County Regulation of Subdivisions and the Plat Approval Process

Chapter 232 of the Texas Local Government Code and HB 3167
What is a plat and why do we regulate it?

• Many people mean many things when they use the word plat.

• It is understood broadly to refer to a drawing or map of a piece or pieces of land.

• In some cases the plat maps also include the location of improvements, easements, notations, sub plats, and other information.

• Private interests and governments have used and created versions of plats to lay out cities, grant land, build railroads, encourage industry, etc.

• Subdivision platting is now generally regulated in Texas by cities and counties to encourage organized development, ensure adequate transportation and emergency access, and generally establish rules for development which promote public health and safety. Plats of subdivisions are generally required to be filed in the records of the County Clerk.

• Along with platting the governments often regulate the minimum infrastructure required to support the subdivision for the same reasons.
Why is proper development important to Government?

• As with many things, the simplest and most effective time to address an issue is at the beginning. Let’s take road rights-of-way for example:

• If a subdivision developer does not properly address rights-of-way for roads, including variables such as width and utility placement prior to lots being sold then the following problems may areas:

  1. Lots without access to roadway.
  2. Insufficient road widths not allowing for the flow of traffic.
  3. Insufficient areas for drainage installation, creating flooding.
  4. Insufficient area for the maintenance of existing roadways or drainage features.
  5. Substandard road widths not allowing for access by emergency response vehicles including ambulances, fire trucks, and police vehicles.

These problems cannot be solved by a single property owner. So when they exist in subdivisions the owners experience property damage, loss of work, injury, health issues, and even loss of life. These factors lead to political communications, which often lead to governmental action at an increased expense to the public.
ALMOST NO ONE LIKES DEALING WITH REGULATIONS.
LARGE SCALE PROBLEMS WILL EVENTUALLY BE COMMUNICATED.
LOCAL LEADERSHIP WILL BE CALLED ON TO
SOLVE THE PROBLEMS THAT INDIVIDUALS
CANNOT SOLVE.
RULES HELP YOU TO BE THIS

SMOKEY SAYS—
Care will prevent 9 out of 10 forest fires!
SO YOU DON’T HAVE TO BE THIS
Chapter 232 of the Texas Local Government Code
The County’s Toolbox for Subdivision Development:

• **SUBCHAPTER A:**
  • GENERAL PLATTING REQUIREMENTS

• **SUBCHAPTER B:**
  • PLATTING REQUIREMENTS FOR COUNTIES NEAR A BORDER

• **SUBCHAPTER C:**
  • PLATTING REQUIREMENTS FOR ECONOMICALLY DISTRESSED COUNTIES

• **SUBCHAPTER D:**
  • COUNTY PLANNING COMMISSIONS

• **SUBCHAPTER E:**
  • PLAT AND SUBDIVISION REQUIREMENTS FOR **URBAN** COUNTIES
Subchapter A: It’s General and it’s for Everyone.

- When is a plat required?
- Who regulates subdivisions and platting in the ETJ?
- What are the exceptions to the platting requirement?
- How are plats to be approved for filing and by whom?
- How and under what timelines are plat applications to be processed?
- What fee can be charged for plat applications?
- What general items can be regulated in relation to subdivision development?
- What types of financial guarantee or bonding may be required of developers?
- How may I enforce my subdivision regulations?
- How may an existing plat be revised, amended, or cancelled?
When is a plat required? (The “or” is important.)

A plat must be prepared if a tract is divided into two or more parts to lay out:

“(1) a subdivision of the tract, including an addition;

(2) lots; or

(3) streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts.” - Sec. 232.001

What is included in “other parts”?

What is meant by lots?
What is a Subdivision?

“A division of a tract under Subsection (a) includes a division regardless of whether it is made by using a metes and bounds description in a deed of conveyance or in a contract for a deed, by using a contract of sale or other executory contract to convey, or by using any other method.” - Sec. 232.001(a-1)

Can a lease of a portion or area of a tract “divide” a tract?

Are mobile home parks, recreational vehicle parks, industrial parks, or condominiums divisions?
What are the Exceptions to the Platting Requirements?

There are certain types of subdivisions excepted by statute. (Sec. 232.0015) (All of these have conditions in the statute.)

