



Land Subdivision: A Practical Guide for Central Texas

18th Annual Land Development Conference
Austin Bar Association
October 29, 2010

Will Schnier, P.E.
BIG RED DOG Engineering | Consulting
815-A Brazos Street, #319 (Mail)
207 West 4th Street (Office)
Austin, Texas 78701

(512) 669 – 5560
www.BIGREDDOG.com
will.schnier@BIGREDDOG.com

© 2010 by BIG RED DOG Engineering | Consulting



Table of Contents

1. Introduction	1
1.1. What is a Subdivision?	1
1.2. What is Not a Subdivision?	1
2. Subdivision Basics and Statutory Framework	1
2.1. When a Subdivision is Required	2
2.2. Establishment of Jurisdictional Authority	2
2.3. Technical Requirements	2
2.4. Enforcement Provisions	3
3. Subdivision Application and Review Process	4
3.1. Preliminary Subdivision Plan	4
3.2. Final Subdivision Plat	5
3.3. Engineer's Commentary on Final Plat Contents	6
4. Plat Vacations, Resubdivision Plats, and Amending Plats	7
4.1. Plat Vacations	7
4.2. Resubdivision Plats	7
4.3. Amending Plats	7
5. Exceptions and Exemptions to the Requirements to Plat	8
5.1. Municipal Exceptions – State Law	8
5.2. County Exceptions – State Law	8
5.3. Condominiums	8
5.4. Mobile Home Parks	9
5.5. City of Austin Local Exceptions	9
5.6. Travis County Local Exceptions	9
6. Inter-local Subdivision Agreements for Land in ETJ	9
6.1. City of Austin and Travis County	10
6.2. City of Austin and Williamson County (and Bastrop County)	10
6.3. City of Austin and Hays County	10
6.4. City of Round Rock and Williamson County	11
6.5. City of West Lake Hills and Travis County	11
7. Chapter 245 Rights	11
8. Conclusion	12
9. References	13



1. Introduction

All development by private entities in the State of Texas must occur on a legal lot or platted parcel. Therefore, all land (real property) in the State of Texas is subject to subdivision regulations, whether imposed by a county, a municipality, or both.

The land development process can be broken down into three general components: 1) zoning and/or land use entitlements, 2) land subdivision, and 3) construction permits – subdivision construction, site development, building, etc. The second stage of the process is the legal subdivision of land, the culmination of which typically results in the creation of an officially recorded subdivision plat.

1.1. What is a Subdivision?

The term “subdivision” refers to the division of a tract of land into one or more parcels for the purposes of sale, transfer, or development. The legal land subdivision process is implemented by a county, city, or as may be the case of land located in the Extra Territorial Jurisdiction (ETJ) of a city, both the city and county.

A “subdivision plat”, or more simply “plat”, refers to a legal document which has been recorded at the office of the County Clerk following approval by the applicable jurisdictional review authority.

1.2. What is Not a Subdivision?

Commonly the term “plat” is often applied to both tax plats and title surveys; this is a misuse of the technical term. A tax plat and title survey can be used to help one determine the location of the property and any encumbrances or agreements associated with the land, but these documents do not create the subdivision status.

A “subdivision plat” is also not a permit. Nothing can be constructed with a recorded subdivision plat alone because it is no more of a construction permit than an ownership deed. It is a legal document which is recorded at the office of the County Clerk.

2. Subdivision Basics and Statutory Framework

An understanding of the basics of the subdivision process and the codes which establish the statutory framework is necessary for the real estate practitioner. On a base level, the Texas Local Government Code establishes the minimum legal framework for the subdivision process.



2.1. When a Subdivision is Required. In a general, the need to subdivide a parcel land is required any time a tract is divided for the purpose of selling or otherwise conveying ownership interest or as the initial stage in the development process (State of Texas Local Government Code Section 212.004 and 232.001).

