Platting 101: County Subdivision Regulation

By Donald Lee, 512-476-6174
donlee@cuc.org

Executive Director
Texas Conference of Urban Counties

Chapter 232, Local Gov. Code

Statute controlling county subdivision regulation authority.
A subdivision is dividing a tract of land into two or more tracts of land. It is the first step in developing raw land.
Subdivisions are made by preparing a plat and filing it with the county clerk.
Why are plats important?

- You can’t convey a subpart of land unless that subpart is shown on a plat filed with the county clerk.
  
  Property Code, 12.002(c)

- Criminal penalties if you sale land in violation of 12.002(c), and is prima facie evidence of an attempt to defraud.
  
  Property Code, 12.002(f)
What I want you to know

- You have 2 roles as policy maker and judge
- You have a mix of limited authority and broad authority
- Border counties and counties receiving EDAP grants must follow model rules created by the state
- You can get into trouble

What is at Stake?

The Future of Your Communities
Chapter 232
Local Government Code

A plat is required to be filed when land is divided into two or more parts to lay out a subdivision, roads or other tracts intended for use by the public or lot owners.

Plats Must Be Approved Before Being Filed

Plats that lay out residential lots or include roads or other tracts intended for public or shared use

- If property is within a city – then city approval required
- If property is outside a city – then county approval required
- If property is in a city’s ETJ – then either the city, county or both
Dual Role for Commissioners Court:

1. **Judge** when you review proposed plats
2. **Policy maker** when you write/amend your subdivision rules

The basic provisions for **all** counties are in Chapter 232, Subchapter A

Role 1: Reviewing Plats

Ministerial Duty

- If plat meets your published rules – you must approve
- If plat does not meet your published rules – you must deny
- Some counties will consider and grant variances from rules on a case-by-case basis
- If you deny a plat that meets your rules – landowner can appeal to district court
Role 2: Writing Rules

Here you have discretion

- Decide what standards are important for your community
- Will roads be gravel or paved?
- Will fire hydrants be required?
- Gutters, ditches or storm sewers?

What Can Go into Rules?

- Exemptions, platting fees
- Requirements for:
  - Road right-of-way;
  - Road construction;
  - Road drainage;
  - Statements of water availability to purchasers;
  - Drainage of the subdivision in general;
  - Performance bond, financial guarantee or letter of credit; and
  - Certification by an engineer of water availability
Statutory Exemptions

All of these subdivisions are exempt if no roads, parks, easements, or public/shared tracts are in the subdivision:
- Land used for agriculture;
- Creation of 4 or less lots transferred to immediate family;
- All the new tracts are greater than 10 acres;
- Land owned by the state; and
- Land to be further subdivided

60-Days to Deny Filed Plats

- County must deny a plat timely or landowner can have district court declare it approved
- County must also rebate plat-filing fees
- County must provide list of documents necessary for a complete plat application
- County must reject for incompletion within 10-days

232.0025
Plat Application Fees

- Cover cost of plat review and construction inspection
- Based on any reasonable criteria i.e…
  - # of lots
  - # of acres
  - Type/extent of improvements

Road Specs – Do Unto Others What You Do Unto Yourself

- County may not impose a higher construction standard on new subdivision roads than it imposes on itself for roads “with a similar type and amount of traffic”

- Classify your roads, Establish specs for each class of road

Counties don’t build subdivision roads
Plat Revisions:

- Landowners wishing to revise an existing plat apply in writing to commissioners court.
- Provide notice of a hearing on revision in newspaper and by mail (to other owners in the subdivision).
- Approve if no damage to established rights of other owners, or all agree.

Manufactured Housing Rental Communities

- Not a subdivision. Subdivision rules don’t apply.
- But you can adopt rules for new MHRCs:
  - Establish reasonable minimum infrastructure standards, including:
    - Drainage
    - Water supply/sanitary sewer
    - Roads to ensure fire/EMS access
- Utility hook-ups blocked until compliance documented.
Border Counties are Special

- Special provisions apply to counties within 50 miles of the border
- Subchapter B, Chapter 232, Local Gov. Code
- The “Colonias” law
- The following applies to everyone else

Criminal Penalties on You! Conflict of Interest

A commissioner court member with a substantial interest in land being subdivided must file, before final action is taken, an affidavit stating the nature and extent of the interest with the county clerk – then refrain from further participation in the matter.

232.0048
Conflict of Interest (2)

Substantial interest in land means:

- As an individual
  - $2,500 or more of ownership interest, or
  - Acting as the developer;
- Owns 10% or $5,000 worth of a company that meets the individual interest threshold;
- Receives income greater than 10% of annual income from a business that meets the individual income threshold; or
- Are closely related to anyone that meets any of the above criteria (1st degree)

Conflict of Interest (3)

- Violation is a Class A misdemeanor

- Bottom Line: Any possible conflict, get a lawyer to look at it up front!
Local Government Code 232 Subchapter B Applies to Border Counties

Applies to:
- Counties within 50 miles of the border; or
- Counties located within 100 miles of the border that contain the majority of the area of a city with a population of more than 250,000.

