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Platting: All You Need To Know

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PLATTING: ALL YOU NEED TO KNOW

Platting property is part of the development process. Although platting is a familiar term, even experienced lawyers, consultants and government officials (and certainly real estate developers and related professionals) frequently misunderstand its meaning. The problem lies in the origin of subdivision platting law. Subdivision platting law is based in public law, whereas most private sector lawyers and professionals spend their time primarily dealing with contract law. Subdivision platting law affects real estate, but its origins come from governmental law concepts premised on the right of the government to “promote the health, safety, morals, or general welfare...and the safe, orderly, and healthful development” (known as the “police power”). To further confuse the issue, subdivision platting law is significantly different from zoning law, another public law area affecting real estate. Many public sector lawyers confuse the two areas. When considering a zoning change, a city has broad discretion over the change; however, the rights of the city in the area of subdivision platting are significantly limited when reviewing a subdivision plat. Zoning and Planning Commission appointees and City Council members often confuse the broad discretion in zoning with the narrow ministerial authority available in platting.

Lacy v. Hoff and *City of Round Rock v. Smith*, seminal platting cases, contain helpful overview of subdivision platting law, and outline the differences between platting law and zoning law. *Lacy v. Hoff*, 633 S.W.2d 605, 607 (Tex. App.—Houston [14th Dist.] 1982, writ ref’d n.r.e.) and *City of Round Rock v. Smith*, 687 S.W.2d 300 (Tex. 1985). *Howeth Invs., Inc. v. City of Hedwig Village* provides an excellent overview of current platting law. 259 S.W.3d 877 (Tex. App.—Houston [1st Dist.] 2008, pet. denied). *Elgin Bank v. Travis County* provides a historic context for the previously more narrowly drawn county subdivision powers as compared to municipal subdivision powers. 906 S.W.2d 120, 124 (Tex. App.—Austin 1995, writ denied). However, effective in 2007, counties have platting authority essentially equivalent to cities. Tex. Loc. Gov’t Code §§ 232.100-108.

Subdivision controls are based on the land registration system. Registration is a *privilege* that local governmental entities have the power to grant or withhold based upon the compliance with reasonable conditions. The regulatory scheme depends on the approval and recordation of the plat. *Hoff*, 633 S.W.2d at 607-08. The regulation of subdivision development is based upon government’s legitimate interest in promoting orderly, healthy development; insuring that subdivisions are constructed safely; and protecting future owners from inadequate police and fire protection, inadequate drainage, and unsanitary conditions. *Smith*, 687 S.W.2d at 302.

The initial compilation of platting law begins with TEX. LOC. GOV’T CODE Chapters 212 (cities) and 232 (counties); these Chapters authorize cities and counties to regulate the division of real property. TEX. LOC. GOV’T CODE §§ 232.001(a), 232.023(a). See *La Cour Du Roi, Inc. v. Montgomery County*, 698 S.W.2d 178, 186 (Tex. App.—Beaumont 1985, writ ref’d n.r.e.). Cities have broad authority to adopt rules governing plats. *Milestone Potranco Dev. v. City of San Antonio*, 298 S.W.3d 242, 244-45 (Tex. App. — San Antonio 2009, pet. denied); see also *Garrett Operators, Inc. v. City of Houston*, 461 S.W.3d 585, 598 (Tex. App.—Houston [1st Dist.] 2015, no pet.). The Local Government Code is general, without extensive detail on procedures, but without more, can be relied upon by a local government as a basis to review and approve plats (as Houston did until 1982). Most cities have a subdivision ordinance (sometimes part of a comprehensive development code), which provides detailed platting regulation and procedures. Often, the local government will have uncodified rules and regulations adopted by the governing body establishing even more detailed requirements. Traditionally, municipal subdivision power is substantially broader than a county’s. *Elgin Bank*, 906 S.W.2d at 123.

Even experienced participants in the platting process often have fundamental misunderstandings about the applicable process and law of subdivision platting. Fortunately, most fundamental

misunderstandings fall into a relatively small number of categories. This article synthesizes the author's experience in answering questions from clients, consultants, government officials, and lawyers over the past 25 years of land use practice.

"Subdivision Law and Growth Management," May 2016 update (West 2016) by Southwestern University Law Professor James A. Kushner [referred to herein as "Kushner"], is a national treatise, published by West Group, with a good representation of Texas cases. Retired UH Law Professor John Mixon's treatise, "Texas Municipal Zoning Law," third edition (2017), now updated by James L. Dougherty of Houston, includes an Appendix on Texas Subdivision Law by the author which provides additional information.

1. WHAT IS A . . . ? (THE JARGON OF PLATTING)

There are many terms of art in subdivision platting law. A clear understanding of these terms is necessary to practice in this area.

Subdivision (to subdivide, subdividing). The division of land without regard to the transfer of ownership. *City of Weslaco v. Carpenter*, 694 S.W.2d 601, 603 (Tex. App.—Corpus Christi 1985, writ ref'd n.r.e.); *See* Op. Tex. Att'y Gen. No. GA-0223 (2004) (for a discussion of what constitutes a "subdivision"). To subdivide property is to perform the act of subdivision. Subdividing is not the same as platting. Case law has held that "developing" is a type of subdivision if such development is specifically set forth in a subdivision regulation. *Cowboy Country Estates v. Ellis County*, 692 S.W.2d 882, 885 (Tex. App.—Waco 1985, no writ).

Platting (to plat). The process required by the government to obtain an approval of a subdivision of real property. TEX. LOC. GOV'T CODE Chapter 212 (Cities) or 232 (Counties).

Plan. Newly added by the 2019 Texas Legislature, a "plan" is subject to the same approval and review requirements of subdivision plats, and include a subdivision plan, subdivision construction plan, site plan, land development application, and site development plan.

Subdivision Plat (or Plat). The written depiction of the lots, blocks, and reserves created by the subdivision of real property, which must be recorded in the Official Public Records of Real Property of a county after it has received the requisite approvals. "[A] map of specific land showing the location and boundaries of individual parcels of land subdivided into lots, with streets, alleys and easements drawn to scale." *Elgin Bank*, 906 S.W.2d at 121 (*citing* BLACK'S LAW DICTIONARY p. 1151 – 6th Ed. 1990).

Planning Commission. A governmental body, appointed by the city council, with authority (final in most cities) to approve subdivision plats. TEX. LOC. GOV'T CODE § 211.006. The planning commission may also act as the Zoning Commission for a city. TEX. LOC. GOV'T CODE § 211.007(a). A Planning and Zoning Commission is subject to the Texas Open Meeting Act, but a planning commission is not. TEX. LOC. GOV'T CODE § 211.0075. If there is no planning commission, then the city council approves subdivision plats. By ordinance, a city may require additional approval from the city council, but in larger cities the planning commission usually has final authority on subdivision plats. This is also true in most growing suburban cities because the city council does not want to be burdened with the additional responsibility. However, in many smaller towns, the city council retains final approval authority over subdivision plats in order to retain more control over the development process.

Variance. A governmentally issued right to vary from the literal word of the applicable regulation upon a showing of "hardship." Some subdivision platting ordinances have a specific provision for issuing a variance. *See* HOUSTON, TX. CODE § 42-81-82 (providing for a general variance provision upon majority

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"Subdivision and Platting: A Land Use Foundation"