local agency or agencies empowered to formulate and adopt local subdivision regulations and to administer the regulations by exercise of the plat approval power;

(2) the powers of a municipality which does not have a planning commission, with a requirement that in such a municipality the local governing body must adopt and publish its own subdivision regulations in ordinance form;³⁴⁷ and

³⁴⁴ Subdivision Control Act of 1967 § 104.

³⁴⁵ *Id.*

³⁴⁶ Failure to accomplish such consolidation, or even to make clarifying references to the other subdivision control statutes, is one of the major defects in the Subdivision Control Act of 1967, which is addressed solely to correction of deficiencies in the Plat Act.

³⁴⁷ Subdivision Control Act of 1967 § 105(b) substantially accomplishes this.

(3) mandatory requirements to be imposed on every subdivider whether or not the local governing body or planning commission establishes any additional requirements by regulation or ordinance.³⁴⁸ If local authorities are to be given the power to waive or modify any of the mandatory requirements, the power to do so and the circumstances under which the power may be exercised should be clearly spelled out.³⁴⁹

In connection with proposal (1) above, it seems clear the planning commission should be charged with the duty of formulating subdivision regulations. If it is desired to retain ultimate control in the elected governing body, the statute should provide that the regulations as formulated by the planning commission shall be submitted to the governing body and that they shall not become effective unless and until the governing body adopts an ordinance which embodies the regulations.³⁵⁰ So far as administration of the subdivision regulations is concerned, three alternatives suggest themselves. First, administration might be made the responsibility of the planning commission alone, without any requirement of plat approval by the local governing body. Second, the planning commission might be given only the power to recommend plat approval, with the final decision reserved to the local governing body. Third, the statute might authorize the local governing body, by ordinance, to choose between the first two alternatives.³⁵¹

In communities with a planning commission, the grant of broad power to regulate land subdivision should continue to be conditioned upon adoption of at least a major street plan, as under section 13 of the Municipal Planning Act.³⁵² In addition, it might be desirable to make the adoption of a comprehensive land-use plan a prerequisite

348. The Plat Act, of course, contains several provisions of this character. The Subdivision Control Act of 1967 imposes a large number of additional requirements.

349. This is not now spelled out, leaving uncertainty as to the power of a municipal planning commission operating under the Municipal Planning Act to waive any of the mandatory requirements of the Plat Act. The Subdivision Control Act of 1967 § 186 (d), expressly authorizes "waiver" of the statutory minimum width and area requirements for residential lots "where connection to a public water and a public sewer system is available and accessible or where the proprietor before approval of the plat has posted security . . . [for construction of necessary water and sewer connections] and where the municipality in which the subdivision is proposed has legally adopted zoning and subdivision control ordinances which include minimum lot width and lot area provisions for residential buildings."

350. As indicated in text accompanying notes 40-43 *supra*, this is in substance the current practice in the great majority of Michigan municipalities where subdivision control is carried on by planning commissions operating under the Municipal Planning Act.

351. This is the way the problem is handled in N.J. REV. STAT. 40:55-41.14 (Supp. 1965).

352. Municipal Planning Act § 13, MICH. COMP. LAWS § 125.43 (1948).

in those municipalities establishing subdivision controls for the first time.

The substantive power of municipalities with a planning commission should be clarified in a number of ways. First, such municipalities should be expressly authorized to adopt regulations requiring subdividers to bear the full cost of subdivision improvements necessary to assure the health, safety, or convenience of the residents of the subdivision, and to bear a fair share of the cost of subdivision improvements which, in the interest of good planning, must be larger or more expensive than would be necessary to serve the residents of the subdivision alone—for instance, where the improvements, in part, will serve areas of the municipality outside the subdivision in question.

Second, such municipalities should be authorized to adopt regulations requiring the conveyance or dedication of land for parks or playgrounds in accordance with a previously adopted open space plan or in accordance with standards set out in the subdivision regulations. Where the benefit of such a required conveyance or dedication will accrue almost entirely to the subdivision in question, no compensation should be required. Where the required conveyance or dedication will substantially benefit other areas as well, the municipality should be required to compensate the subdivider in proportion to the benefits accruing to other areas. And since a municipality must locate new parks and sizeable playgrounds where they will serve the entire community to maximum advantage, they should be authorized to require from each subdivider a fee proportionate to the benefit estimated to accrue to his subdivision, in lieu of requiring conveyance or dedication of land for park or playground use. Such a fee system admittedly entails difficult valuation problems, but a reasonably accurate determination of benefits should be possible in most cases. There would seem to be no constitutional basis for objection to such a fee requirement, since its rationale is the same as that of the special assessment for local improvements.³⁵³ Indeed, although schools have not customarily been financed on a special assessment basis, even a requirement that land within a subdivision must be conveyed to the school district or that a fee in lieu of conveyance be paid to provide for needed additional schools could probably be sustained against constitutional objections, if the exaction were prop-