In current practice however, and certainly historically, a portion of a larger tract of land is often conveyed by a surveyed metes and bounds description of the property, initially bypassing the requirement to legally subdivide, though the property has in effect been subdivided. Before the property owners develop their newly acquired land however, they will in all likelihood be required to file a subdivision plat application with the applicable jurisdictional authority unless exempted from the requirement under state or local exception clauses.

2.2. Establishment of Jurisdictional Authority. Most real property in Texas is located outside of the corporate limits of a municipality, making the majority of land subject to subdivision regulations imposed by counties. Chapter 232 of the State of Texas Local Government Code contains the county regulations for governing the land subdivision process.

Chapter 212 of the Local Government Code regulates the subdivision process for cities, which have the exclusive right to regulate the land subdivision process within their full purpose limits.

For land located within the Extra-Territorial Jurisdiction (ETJ) of a city, the affected city, at its election, may impose their subdivision regulations under the provisions contained in Chapter 242 of the Code. Furthermore, State of Texas House Bill 1445 (77th Legislative Session) mandates that cities and counties adopt an inter-local agreement that clearly defines the subdivision regulations in the ETJ.

A city may extend the boundaries of their ETJ from ½-mile to 5-miles based on population. Those municipalities with less than 5,000-people are allowed a ½-mile ETJ for planning purposes. Such purposes include regulating the land subdivision process and to claim the exclusive right of annexation into their corporate limits. A city with more than 5,000 but less than 24,999-people allows an ETJ of 1-mile. In order to have a 2-mile ETJ, the population must be between 25,000 and 49,999-people. Those with a population between 50,000-people and 99,999-people may have an ETJ limit of 3.5-miles. Finally, a city with more than 100,000-people may have an ETJ limit of 5-miles.

2.3. Technical Subdivision Requirements. In counties, cities, and ETJ's, the land subdivision process broadly governs and sets restrictions on how property may be developed in terms of the layout of streets, utilities, drainage infrastructure, and other public improvements. With limited exception, the process of land subdivision does not govern the specific use or density of the land being subdivided.



In fact, there are only four statutory requirements that a plat must meet to be subject to approval and recordation: 1) the land must be described by metes and bounds with acceptable accuracy, 2) the land must be locatable with respect to the original parent tract of which it is a part, 3) the plat must state the exact dimension of each lot, right-of-way, parkland, and other property that will be used by either the public or private owners (Local Government Code Sections 212.004(b) and 232.001(b)), and 4) the subdivision must contain acknowledgement of the subdivision by the legal property owner(s) (Local Government Code Sections 212.004(c) and 232.001(c)).

It should be noted that a county or city may enact additional subdivision ordinances in addition to these minimum Code requirements. If there are not any additional local ordinances in effect, and if all four of these requirements are met, then the subdivision must be approved and recorded under state law (Local Government Code Sections 212.005, 212.010, and 232.002(a)).

2.4. Enforcement Provisions. There are both criminal and civil penalties for failure to abide by the various codified subdivision regulations.

Section 054.001 of the Local Government Code authorizes cities to impose criminal penalties within their corporate limits only (not in the ETJ per 212.003(b)). Section 232.005(b) of the Local Government Code contains provisions for criminal enforcement by counties. Additionally, Section 12.002 of the Texas Property Code states that violation of the subdivision requirements is a misdemeanor offense which can lead to a fine of up to \$1,000 per violation and/or a 90-day county jail sentence.

Civil penalties can also be enforced for failure to comply with the requisite subdivision regulations. Section 212.018(a) of the Local Government Code authorizes a municipality to recover monetary damages in order to complete the construction of the necessary infrastructure improvements and bring the land into compliance with the applicable subdivision regulations. The same provisions can be found in Section 232.005 for land located within a county.

