

CHAPTER 18

SITE CONDOMINIUM SUBDIVISIONS

SECTION 18.01 PURPOSE AND SCOPE.

Site condominium projects are condominium developments in which each condominium unit consists of an area of vacant land and a volume of vacant air space within which a building or other improvements may be constructed by the condominium unit owner. Each site condominium unit may also have an appurtenant limited common element reserved for the exclusive use of the owner of the condominium unit. Either the condominium unit by itself, or the condominium unit taken together with any contiguous, appurtenant limited common element, shall be considered to constitute a building site which is the functional equivalent of a "Lot" for purposes of determining compliance with the requirements of the Zoning Ordinance and other applicable laws, ordinances, and regulations. Site condominium projects may also include general common elements consisting of common open space, recreational areas, streets, and other areas available for use by all owners of condominium units within the project. Subject to the district zoning provisions applicable to the project's location, any land use permitted by the Heath Township Zoning Ordinance may be permitted in a site condominium project.

The purpose of this Chapter is to ensure that plans for developments within Heath Township proposed under the provisions of the Condominium Act, Act 59 of the Public Acts of 1978, shall be reviewed with the objective and intent of achieving the same or comparable essential characteristics as if the development and improvements therein were being proposed pursuant to the Land Division Act, Act 288 of the Public Acts of 1967, as amended. It is also the intent of this Chapter to ensure that such development is in conformance with the requirements of this Zoning Ordinance, as amended, and other applicable Township Ordinances and state and federal regulations.

SECTION 18.02 SITE CONDOMINIUM REVIEW AND APPROVAL PROCEDURES. Application for review and approval of a site condominium subdivision shall be in accordance with the following procedures:

- (a) Step I - Preliminary Review. Prior to the formal application for a Site Condominium Subdivision, the developer shall meet with the Planning Commission. The purpose of this meeting is to inform the Planning Commission of the applicant's intent to initiate a site condominium project. On or before this meeting, the applicant shall submit the following to the Township Clerk (or appropriate designee) who shall distribute it to the Zoning Administrator, all Planning Commissioners, the Township Supervisor, Township Planner, and Township Engineer:
 - (1) A sketch drawn to scale, indicating the general location and configuration of the property to be developed; the alignment of streets and building sites; and the relationship of the proposed project to adjacent streets and neighboring properties.
 - (2) A statement regarding the provision of sewer service and water supply.
 - (3) Appropriate fees as required by Township Board resolution

During the preliminary discussion meeting, the Planning Commission and applicant shall discuss the following, as applicable:

- (4) General requirements of this Section and other applicable provisions of the Zoning Ordinance.
- (5) Planned or anticipated sites of parks and recreation areas and other public uses.
- (6) Utility system capabilities.
- (7) Planned or anticipated public improvements, including streets, utility extensions, and the like.
- (8) Street plans and potential problems relative to the natural features of the area including, but not limited to, floodplains, soil conditions, topography, and groundwater tables.
- (9) Additional information which may assist the applicant in proceeding in a reasonable and sound manner toward final approval of the site condominium project.

Step I Review is intended for information purposes only and does not constitute binding commitments on the part of the Township. Neither do they imply tentative approval of any proposed site condominium project. Furthermore, such discussions shall not carry the authority to proceed with construction or to sell or transfer property.

- (b) Agency Review. Following Step I preliminary review the applicant shall submit the site condominium subdivision plans to the following agencies for their review and comment and, if required, their approval:

- (1) Allegan County Health Department
- (2) Allegan County Road Commission
- (3) Allegan County Drain Commission
- (4) Michigan Department of Natural Resources and Environment
- (5) Michigan Department of Transportation
- (6) Other appropriate state and county review and enforcement agencies having direct approval or permitting authority over all or part of the project's construction phases.
- (7) Gas and electrical utility corporations serving the area.
- (8) The applicable Intermediate School District and the individual School District affected by the project.

- (c) Step II Preliminary Review By Planning Commission.