353. See Reps & Smith, *supra* note 338, at 407-12. Compare Heyman & Gilhool, *The Constitutionality of Imposing Increased Community Costs on New Suburban Residents Through Subdivision Exactions*, 73 YALE L.J. 1119 (1964). See also Johnston, *Constitutionality of Subdivision Control Exactions: The Quest for a Rationale*, 52 CORNELL L.Q. 871, 912-24 (1967). See also discussion in text accompanying notes 119-38 *supra*.

erly related to the costs imposed on the school district by the new subdivision.³⁵⁴

Third, municipalities with planning commissions should be expressly empowered to allow cluster or planned unit developments. Instead of trying to revise the rather obscure language in section 15 of the Municipal Planning Act³⁵⁵ as to agreements on "use, height, area or bulk requirements," the writer would recommend the incorporation of the recently drafted Model State Enabling Act for Planned Residential Development,³⁵⁶ with any minor changes necessary to adapt it for use in Michigan, into any new Michigan subdivision control statute.

In municipalities without any planning commission, the local governing body should be authorized, in general, to exercise the same controls over land subdivision as the governing body and the planning commission together are authorized to exercise in municipalities with a planning commission,³⁵⁷ except that such municipalities should probably not be empowered to allow cluster or planned unit developments. It would seem, moreover, that there is no need for separate statutory provisions for subdivision control by cities and villages, on one hand, and townships, on the other.³⁵⁸ If townships are considered sufficiently competent, in general, to exercise subdivision control powers, they should be given the same powers as cities and villages. If not, all subdivision control powers in township areas should probably be transferred to the counties. Enabling legislation for county and regional planning already exists,³⁵⁹ and subdividers in township areas should be required to comply with county land-use plans in any case, with the county plan-

354. See Heyman & Gilhool, *supra* note 353; Johnston, *supra* note 353.

355. Municipal Planning Act § 15, MICH. COMP. LAWS § 125.45 (1948).

356. The Model Act was drafted by Babcock, Krasnowiecki, and McBride and was originally published in *Planned Unit Residential Development*, URBAN LAND INSTITUTE TECHNICAL BULLETIN 52, at 67-83 (1965). The Model Act, with some revisions, was republished at 114 U. PA. L. REV. 140-70 (1965), as part of a *Symposium on Planned Unit Development*. Both versions of the Model Act are accompanied by extensive commentary.

357. This would appear to be the case under the Subdivision Control Act of 1967. Section 105(b) which provides that approval of preliminary and final plats shall be conditioned upon compliance with "any ordinance or published rules of a municipality or county adopted to carry out the provisions of" the act, and § 259, which states that "the standards for approval of plats prescribed in this act are minimum standards and any municipality, by ordinance, may impose stricter requirements and may reject any plat which does not conform to such requirements." In view of these provisions, it would appear that a municipality without a planning commission could exercise powers under the 1967 Act which would be as extensive as those available to a municipality with a planning commission under the Municipal Planning Act.

358. The Subdivision Control Act of 1967 makes no such distinction.

359. County Planning Commission Act of 1945, MICH. COMP. LAWS §§ 125.101-107 (1948). Regional Planning Commission Act of 1945, MICH. COMP. LAWS §§ 125.11-23 (Supp. 1961).

ning commission, if there is one—rather than the county plat board—acting as the county plat approval agency.

Mandatory requirements imposed on all local governments should be limited substantially to those set out in the Subdivision Control Act of 1967. Local governments should be authorized to waive certain of the mandatory requirements, provided they have their own regulations covering the same subject matter.³⁶⁰ Review by county and state highway agencies, as provided in the 1967 act,³⁶¹ is highly desirable. Indeed, increased state highway agency power to control land use in the "highway corridor" around state trunk line and federal aid highways would seem desirable³⁶²—but that is beyond the scope of this article.

It is also beyond the scope of this article to discuss a development now favored by many urban and regional planning experts—the combination of zoning and subdivision controls, along with other related public controls, into a set of comprehensive and integrated land development controls.³⁶³ It is hoped that such a discussion will form the subject matter of a later article.

360. Section 186(d) of the Subdivision Control Act of 1967 provides an excellent example.

361. *Id.* §§ 105(c) & (d), 113, 115, 142(f) & (i), 147, 150, 165, 170, 183, 184, 225(c) & (e), 226(a) & (b).

362. *See* NETHERTON & MARKHAM, *ROADSIDE DEVELOPMENT AND BEAUTIFICATION*, part 2 (Highway Research Board 1966), 82-141.

363. For an introductory discussion, *see* Reps, *Requiem for Zoning*, the 1964 Pomeroy Memorial Lecture, presented at the 1964 National Planning Conference of the American Society of Planning Officials and reprinted in *AMERICAN SOCIETY OF PLANNING OFFICIALS*, *PLANNING* 56-67 (1964) and 16 *ZONING DIGEST* 33-39, 56-63 (1964).