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Subdivision and Platting: A Land Use Foundation

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Table of Contents

1. DEFINITIONS AND KEY CONCEPTS	2
Types of Plats:	5
2. WHEN IS PLAT APPROVAL REQUIRED?	8
A. General Rule—Any Subdivision of Property	8
B. Exceptions—State Law, Local Ordinance, Case law	9
C. Plat Certification—TEX. LOC. GOV'T CODE Sec. 212.0115(a)	12
3. REGULATIONS GOVERNING PLAT APPROVAL.	12
A. Procedural	13
B. Substantive	13
C. Development Plats	16
D. Manufactured Housing	16
E. Colonias	16
F. Overlapping Jurisdiction	16
G. General Plans	17
H. Are there Statutory Limits on Platting Powers?	17
I. Improper Approval of Plats.	18
4. MUST A PLAT MEETING ESTABLISHED REQUIREMENTS BE APPROVED?	19
5. MUST REASONS FOR A PLAT DENIAL BE PROVIDED?	20
6. MUST A PLAT APPLICATION BE PROMPTLY CONSIDERED?	21
7. MAY SIGNIFICANT "EXACTIONS" WITHOUT COMPENSATION BE REQUIRED AS A CONDITION TO PLAT APPROVAL?	22
8. ARE THERE LIMITS ON EXACTIONS A CITY CAN REQUIRE OF A DEVELOPER?	24
A. Federal Case Law.	24
B. State Case Law.	24
C. State Statute	26
D. Required Objections to Improper Exactions	27
9. MAY THE RULES BE CHANGED AFTER PLAT APPLICATION?	27
10. MAY THE GOVERNMENT HALT DEVELOPMENT TO CONSIDER CHANGES TO ITS SUBDIVISION REGULATIONS?	29
11. DO CONFLICTS PREVENT PARTICIPATION IN PLATTING DECISIONS?	30
12. DOES PLATTING AFFECT RESTRICTIONS OR EASEMENTS?	30
A. Enforcement—The platting process is used to enforce restrictions.	31
B. Enforcement—Some Cities are authorized to directly enforce certain private restrictions.	32
C. Creation—Implied Private Easements/Restrictions based on Plats.	32
D. Creation -- No Minimum Lot Sizes Implied from Prior Plats	34
E. Creations -- Plat Setbacks/Notes Should not be Private Easements or Restrictions	34
F. Creation -- Notations on the Plat Drawing, But Outside the Platted Area	35
G. Creation – Clean Plat Movement	35
H. Creation—Some Cities require restrictions for plat approval.	35
I. Violation—Platting may violate restrictions.	36
J. Amendment—Platting does not amend or invalidate restrictions.	36
13. DOES PLATTING AFFECT ZONING?	36
14. DOES A COMPREHENSIVE PLAN AFFECT PLATTING?	37
15. ARE THERE ADDITIONAL RULES FOR A SUBDIVISION GOLF COURSE?	37
16. MAY "CROSS SUBDIVISION" REPLATS BE APPROVED?	40
17. HOW DO YOU ELIMINATE UNCONSTRUCTED, BUT PLATTED STREETS AND	

	OTHER PUBLIC IMPROVEMENTS?	41
18.	MAY ACCESS TO ABUTTING PLATTED STREETS BE DENIED?	42
19.	ARE PLATS USED TO COLLECT AD VALOREM TAXES?	43
20.	WHAT ARE THE CONSEQUENCES OF IGNORING PLATTING REQUIREMENTS?	43
22.	IS THERE AN AFFIRMATIVE DUTY TO DISCLOSE PLATTING STATUS?	45
23.	RECENT CASES IN SUBDIVISION PLATTING	46

SUBDIVISION AND PLATTING: A LAND USE FOUNDATION

A plat is a map, drawn to scale, showing the divisions of land into separate parcels and tracts, prepared in accordance with local regulations to be recorded in the real property records. The preparation of a plat is one of the essential and typically early steps in the development of land. Although subdivision platting is a familiar term and common requirement, even experienced professionals in the private and public sector misunderstand its meaning and purpose. Subdivision platting law is based in public law, while 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 exercise its police power for the “health, safety, morals, or general welfare...and the safe, orderly, and healthful development.” To further confuse the issue, subdivision platting law is significantly different from zoning law, another public law area affecting real estate. A city has broad discretion over the zoning change. By contrast, a city has very limited discretion to approve or disapprove an application for 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. DEFINITIONS AND KEY CONCEPTS

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. As defined, the approval and disapproval requirements of Chapter 212 apply to local review of things completely unrelated to subdivision platting such as review of site development plans for off-street parking, landscape plans, compliance with multi-family standards

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 to approve subdivision plats. TEX. LOC. GOV'T CODE § 212.006. 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 (Note: Houston's Planning Commission was at one point charged with assisting the governing body in developing zoning regulations, and therefore, the practice of Houston has traditionally been to subject its Planning Commission to the Texas Open Meetings Act in accordance with TLGC Section 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 cities often provide that 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.

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