- (1) **Submission Requirements.** An application for preliminary review of a site condominium subdivision project shall be made to the Township Clerk along with

the appropriate fees as required by Township Board resolution. The application shall, at a minimum, contain the following information:

- a. The applicant's name, address and phone number.
 - b. Proof that the applicant is the owner of the property or has a legal or financial interest in the property such as a purchase agreement.
 - c. The name, address and phone number(s) of the owner(s) of record if different than the applicant.
 - d. The legal description, address and tax parcel number(s) of the property.
 - e. Project description, including number of structures, dwelling units, square feet of building sites, open spaces, and estimated inhabitants, phasing etc.
 - f. Gross and net size of the parcel in acres.
 - g. Written comments and/or approvals from the above list of agencies resulting from their review of the site condominium subdivision plans, as applicable.
 - h. A copy of the proposed deed restrictions or covenants for the site condominium subdivision.
 - i. A copy of any preliminary agreements which may be required before Final Plan approval is granted.
 - j. A copy of the proposed Master Deed of the project and the supportive information which is intended to be recorded with the Register of Deeds as required by state law.
- (2) The applicant shall provide at least fifteen (15) copies of the preliminary site condominium project plan and additional copies if deemed necessary by the Clerk. The plans shall contain the information required for preliminary site condominium plans as required by this Section.
 - (3) The application and plans shall be submitted at least twenty (20) days before the next regularly scheduled meeting of the Planning Commission.
 - (4) Upon receipt of the preliminary site condominium project plans, the Clerk shall forward one copy to each member of the Planning Commission, Township Planner and Township Engineer, for consideration at the next regularly scheduled meeting of the Planning Commission.
 - (5) **Planning Commission Step II Review.**

The Township Clerk shall notify by mail all the members of the Planning Commission that a meeting will take place at a specified time concerning the property proposed for the site condominium project. At this or a subsequent meeting, a public hearing shall be held. Notice of the public hearing shall be made as set forth in Section 31.02 of this Ordinance.

In reviewing the Preliminary Plan, the Planning Commission shall give particular attention to the requirements of this Chapter. The Planning Commission shall also review all deed restrictions and covenants for the site condominium project

and find that they are adequate to ensure ultimate completion of the project in accordance to the proposed project plan. If the Preliminary Plan meets the requirements of this Ordinance and all other applicable local, county, state and federal regulations, the Planning Commission shall grant its Preliminary Approval. The Planning Commission shall forward one (1) copy of the Preliminary Plan along with a notation indicating Preliminary Approval and any recommendations to the Township Board for Step II review and approval.

If the plan does not meet the requirements of this Ordinance, the Planning Commission shall:

- (a) Recommend denial of the Preliminary Plan, setting forth the reasons in writing, or
- (b) Recommend granting of Preliminary Plan approval contingent upon completion of the revisions as noted.

The Planning Commission shall forward the Planning Commission's recommendations to the Township Board.

- (d) Township Board Step II Review, and Approval of Preliminary Plan. After receipt of the Preliminary Plan and recommendations from the Planning Commission, the Township Board shall consider the Preliminary Plan at its next meeting, or within thirty (30) days from the date of receipt from the Planning Commission.
 - (1) The Township Board shall consider the Preliminary Plan along with the recommendations of the Planning Commission. If the plan meets the Preliminary Plan requirements of this Ordinance, the Board shall grant Step II Preliminary Plan approval. The Township Clerk shall sign the plan with the notation that it has received Step II approval and the applicant shall be so notified. Step II approval shall give the applicant the following rights for a two (2) year period from the date of approval:
 - (a) That the general terms and conditions under which Step II approval was granted will not be changed by the Township.
 - (b) That the building site sizes, number and orientation and street layout have been approved.
 - (2) If the Preliminary Plan substantially meets the requirements of this Ordinance, the Township Board may grant tentative approval of Step II. This approval shall be conditioned upon the submission of such changes, revisions or additional material as is determined to be necessary to complete Step II. Upon the submission of such changes, revisions, or additional material to the Township Board, the Preliminary Plan shall be granted unconditional Step II approval and the applicant shall be so notified.
 - (3) If the Preliminary Plan cannot meet the requirements of this Ordinance, the Township Board shall deny Step II approval and shall notify the applicant along with the reasons for denial.