The most common enforcement provisions however do not involve criminal or civil penalties, but instead prohibit the approval of subsequent construction permits, including site development, building, and utility permits from being approved unless the parcel is legally subdivided. Likewise, Section 212.012 of the Local Government Code prohibits a city (Section 232.029 for counties) from providing utility services (water, wastewater, electric, or gas) to a property if it has not complied with or otherwise been exempted from subdivision regulations.



3. Subdivision Application and Review Process

The land subdivision process typically has two main steps: 1) the Preliminary Plan, and 2) the Final Subdivision Plat(s). While rare in counties, many municipalities also require the initial submittal of a general concept plan. For example, the City of Round Rock requires the submittal of a Concept Plan prior to accepting any preliminary plan for review, and the City of Austin requires a Master Development Plan for tracts which will consist of more than one preliminary plan section.

Within the City of Austin, Section 25-4 of the City of Austin Code of Ordinances governs subdivision regulations in the full purpose limits of the City. Section 30 of the same Code of Ordinances governs subdivision regulations in the ETJ for land which is located in Travis County; these regulations are also contained in Chapter 30 of the Travis County Policy, Procedures, and Regulations Manual ("Travis County Code"). Chapter 82 of the Travis County Code contains the subdivision regulations for property located entirely within the jurisdiction of the county.

3.1. Preliminary Subdivision Plan. The preliminary plan typically includes all land under contiguous and common ownership. In the City of Austin, a preliminary plan is required when more than four lots are created or public right of way for a new street is being dedicated. The preliminary plan is intended to present a graphic representation of how a particular parcel of land will be incrementally subdivided and subsequently developed. Section 25-4 of the City of Austin Code of Ordinances governs subdivision regulations in the full purpose limits of the City; Chapter 30 of the Travis County Code governs those portions of the City of Austin ETJ which are located in Travis County.

A preliminary plan is what its name suggests, a preliminary planning document, and as such is not subject to recordation in the official county records. Approval of a preliminary plan typically represents the baseline for obtaining vested development rights under Chapter 245 of the Local Government Code. Preliminary plan approval also establishes a commitment from the affected utility provider to provide utility services in accordance with the approved plan.

In the City of Austin, an approved preliminary plan now expires three year or five years after the application date (note: not from the approval date), dependent on what portion of the City the property is located. Generally, the land located west, northwest, and southwest of downtown Austin is located in the Drinking Water Protection Zone (DWPZ), and therefore subject to the three year expiration term. Land located in the eastern portion of the City is less environmentally sensitive and is therefore considered the Desired Development Zone (DDZ), and is allowed a five year expiration term (COA Code 25-4-62). In the ETJ, the expiration period is extended to four years (DWPZ) and ten years (DDZ) as described in Section 30-2-62 of the City of Austin Code.



In the City of Austin, if a project requires a preliminary plan, then it must be approved through a public hearing, typically a land use commission, following review and recommendation of staff (COA Code 25-4-57). Land located inside the City limits and inside an official neighborhood planning area is subject to Planning Commission review and approval. Land located outside of an official neighborhood planning area or in the ETJ is subject to review and approval by the Zoning and Platting Commission.

Complex preliminary plan applications, those which are contingent on granting of an initial zoning district or a change of zoning, an amendment to the City's Comprehensive Plan, or the extension of water or wastewater service, among other triggering items, requires approval by both the land use commission and City Council (COA Code 25-4-53).

For projects located in the City of Austin ETJ and Travis County, preliminary plan approval by the Travis County Commissioners Court is also required (COA Code 30-2-57) in addition to the City's land use commission and potentially City Council (COA Code 30-2-58).

3.2. Final Subdivision Plat. The final subdivision plat is a legal document recorded at the office of the County Clerk in the County where the land is located. With limited exception, once recorded, a final subdivision plat never expires (for one such exception to this statement, reference Section 232.002 (c) of the Local Government Code).