When is a Plat Required in a Border County?

- Subdivisions creating 2 or more lots where at least one is for residential purposes
- Residential purpose presumed for lots < 5 acres
- Exempt when all lots are > 10 acres
- Exempt if subdivision is incident to a gift among family

Subchapter B, Chapter 232.022
Border Counties **Shall**!

- Adhere to significantly greater platting requirements
- Adopt and enforce model rules written by the Texas Water Development Board
  - Shall enforce road standards
  - Shall enforce extensive drainage provisions
  - Shall enforce Water/sewer facilities, electricity and gas provisions
    - Build it or Bond it on water and sewer
- Shall not weaken requirements of model rules
  Subchapter B, Chapter 232

Border Counties **May**…

Establish a planning commission
- Acts on behalf of court in regard to subdivision regulations
- No additional authority
- Must act on plats under same time limits (60-days) as non-border counties
  Subchapter D, Chapter 232
Violations are a Class B Misdemeanor

- A violation of the commissioners court platting and subdivision rules is a class B misdemeanor.
- The court can request the county attorney or district attorney enforce the rules.

Conflict of Interest Standard in Border Counties!

- Any interest in subdivided land!
- Any ownership or stock in a company with any interest in subdivided land, or acting as developer.
- Receive anything of value from a company with any interest.
- Extended family relationship (2nd degree) with someone with any interest.
- Affidavit, abstention required.
- Class A misdemeanor
  - Conviction constitutes official misconduct and is ground for removal from office.

Subchapter B, Chapter 232.034 & 232.035
Economically Disadvantaged Areas Program

- Grant program run by the Texas Water Development Board
- Provides funds for water/sewer infrastructure in counties built without water/sewer service
- To get the grant you must agree to enforce the model rules required of border counties
  - Build it or Bond it

County Subdivision Regulation

---

Broad, Additional Authority

Chapter 232, Subchapter E

Counties may adopt rules governing plats and subdivisions of land within the unincorporated area of the county to promote the health, safety, morals, or general welfare of the county and the safe, orderly, and healthful development of the unincorporated area of the county.

Examples:
- Dedication of park land
- Fire hydrants
- Street lights
What Can Be Done With Subchapter E?

- Any regulation necessary to protect health, safety, welfare and morals
- Anything a city can do in their ETJ
- Grant of police power

More Involved When Using Subchapter E

- County determines what it can do – based on facts.
- Constitutionality not presumed.
- Requires significantly more professional assistance: lawyers and engineers
What has been done with Subchapter E

- Required Streetlights
- Required fire hydrants
- Required sufficient park land or funds to help county buy parkland

Also in Subchapter E

- Require greater right-of-way, especially for MPA major thoroughfare plans
- Minimum lot frontages
- Establish lot set-back requirements
- Prohibit connection of utilities in unplatted subdivisions
City ETJ Overlapping Regulations

- Cities have limited authority in areas surrounding the city
- Called Extraterritorial Jurisdiction
- Bigger the city – the bigger the ETJ
  - ½ mile for smallest cities to 5 miles for largest
- Cities have subdivision regulation authority in their ETJ – overlaps with county authority

Chapter 242 Resolves Conflicts Between City and County Regulation

The most stringent subdivision regulation applies in:

- Border counties
- Counties receiving EDAP grants
- Harris county and other counties containing part of Houston
All Other Counties

- Require the adoption of a 242 agreement

Must Establish 1-Stop Shop for Platting in ETJ

- Cities and counties must reach local agreement, through a written contract, to provide 1-Stop shop for platting in ETJ
  
  Chapter 242
Agreement May Provide Either:

Option 1: City regulates, county does not
Option 2: County regulates, city does not
Option 3: Split the ETJ up geographically
Option 4: Both regulate, but provide single front to landowners

Option 4 Must:

- Provide single office to file plats
- One (combined) plat application fee
- One response indicating approval or denial
- Provide one set of consolidated and consistent subdivision regulations
If No Agreement is Reached Then Arbitration is Required

- If no agreement is reached, binding arbitration is required, with costs split by city and county
- Deadline: 120 days after incorporation of a municipality

Other Related Authority:

- Populous counties can adopt fire-codes (>250,000 population)
- Certain counties have zoning
  - Lakes, South Padre Island
- OSSF – Septic Tanks
  - State regulated (TCEQ)
  - County can act as State Agent and adopt, enforce local rules
  - Often combine regulations with subdivision
Important Points to Remember

- Dual roles: understand when you have discretion
- You have a mix of traditional authority and recently passed broad authority
- Border counties and counties receiving EDAP grants must follow model rules created by the state
- You can get into trouble

Donald Lee, Executive Director
E: DonLee@cuc.org | W: www.cuc.org
O: 512.476.6174 | F: 512.476.5122
500 W. 13th Street
Austin, TX 78701