

ARTICLE IV. LAND DIVISIONS*

***Editor's note:** Ord. No. 773, §§ I--X, adopted October 17, 2005, amended the Code by repealing former art. IV, §§ 28-211--28-219, and adding a new art. IV. Former art. IV pertained to similar subject matter, and derived from Comp. Ords. 1988, § 134.010; and Ord. No. 691, adopted June 5, 2000.

State law references: Land division act, MCL 560.101 et seq.

Sec. 28-211. Purpose.

The purpose of this article is to implement the provisions of the State Land Division Act (1967 PA 288, as amended, formerly known as the Subdivision Control Act), to prevent the creation or alteration of parcels of property that would not comply with the applicable ordinances and said act, to minimize potential boundary disputes, to maintain orderly development of the community, to provide for the health, safety, and welfare of the residents and property owners of the township, and implement the goals and objectives of the township comprehensive plan by establishing reasonable standards for prior review and approval of land divisions of land and property boundary changes within the township.

(Ord. No. 773, § I, 10-17-2005)

Sec. 28-212. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means a natural person, firm, association, partnership, corporation, or combination of any of them, or other legal entity that holds an ownership interest in land whether recorded or not.

Accessible in reference to a parcel, means that the parcel meets the following requirements: Has an area where a driveway provides vehicular access to an existing public or private road or street and meets all applicable location standards of the state transportation department or county road commission under Act No. 200 of the Public Acts of 1969, being sections 247.321 to 247.329 of the Michigan Compiled Laws, and of the township, or has an area where a driveway can provide vehicular access to an existing road or street and meet all such applicable location standards.

Buildable means (i) having sufficient upland area outside of regulated wetlands, wetland/watercourse setbacks, floodplains and protected woodlands to meet minimum structure setbacks, floor area, parking, sewage disposal, and use requirements, unless, prior to submitting the land division request, the appropriate use permit is obtained allowing construction within the regulated wetland, wetland watercourse setbacks, floodplains or protected woodlands; and (ii) having sufficient upland area to meet minimum parcel size requirements under the township zoning ordinance.

Building envelope means a defined area determined by applicable zoning requirements and buildable area.

Boundary change the addition, adjustment or reconfiguration of a parcel, tract of land, or any part of the foregoing with an existing parcel, tract of land or any part of such area of land.

Divide or *division* means the partitioning or splitting of a parcel or tract of land by the proprietor thereof or by his or hers heirs, executors, administrators, legal representatives, successors or assigns, for the purpose of sale or lease of more than one year, or of a building development that results in one or more parcels of less than 40 acres or the equivalent, and that satisfies the requirements of sections 108 and 109 of the State Land Division Act. Divide and division does not include a property transfer between two or more adjacent parcels, if the property taken from one parcel is added to an adjacent parcel; and any resulting parcel shall not be considered a building site unless the parcel conforms to the requirements of the Land Division Act, or the requirements of other applicable local ordinances.

Exempt split or *exempt division* means the partitioning or splitting of a parcel or tract of land by the proprietor thereof, or his or her heirs, executors, administrators, legal representatives, successors or assigns, that does not result in one or more parcels of less than 40 acres or the equivalent; provided all resulting parcels are accessible for vehicular travel and utilities from existing public roads through existing adequate roads or easements, or through areas owned by the owner of the parcel that can provide such access. For the property transfer between two or more adjacent parcels, if the property taken from one parcel is added to an adjacent parcel, any resulting parcel shall not be considered a building site unless the parcel conforms to the requirements of the Land Division Act and all applicable local ordinances.

Forty acres or the equivalent means either 40 acres, a quarter-quarter section containing not less than 30 acres, or a government lot containing not less than 30 acres.

Governing body means the township board.

Land division officer means that person designated by the township board to administer this article and that person's designee.

Lot means a measured portion of a parcel or tract of land, which is described or fixed in a recorded plat.