- Agricultural Use
- Family Sales/Grants
- All Lots 10 Acres or Larger
- Subdivisions for Sale to Veterans Through Land Board
- State Land / Permanent School Fund
- Divided by Political Subdivision in Floodplain to Adjoining Owners
- Divided for Further Subdivision by Another Person
- Transfer of Parts to Owners of Undivided Interest
“Sec. 232.0015. EXCEPTIONS TO PLAT REQUIREMENT. (a) To determine whether specific divisions of land are required to be platted, a county may define and classify the divisions. A county need not require platting for every division of land otherwise within the scope of this subchapter.”

If a county has the authority to define and classify divisions can these divisions be regulated or processed depending on the classification?

If a county need not require platting for every division of land then can a county add their own exceptions to the platting requirement?
How are plats to be approved for filing and by whom?

“Sec. 232.002. APPROVAL BY COUNTY REQUIRED. (a) The commissioners court of the county in which the land is located must approve, by an order entered in the minutes of the court, a plat required by Section 232.001. The commissioners court may refuse to approve a plat if it does not meet the requirements prescribed by or under this chapter or if any bond required under this chapter is not filed with the county.”

Plats required must be approved by Commissioners Court unless there is an agreement with a city in the ETJ that states otherwise.
How and under what timelines are plat applications to be processed?

*The answer to this question is located in sections 232.0023 – 232.0029 of the Texas Local Government Code.*

*The processes and timelines in these sections detail the review and approval processes for plat applications.*

*These processes have recently been altered by HB 3167, which took effect on September 1st of this year.*

Is a plat application the same thing as a plat?
Old Process Prior to Changes in Statute

Complete Application was Submitted to County. County has 10 business days to determine completeness.

County had 60 days to review, comment, and receive updates from Developer following completed application.

County had to take final action on the application within 60 days of a complete submittal.

If the application was disapproved then it could be resubmitted.

The application was approved and filed or disapproved.

Developer can voluntarily request any additional amount of time for review.
New Process After the Changes in the Statute
Plat Application Approval Procedure Changes

• Counties continue to have 10 business days to notify the applicant that an application is missing documents or other required information.
Plat Application Approval Procedure Changes

• An application is still considered incomplete until all required documents on the county’s written list are submitted.
Plat Application Approval Procedure Changes

- The prior statute allowed 60 days from the receipt of a completed application for “final action” to be taken by the Commissioners Court or the Court’s designee. The revised statute allows only 30 days for the Court or its designee to “approve”, “approve with conditions”, or “disapprove” the application.

- Notice: The 30 day and 60 day timelines begin on the date the completed application is received, not the date the Commissioners Court decided it was complete.
Plat Application Approval Procedure Changes

• The prior statute allowed the review period to be extended beyond 60 days for any period the applicant considered reasonable if agreed to in writing by the applicant and agreed to by the Commissioners Court.

• The revised statute apparently does not allow for the developer to extend the 30 day period for more than 30 additional days, even if the developer requests and agrees to the extension.

Can the applicant voluntarily withdraw an application?
Plat Application Approval Procedure Changes

• The prior statute allowed for a “reasonable” extension of the review period in order to perform a “takings impact assessment” in connection with a plat.

• Apparently, the revised statute only allows a 30 day extension.
Plat Application Approval Procedure Changes

- Both the previous and current statute agree that the review period “applies only to a decision wholly within the control of the commissioners court or the court’s designee.”
Plat Application Approval Procedure Changes

• The previous version of the statute allowed for the owner to request or agree to an extension at any point during the review period, but required the county to notify the applicant within 20 days of the receipt of the complete application of any extension needed for a takings review.

• The revised statute appears to require that either extension be determined “not later than the 20th day after the date the completed application is received.”
Plat Application Approval Procedure Changes

• What happens if the plat application doesn’t get approved, approved with conditions, or disapproved within the 30 day period?

• Several things are required:
  1. The commissioners court shall refund the greater of the unexpended portion of any fee or 50% of an application fee.
  2. The application is “granted by operation of law”
  3. The applicant may apply to a district court in the county where the tract of land is located for a writ of mandamus to compel the commissioners court to issue documents recognizing the “plat application”

• This section of the statute remains relatively unchanged with the exception of the word “plat” being removed and replaced with the word “application”. Is this significant?
Completely New Plat Application Approval Procedures

• Sections 232.0026 is added to the code.

