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Subdivision and Platting 101

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21st ANNUAL LAND USE CONFERENCE

SUBDIVISION AND PLATTING 101

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PLATTING

Platting is the actual tool used by local governments to regulate the subdivision of land. The need for this type of regulation arose from growing issues within two different policy areas. The first was the need to bring order, consistency and brevity to the process of describing land ownership.

As we are all aware, original title issues in Texas dealt with legal descriptions based upon a metes and bounds approach. It was common for property descriptions to involve extensive sets of survey field notes to identify a particular tract or parcel. As further divisions of land occur, the complexity of the survey descriptions and the risk of error in copying or interpreting the descriptions continued to increase. As more and more individuals owned and developed property in towns, villages and cities, the complexity of the legal description problem multiplied geometrically.

The conversion to a form of mapping that produced unique, concise and accurate legal descriptions of property significantly reduced the chances and opportunities for error or misinterpretation thereby producing immediate and enormous benefit to the real estate community.

The second policy area that mandated the need to look at what has become our modern platting requirement, was the pressure to establish a system under which public rights-of-way, easements and infrastructure could be planned, constructed and extended in a logical and consistent manner throughout our communities as they grew. The modern concept of platting provided a mechanism to ensure that property owners and developers were required to plan and coordinate their developments to interface within the existing urban design of the communities within which they were occurring.

Platting in Texas has its genesis in the Standard Planning Enabling Act published by the Department of Commerce in 1926. It was a prototype piece of suggested legislation produced by the U.S. Department of Commerce to help state and local governments in dealing with issues of urban growth. The legislature of the State of Texas adopted the platting portion of this model legislation in Article 974a in 1927. The original model legislation addressed both city planning and the concept of platting and subdivision regulation as a unified doctrine. The Texas Legislature was uncomfortable with the city planning concept and chose to adopt a State Enabling Act dealing only with the platting question.

SUBDIVISION AS A CONCEPT

If the purpose of platting is to regulate the act of subdivision, the threshold question becomes what constitutes subdivision. A subdivision is the division of land into two or more tracts. Over the years various additional definition elements have been added to the concept. The division of a tract into two or more parts for the purpose of resale and/or building development, and/or the laying out of roads, rights-of-ways or utility easements. Although the definitions have shifted somewhat, in the treatises and reported cases, the concept remains the same.

Subdivision is the act of dividing a piece of property into more than one tract by sale, gift, lease or other method of conveyance. The division of the property results in the need to create a new

legal description to identify the newly created tracts and the need to ensure that the infrastructure necessary to support construction on the new tract is readily and appropriately available. Although any division of land can be and, technically, is a subdivision pursuant to general legal theory, the real question is what type of subdivision activity will be regulated by local governments.

WHAT SUBDIVISIONS ARE SUBJECT TO LOCAL REGULATION

As a general proposition of law, a local government may only regulate those activities occurring within its “jurisdiction”. A municipal corporation adopts subdivision regulations pursuant to the terms and conditions of a local ordinance. The ordinance, upon its adoption, will automatically be applicable within the boundaries of the municipal corporation itself. Section 212.003 of the Texas Local Government Code allows a municipal corporation to extend its subdivision regulation authority into the extraterritorial jurisdiction of the city. The purpose of this grant of authority philosophically ties back to the original Standard Planning Enabling Act. The purpose of subdivision regulations and platting is to allow a local government to plan the layout of a development or developments and the roadways and utilities that will service those developments in a logical, efficient and effective plan of service. The legislature has recognized that although a local government may have a discrete municipal city limit line, development will frequently occur across that line but within the logical growth area of the municipality. The extraterritorial jurisdiction of a municipal corporation is the area within which it is reasonable to expect that it will expand within the near to intermediate term future. The local government is given the authority to extend its “design” regulations into that area to ensure that roadways and utilities are coordinated to support continued growth and development.

EXTRATERRITORIAL JURISDICTION

The size of a municipalities extraterritorial jurisdiction is based upon the population of the municipality. The size of the extraterritorial jurisdictions fall within brackets as set forth under the provisions of Section 42.021 of the Texas Local Government Code which establishes a system as set out below:

<u>Population</u>	<u>ETJ From City Boundary</u>
Less than 5,000	One-half mile
5,000 - 24,999	1 mile
25,000 - 49,999	2 miles
50,000 - 99,999	3.5 miles
100,000+	5 miles

Once a determination has been made that a property proposed for subdivision lies within a municipality boundary or its extraterritorial jurisdiction, the next issue is defining the type of subdivision requiring platting within the terms of the subdivision regulation ordinance. Section 212.0045 of the Texas Local Government Code, gives each municipality the discretion to define and classify what constitutes the type of subdivisions that they recognize within their ordinance. It

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