- (e) Effect of Step II Approval. Approval of a Step II Preliminary Site Condominium Subdivision project by the Township Board shall serve as conditional authorization to proceed with the project, including the sale of individual building sites on the basis of condominium ownership and the construction of required improvements to the land in conformity with approved project plans. Step II Preliminary Site Condominium Subdivision approval shall not serve as the direct authorization for construction of buildings on individual building sites within the subdivision. Prior to building construction, individual uses shall be subject to the customary zoning provisions and any general or special regulations applicable to the individual structure or use as outlined or referenced in the applicable District regulations of this Ordinance.
- (f) Final Plan Review and Approval
- (1) Within two (2) years from the date of Step II approval of the Preliminary Plan, the applicant shall prepare and submit the necessary copies of the Final Site Condominium Plan to the Township Clerk along with a completed application form and any fee established by the Township Board at least two (2) weeks prior to the next regularly scheduled Board meeting. The applicant shall also submit the following:
 - (a) Two (2) copies of as-built plans of all required public improvements which shall be reviewed by the Township Engineer for compliance with applicable Township ordinances.
 - (b) A copy of all final agreements and the Master Deed which is to be recorded with the Allegan County Register of Deeds.
 - (c) Letters of approval from all applicable agencies or utilities listed in Subsection (2) stating that improvements have been properly installed and inspected, and inspection fees paid, or that performance guarantees or other similar surety have been submitted for uncompleted improvements.
 - (2) If all submissions are found acceptable, the Clerk shall submit the same to the Township Board at its next regular meeting for approval.
 - (3) The Board shall approve or reject said Final Plan based upon the Plans and other material submitted and the recommendation of the Township Engineer and notify the applicant in writing.
 - (4) If the Final Plan is rejected, the Clerk shall notify the applicant stating the reasons for denial.
 - (5) All provisions of the Site Condominium Subdivision Project Plans which are approved by the Township Board must be incorporated, as approved, in the Master Deed for the condominium project. A copy of the Master Deed as filed with the Allegan County Register of Deeds for recording must be provided to the Township Clerk within ten (10) days after such filing with the County.

SECTION 18.03 FINANCIAL GUARANTEE. In lieu of completion of all required public or private improvements prior to approval of the final plan, the Township Board may permit the developer to provide a financial guarantee of performance in one or a combination of the

following arrangements for those requirements which are over and beyond the requirements of any public agency other than the Township responsible for the administration, operation, and maintenance of the applicable public improvement. Completion of improvements shall be required prior to the issuance of occupancy permits for any dwelling or business establishment.

(a) Cash Deposit, Certified Check, Irrevocable Letter of Credit

- (1) A cash deposit, certified check, or irrevocable letter of credit shall accrue to the respective public agency responsible for administering the construction, operation, or maintenance of the specific public improvement. These deposits shall be made with the treasurer of the respective unit of government of which the public agency is a part, or deposited with a responsible escrow agent, or trust company, subject to the approval of the respective governmental body.
- (2) The dollar value of the cash deposit, certified check, or irrevocable letter of credit shall be equal to the total estimated cost of construction of the specified public improvement.
- (3) The escrow time for the cash deposit, certified check, or irrevocable letter of credit shall be for a period to be specified by the respective public agency responsible for administering the construction, operation or maintenance of the specific public improvement.
- (4) In the case of either cash deposits or certified check, an agreement between the respective public agency and the developer may provide for progressive payments out of the cash deposit or reduction of the certified check to the extent of the estimated cost of the completed portion of the public improvement in accordance with the standard practices of the public agency responsible for administering the specific public improvement.

- (b) Penalty for Failure to Complete the Construction of a Public Improvement. In the event the developer shall, in any case, fail to satisfactorily complete the required construction of a public improvement within such period of time as required by the conditions of the guarantee for the completion of public improvements, the Township Board may declare the developer to be in default and require that all the improvement(s) be installed regardless of the extent of the building development at the time the bond is declared to be in default. The Township Board may obtain sums necessary for the cost and expense of such installation by appropriating the amounts necessary to complete the project from the cash deposit, certified check, or irrevocable letter of credit. Nothing contained herein shall prohibit the Township from the pursuit of any other remedies which may be available for breach of agreement and/or for damages including requests for actual attorney fees and costs.

SECTION 18.04 SITE CONDOMINIUM SUBDIVISION PLANS.

- (a) Required Content - Preliminary Plan. Site plans submitted for a Site Condominium Subdivision shall be prepared in accordance with the following requirements.

The Preliminary Plan shall be drawn at a scale of not more than one hundred (100) feet to the inch and shall include or be accompanied by the following information:

- (1) The name of the project; the name and address of the developer; the name, address and seal of a registered surveyor or engineer preparing the Plan; and a description of the property to be subdivided.
- (2) A key map showing the location and position of the property and its relationship to surrounding streets and the surrounding area including existing zoning of abutting areas.
- (3) North arrow, scale, contour interval, and legend when appropriate.
- (4) Contour elevations adjusted to USGS datum at not more than five (5) foot intervals.
- (5) Where appropriate, established flood plain contours and elevations adjusted to USGS datum.
- (6) The location of all existing streets, driveways, lots, plats, public utilities, drains, streams or bodies of water on/or abutting the property within 200 feet of the subject property.
- (7) The lot lines, intended layout, and intended use of the entire property owned or represented by the developer. The following shall be included:
 - (a) Street and stub street right-of-way -- location, width and curve radii.
 - (b) Proposed street names.
 - (c) Building site lines, site line dimensions to the nearest foot, site and block numbers, and building site areas to the nearest ten (10) square feet.
- (8) The location and dimensions of all existing or proposed easements or open space reserves, including electrical and telephone easements.
- (9) The locations and tentative sizes of proposed sanitary sewers, storm sewers and catch basins, water mains, culverts, bridges, ponding areas, ponds, lagoons, slips, waterways, lakes, bays, and canals.
- (10) Statements regarding:
 - a. Intent to utilize public or private water or sewage facilities.
 - b. Zoning and lot size requirements.
 - c. Zoning requirements for front, side and rear yards.
 - d. Size and type of street in accord with Allegan County Road Commission standards or any adopted Heath Township private street regulations (ref. Chapter 22).
 - e. Intent to install gas, sidewalks, street lights, and shade trees.
 - f. Use of waterways, rivers, streams, creeks, lakes or ponds.
 - g. The location of all general and limited common elements.
 - h. The use and occupancy restrictions and maintenance provisions for all general and limited common elements as will be contained in the Master Deed.