• Requires a written statement of the conditions for approval, or reasons for disapproval.

• The written statement must clearly articulate each “specific” condition or reason.

• Each condition or reason must be directly related to “the requirements of this subchapter” and include a citation to the law including the statute or order, that is the basis of the condition or reason.

• The condition or reason cannot be “arbitrary”.

Completely New Plat Application Approval Procedures

• Sections 232.0027 is added to the code.

• Allows the applicant to submit a response to the written statement of the conditions for approval, or reasons for disapproval.

• The response must satisfy the each of the conditions or reasons.

• “The commissioners court may not establish a deadline for the response."
Completely New Plat Application Approval Procedures

• Sections 232.0028 is added to the code.

• Requires that once a written response is submitted that satisfies each of the conditions or reasons for conditional approval or disapproval that the commissioners court, within 15 days; must approve, conditionally approve, or disapprove the plat application.

• The statute appears to require that the plat application may only be disapproved “for a condition or reason provided to the applicant under the original application.”

• If the response is not acted upon within 15 days then the application “is approved”.
Completely New Plat Application Approval Procedures

• Sections 232.00285 is added to the code.
• Defines Development Plan
• Mandates that a county cannot require a person to submit a development plan during the plat approval process required by the subchapter, unless explicitly authorized by another law of Texas.
• Requires the approval procedures under this subchapter be followed if authorized under another law.
Completely New Plat Application Approval Procedures

• Sections 232.0029 is added to the code.

• States that, “In a legal action challenging a disapproval of a plat application under this subchapter, the county has the burden of proving by clear and convincing evidence that the disapproval meets the requirements of this subchapter or any applicable case law. The court may not use a deferential standard.”
What can Counties Charge for the Review and Inspection?

• Sections 232.021

• Plat Application Fee

• The commissioners court may impose a fee to cover the cost of the county’s review of a subdivision plat and inspection of street, road, and drainage improvements described by the plat.

• The fee can vary based on any reasonable criteria.

• The fee must be paid at the time directed by the county before the county reviews the plat.
What general items can be regulated in relation to subdivision development?

- **In Subchapter A:**
  - Rights-of-way and their widths
  - Road construction standards including widths (cannot be higher than county’s standard for new road construction)
  - Drainage standards
  - Bonding
  - Lot and block monumentation
  - Groundwater availability
  - Emergency Vehicle Access Requirements
  - And much, much more. *(See Subchapter E)*
What types of financial guarantee or bonding may be required of developers?

• (1) be payable to the county judge of the county in which the subdivision will be located or to the judge's successors in office;

• (2) be in an amount determined by the commissioners court to be adequate to ensure proper construction of the roads and streets in and drainage requirements for the subdivision, but not to exceed the estimated cost of construction of the roads, streets, and drainage requirements;

• (3) be executed with sureties as may be approved by the court;

• (4) be executed by a company authorized to do business as a surety in this state if the court requires a surety bond executed by a corporate surety; and

• (5) be conditioned that the roads and streets and the drainage requirements for the subdivision will be constructed:

  • (A) in accordance with the specifications adopted by the court; and
  • (B) within a reasonable time set by the court.
How may I enforce my subdivision regulations?

- Sec. 232.005. ENFORCEMENT IN GENERAL; PENALTY. (a) At the request of the commissioners court, the county attorney or other prosecuting attorney for the county may file an action in a court of competent jurisdiction to:
  - (1) enjoin the violation or threatened violation of a requirement established by, or adopted by the commissioners court under a preceding section of this chapter; or
  - (2) recover damages in an amount adequate for the county to undertake any construction or other activity necessary to bring about compliance with a requirement established by, or adopted by the commissioners court under a preceding section of this chapter.

- (b) A person commits an offense if the person knowingly or intentionally violates a requirement established by, or adopted by the commissioners court under a preceding section of this chapter. An offense under this subsection is a Class B misdemeanor. This subsection does not apply to a violation for which a criminal penalty is prescribed by Section 232.0048.
Thank you

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