Parent parcel or *parent tract* means a parcel or tract, respectively, lawfully in existence on March 31, 1997.

Tract means two or more parcels that share a common property line and are under the same ownership.

(Ord. No. 773, § II, 10-17-2005)

Sec. 28-213. Request for division or boundary change exemptions.

Land in the township shall not be divided or property boundaries reconfigured without the prior review and approval of the land division officer, in accordance with this article and the State Land Division Act. The following shall be exempted from this requirement:

(1) A parcel proposed for subdivision through a recorded plat pursuant to the township subdivision control regulations set out in the subdivision ordinance and the State Land Division Act.

(2) A lot in a recorded plat proposed to be divided in accordance with the township subdivision control regulations set out in the subdivision ordinance and the State Land Division Act.

(3) A parcel proposed to be developed as a site condominium in accordance with the township site condominium regulations set out in the site condominium ordinance and the State Condominium Act.

(4) A site condominium unit in an approved site condominium proposed to be divided in accordance with the township site condominium regulations set out in the site condominium ordinance and the State Condominium Act.

(5) An exempt split as defined in the Michigan Land Division Act provided, however, that boundary changes that transfers property between two or more adjacent parcels shall still be subject to the requirements of this article regarding boundary changes.

(6) An internal boundary change within a record plat proposed to be changed in accordance with this article and the Land Division Act, and which does not change the exterior boundaries of the plat.

(7) An internal boundary change within an approved site condominium proposed to be changed in accordance with the site condominium ordinance and the State Condominium Act, and which does not change the exterior boundaries of the site condominium project.

(8) The combination of lots, parcels, site condominium units, or tracts of land.
(Ord. No. 773, § III, 10-17-2005)

Sec. 28-214. Requirements for submission of application for division or boundary change.

An applicant shall file all of the following with the land division officer for review and approval of a proposed land division or property boundary change before making any division or property boundary change by deed, land contract, lease for more than one year, or otherwise:

(1) A complete application form signed by all persons who have any legal or equitable interest in the parent parcel(s) on such form as may be provided by the township. In cases where a parcel is combined with an adjoining parcel, all persons having an interest in such adjoining parcels shall also sign the application.

(2) Proof of fee ownership of the land proposed to be divided or boundary changed.

(3) A survey map of the land proposed to be divided or boundary change, prepared pursuant to the survey map requirements of 1970 public act 132, as amended, (MCL 54.211 et seq.) by a land surveyor or civil engineer licensed by the state, and showing:

a. A dated survey with north arrow, scale, and name of the individual or firm responsible for the completion of the survey.

b. The survey shall include existing and proposed boundary lines and their dimensions before and after the proposed split or boundary change. The survey shall also include building envelopes.

c. The location of any public or private street, driveway, or any easements located or to be located within any proposed parcel. Where applicable copies of the instruments describing and granting such easements and/or maintenance agreements shall be submitted with the application.

d. When applicable, general topographical features including contour intervals no greater than five feet, and including a delineation of any wetlands or floodplains.

In lieu of such survey map, at the applicant's option, the applicant for land divisions or boundary changes may waive the 45-day statutory requirement for a decision on the application until such survey map and legal description are filed with the township, and submit a tentative preliminary parcel map drawn to scale of not less than 1" = 40', including an accurate legal description of each proposed division or boundary change, and showing the boundary lines, dimensions, and the accessibility of each division or boundary change from existing or proposed public roads for vehicular traffic and public utilities, for preliminary review, approval, or denial by the land division officer, prior to a final application under this section.

The land division officer may waive the survey map requirement where the foregoing tentative parcel map is deemed to contain adequate information to approve a proposed land division or boundary change considering the size, simple nature of the divisions or

boundary changes, and the undeveloped character of the territory within which the proposed divisions or boundary changes are located. An accurate legal description of all the proposed divisions or boundary changes, however, shall at all times be required.