- (b) Required Content-Final Plan. The Final Plan for a Site Condominium Subdivision shall include:
- (1) One (1) set of approved as-built or final construction plans for all required improvements to be kept on file by the Township.
 - (2) One (1) copy of the final Master Deed intended for recording.
 - (3) Performance or installation agreements for any improvements not controlled or regulated by other agencies, such as sidewalks, streetlights, or shade trees.
 - (4) One (1) copy of any financing arrangements between the Township and the proprietor for the installation of required improvements, if any.

SECTION 18.05 SITE CONDOMINIUM SUBDIVISION LAYOUT, DESIGN, AND REQUIRED IMPROVEMENTS.

- (a) Conformance With Zoning. All land uses and building sites within a site condominium subdivision project shall be subject to the requirements of the Heath Township Zoning Ordinance for that zoning district in which it is located.
- (b) Streets. All site condominium subdivision lots shall be served by a public road system constructed in accordance with the regulations of the Allegan County Road Commission or, with private streets constructed under the standards of Heath Township.
- (c) Water, Sanitary Sewer, Storm Drainage and Private Utilities.
- (1) Site condominium subdivisions which cannot reasonably be required to connect to public water and sewer services may at the discretion of the Township Board be allowed to utilize private well and septic systems. Such systems, if allowed, shall adhere to the requirements of the Allegan County Health Department. Private community well and sewage systems, if allowed, shall be constructed to standards for public systems for eventual dedication to the public.
 - (2) All telephone, electric, gas and cable television utilities, when provided, shall be installed underground within easements dedicated for such use.
 - (3) Storm drainage collection, retention, and detention facilities shall be constructed to Allegan County Drain Commission standards and recommendations.
 - (4) Unless specifically waived by the Township, streetlights shall be required at all street intersection and appropriate legal and financial mechanisms for the installation and operation of the street light system by the residents shall be established by the proprietor.
- (d) Other Required Improvements.
- (1) Monuments shall be located in the ground at all angles along the boundaries of the site condominium subdivision. These monuments shall be made of solid iron or steel bars at least 1/2 inch in diameter and 36 inches long and completely encased in concrete at least four (4) inches in diameter.

- (2) All corners of lots within a site condominium subdivision shall be staked in the field by iron or steel bars or iron pipes at least 18 inches long and 1/2 inch in diameter or other markers as approved by the Township Building Inspector.
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- (e) Law. The requirements, procedures, regulations, and powers set forth in the Condominium Act, Act 59 of 1978, as amended, shall apply except as provided by this Ordinance.
- (f) Inspection and Specifications. The Township Board may establish inspection fees, inspection requirements, specification standards, and administrative procedures as provided by law and such shall be deemed to be requirements of this Ordinance. All plans and installation of improvements called for shall be subject to the approval of the Township or its agent, or such other competent persons as designated by the Township. All inspection fees shall be paid by the applicant before the Final Plan is signed by the Township Supervisor, unless adequate sureties or deposits to cover such expenses are provided to the Township prior to Final Plan approval.

SECTION 18.06 VARIANCES.

- (a) Building Site Area, Width, and Depth Regulations. Variances with respect to individual building site width, depth, and area regulations governed by the District regulations of the Zoning District in which the site condominium project is located shall be made to the Zoning Board of Appeals pursuant to the procedures, rules, and conditions contained in this Ordinance.
- (b) Applications. Applications for any variance or planned development shall be made in writing by the petitioner prior to the time when the Step II Preliminary Plan is filed for the consideration of the Planning Commission. The application shall state fully and clearly all facts relied upon by the petitioner and shall be supplemented with maps, plans, or other additional data which may aid the Planning Commission or Zoning Board of Appeals in the analysis of the proposed variance.