A final plat application which is in compliance with the approved preliminary plan and the requirements published by the applicable jurisdictional authority must be approved under state law (Local Government Code Sections 212.005, 212.010, and 232.002(a)). The final plat must be substantially similar to the approved preliminary plan. There is not a limit to the number of final plats which may be created from a single preliminary plan (COA Code 25-4-81). Additionally, when any one section of a preliminary plan has been final platted, the underlying preliminary plan section that has been final platted is considered null and void (but not the balance of the preliminary plan).

In the City of the Austin, a plat which creates four or fewer lots, with all new lots having frontage on an existing street, and with utility availability may be approved administratively (COA Code 25-4-84). If the plat application does not meet these requirements, it will require approval by the applicable land use commission.

Similar to a preliminary plan application, final plat applications which are contingent on granting of an initial zoning district or a change of zoning, an amendment to the City's Comprehensive Plan, or the extension of water or wastewater service, among other triggering items, require approval by both the land use commission and City Council.



For projects located in the City of Austin ETJ and Travis County, final plat approval by the Travis County Commissioners Court may also be required in addition to the City's land use commission and potentially City Council (COA Code 30-2-84) if the plat cannot be approved administratively.

Barring a plat vacation, the resulting legal lots can be re-subdivided or amended as described below without the need to revise the original preliminary plan, assuming the resubdivision does not itself trigger a preliminary plan. Once a portion of a preliminary plan has been final platted, the underlying section of the preliminary plan is considered null and void; only those unplatted sections of the preliminary plan remain on the affected preliminary plan.

3.3. Engineer's Commentary on Final Plat Contents. In practice, with limited exceptions, an engineer or surveyor should NEVER reference zoning-related information on a subdivision plat, including building setbacks or impervious cover limits, density limits, or other land use restrictions, even if these items are requested by the City review staff. Instead, an ambiguous plat note should be utilized if at all possible. For example, a note such as: "building setbacks, density, and other development regulations shall be in compliance with the applicable zoning district regulations at the time that a development application is filed, as may be amended by approved variances".

The reason for not showing such items is that zoning districts are subject to change, zoning regulations regularly change and are amended, and variances from zoning codes are frequently granted. Once shown on a recorded subdivision plat, the only legal manner to get these items removed from a recorded subdivision plat is to vacate and rededicate the plat in its entirety. There is no variance process for regulations imposed by an already-recorded subdivision plat.

Similarly, with perhaps the exception of minor utility easements (those less than 15-feet in width) adjacent to public right-of-way, easements should also NEVER be dedicated by subdivision plat, but rather by separate instrument which can be referenced on the plat by document number prior to plat recordation. This also applies to floodplains – drainage easements containing 100-year floodplains should also be dedicated by separate instrument because land can be reclaimed from a floodplain at a later date, but it can't be developed with buildings if it's still in a drainage easement. It is much simpler to vacate or modify an easement which has been dedicated by separate instrument than to vacate a recorded subdivision plat for the same purpose.



4. Plat Vacations, Resubdivision Plats and Amending Plats

Subdivision plats may be vacated, in full or partially. There are also two additional standard plat-types which are considered to be final subdivision plats, these being resubdivision plats (replats) and amending plats.

4.1. Plat Vacations. A final plat may be vacated, or canceled, through the final plat vacation process (Local Government Code Sections 212.013 and 232.039). The only way to remove easements dedicated by plat, notes, covenants, or restrictions from a subdivision plat is to vacate the plat in its entirety or to partially vacate the plat in full-lot increments.

Single legal lots which are not right-of-way may not be partially vacated (one lot cannot be partially vacated and remain a legal lot). However unimproved right-of-way which was dedicated by plat can be partially vacated from other contiguous right of way dedicated with the same plat using a metes and bounds description.

The plat vacation process requires all current owners who own land within the subdivision to approve and sign the plat vacation documents, even if their lot is not being vacated. With few exceptions, a public hearing is required for a plat vacation.