(4) A signed statement that, to the best of the applicant's knowledge, all standards of the State Land Division Act and this article have been met.

(5) The history and specifications of any previous division(s) and boundary change of land of which the proposed division or boundary change was a part sufficient to establish the parcel to be divided was lawfully in existence as of March 31, 1997, the effective date of the Land Division Act.

(6) Proof that all due and payable taxes, installments or special assessments pertaining to the land proposed to be divided or the parcel that is the subject of a boundary change are paid in full.

(7) If the transfer of division rights is proposed in the land transfer, a completed notice to the assessor of transfer of the right to make a division of land must be completed and submitted.

(8) Unless a division or boundary change creates a parcel which is acknowledged and declared to be "not buildable" under section 28-217 of this article, all divisions and boundary changes shall result in "buildable" parcels containing sufficient "buildable" area outside of unbuildable wetlands, flood plains, and other areas where buildings or structures are prohibited therefrom, and with sufficient area to comply with all required setback provisions, minimum floor areas, off-street parking spaces, on-site sewage disposal and water well locations (where public water and sewer service is not available), and maximum allowed area coverage of buildings and structures on the site.

(9) Provide the location of wetlands, floodplains, soils that will not sustain on-site septic systems and steep slopes.

(10) The applicant shall provide documentation from the county health department that the building sites are acceptable for on-site wells.

(11) The applicant shall provide documentation from the county health department that the building sites are acceptable for septic systems.

(12) A driveway permit from the county road commission. This is required for new private roads and new private driveways. A driveway permit is not required for a driveway coming off an existing private road. When applicable, an address permit shall be obtained from the county road commission.

(13) The fee as may from time to time is established by resolution of the township board for land division and boundary change reviews pursuant to this article to cover the costs of review of the application and administration of this article and the State Land Division Act.

(Ord. No. 773, § IV, 10-17-2005)

Sec. 28-215. Procedure for review of applications for land division and boundary change approval.

(a) Upon receipt of a fully completed application package, the land division officer shall:

(1) Approve;

(2) Approve with reasonable conditions to assure compliance with applicable ordinances and the protection of public health, safety, and general welfare; or

(3) Disapprove the land division applied for within 45 days after receipt of the application package conforming to this article's requirements,

and shall promptly notify the applicant of the decisions and the reasons for any denial. If the application package does not conform to this article's requirements and the State Land Division Act, the land division officer shall return the same to the applicant for

completion and re-file in accordance with this article and the State Land Division Act, in which case the 45-day period shall not commence until the fully completed application is received.

(b) Any person or entity aggrieved by the decision of the land division officer may, within 30 days of said decision, appeal, in writing, the decision to the township board or such other board or person designated by the township board which shall consider and resolve such appeal by a majority vote of said board or by the designee at its next regular meeting or session affording sufficient time for a 20-day written notice to the applicant (and appellant where other than the applicant) of the time and date of said meeting and appellate hearing. A fee as may from time to time be established by resolution of the township board shall accompany the request for an appeal.

(c) A decision approving a land division or boundary change is effective for 180 days, after which it shall be considered revoked unless within such period the document accomplishing the approved land division or boundary change is recorded with the county register of deeds and a recorded copy thereof is filed with the township.

(d) The land division officer shall maintain an official record of all approved and accomplished land divisions and boundary changes.

(Ord. No. 773, § V, 10-17-2005)

Sec. 28-216. Standards for approval of land divisions.

A proposed land division or boundary change shall be approved if the following criteria are met:

(1) All the parcels to be created by the proposed land division or boundary change fully comply with the applicable lot, yard and area requirements of the zoning ordinance, including, but not limited to, minimum lot size, minimum frontage, minimum width, minimum road frontage, minimum lot area, minimum lot width to depth ratio, maximum lot coverage and minimum set-backs for existing buildings/structures.

(2) The proposed land division complies with all requirements of the State Land Division Act and this article.

(3) The ratio of depth to width of any parcel created by division or boundary change does not exceed a four to one ratio exclusive of access roads, easements, or non-buildable parcels created under section 28-217 of this article and parcels added to contiguous parcels that result in all involved parcels complying with said ratio. The permissible depth of a parcel created by land division or boundary change shall be measured within the boundaries of each parcel from the abutting road right of way to the most remote boundary line point of the parcel from the point of commencement of the measurement. The permissible minimum width shall be as defined in the zoning ordinance. Upon application to the township board, the township board may, in its sole discretion, grant a greater width to depth ratio based on the following factors:

a. Exceptional topographic or physical conditions with respect to the parcel and compatibility with surrounding lands.

b. Whether a greater depth to width ratio will detrimentally affect adjacent property and materially impair the intent and purpose of this article.

c. Whether the request for greater depth to width ratio is self-created.

d. Whether an alternative exist which meets this article's requirements.

e. The township board may impose reasonable conditions to any variation from the depth to width ratio requirements, including the requirement that the applicant permanently preserve in an undeveloped state that portion of a parcel exceeding the lot length time's width requirement.

(4) All parcels created by a land division or modified by a boundary change shall have a minimum road frontage of 66 feet on a public road or approved private road.

(5) Where it is deemed in the health, safety and general welfare of the public, the township may require:

- a. Utility easements in accordance with but not wholly subject to the township master plan; and/or
- b. Each resulting parcel that is a development site have adequate easements for public utilities from the parcel to existing public utility facilities.

(6) Approval of a division or a boundary change is not a determination that the resulting parcels comply with other ordinances or regulations.

(Ord. No. 773, § VI, 10-17-2005)

Sec. 28-217. Allowance for approval of other land divisions or boundary changes.

Notwithstanding disqualification from approval pursuant to this article, a proposed land division or boundary change that does not fully comply with the applicable lot, yard, and accessibility and area requirements of the zoning ordinance or this article may be approved in any of the following circumstances:

(1) Where the applicant executes and records a deed restriction or other document approved by the township with the county register of deeds, in a form acceptable to the township, designating the parcel(s) as "not buildable." Any such parcel(s) shall also be designated as "not buildable" in the township records, shall not thereafter be the subject of a request to the zoning board of appeals for variance relief from the applicable lot and/or other requirements, and shall not be developed with any building or structure.

(2) Where, a parcel is legally non-conforming and the proposed division or boundary change does not increase the non-conforming aspect of the parcel.

(3) Where the proposed boundary change involves only the minor adjustment of a common boundary line solely for purposes of straightening or correcting said boundary line.

(Ord. No. 773, § VII, 10-17-2005)

Sec. 28-218. Consequences of noncompliance with land division or property boundary change approval requirement.

Any parcel or easement created or altered in noncompliance with this article shall not be eligible for any building permits, or zoning approvals, such as special land use approval or site plan approval, and shall not be recognized as a separate parcel on the assessment roll. In addition, violation of this ordinance shall subject the violator to the penalties and enforcement actions set forth in section 28-219 of this article, and as may otherwise be provided by law.

(Ord. No. 773, § VIII, 10-17-2005)

Sec. 28-219. Penalties and enforcement.

Any person, firm corporation, trust, partnership, or other legal entity which violates or refuses to comply with any provision of this article shall be responsible for a municipal civil infraction and subject to a fine plus any costs, damages, expenses, and other sanctions as authorized under chapter 87 of Act No. 236 of the Public Acts of 1961, as amended, and other applicable laws. Each day a violation occurs or continues shall constitute a separate offense, and shall make the violator liable for the imposition of a fine for each day. The rights and remedies provided for in this section are cumulative and in addition to any other remedies provided by law including, but not limited to, invalidation of the land division or boundary change, and appropriate injunctive relief.

(Ord. No. 773, § IX, 10-17-2005)

Secs. 28-220--28-250. Reserved.