4.2. Resubdivision Plat. A resubdivision plat, or replat, is the process of a creating a new land subdivision, and thereby increasing the number of legal lots, from a previously platted parcel (Local Government Code Sections 212.014 and 232.040). One important aspect of a resubdivision plat is that all of the restrictions which were applicable to the original subdivision will also apply to the resubdivision.

Additionally, all resubdivision plats require a public hearing prior to approval. Covenants, easements, notes, setbacks, and restrictions which are shown on a subdivision plat cannot be removed through the resubdivision process and must instead be addressed through a plat vacation and new final plat.

4.3. Amending Plat. An amending plat, sometimes referred to as a plat revision, allows a property owner to move lot lines between two or more contiguous lots, address minor documentation errors, make known any changes in property monuments, or similar purposes (Local Government Code Sections 212.016 and 232.041). With limited exceptions, amending plats do not require a public hearing prior to approval. Similar to the resubdivision process, all of the restrictions which were applicable to the original subdivision will also apply to the amending plat.



5. Exceptions and Exemptions to the Requirement to Plat

Like every rule, the requirement to subdivide does have its exceptions. Potential exceptions include those mandated by state law and additional local exceptions.

5.1. Municipal Exceptions – State Law. The most prominent city exception found in the Code is the 5-acre municipal exemption which allows the subdivision of land into tracts of 5-acres or more if each tract has access to a public street and no public improvements are necessary (Local Government Code 212.004).

Another exemption applies to property adjacent to small airports. The airpark exemption applies to cities with less than 5,000 people and allows the subdivision of land into tracts of 2.5-acres or more with frontage on an aircraft runway (Local Government Code 212.0046).

5.2. County Exceptions – State Law. Chapter 232 of the Local Government Code outlines several county exceptions to the requirement to subdivide land. The 10-acre exemption is the most common and provides for a landowner to subdivide into tracts of 10-acres or more as long as public right-of-way is not being dedicated. Interestingly enough, this exception does not require all of the lots to have frontage on a public street (Local Government Code 232.015(f)).

Other county exceptions found in the Code include those for the subdivision of land used for agricultural cultivation, family transfers creating less than 4 parcels, and a seller keeping a portion of his/her parent tract when the balance has been sold and subdivided by a purchaser (Local Government Code 232.015).

5.3. Condominiums. Condominium buildings and condominium regimes are becoming very popular in central Texas. Apart from vertical condominium buildings, one other increasingly common application in Austin can be found in “single family condominium” development projects. Once a parent tract has been legally subdivided or exempted from the requirement to subdivide, the condominium process provides a means to legally further divide property among ownership interests.

The Texas Property Code explicitly states that “the creation of a condominium regime is not a subdivision and plat approval is not required” (Texas Property Code 82.005) and that “a condominium plat is not a subdivision plat” (Texas Property Code 82.003). The Property Code further proclaims that “land use laws may not prohibit the condominium form of ownership or impose any requirement on a condominium which is not imposed on other physically identical developments under a different ownership structure” (Texas Property Code 82.006), such as a fee simple structure. However, in order to develop the property at all, the original underlying tract must be a legal lot for development purposes.



5.4. Mobile Home Parks. When located entirely in the jurisdiction of a county, Section 232.007 of the Local Government Code contains an exception for mobile home (trailer) parks. Under this provision, separating a tract of land into allocated spaces or ‘lots’ for the installation of residential mobile homes which are for lease only, does not trigger the requirement to subdivide.

5.5. City of Austin Local Exceptions. In the City of Austin, there are several other local exceptions which are used quite frequently as described in Chapter 25-4-2 of the City of Austin Code of Ordinances (Chapter 25 cumulatively is known as the Land Development Code).

The most common local exception allows tracts of land which have not changed configuration since becoming part of the ETJ and/or City limits an exemption from the requirement to subdivide (COA Code 25-4-2(A)).

Similarly, the amnesty exemption provides legal lot status for tracts which are less than 5-acres and have remained in their current configuration since August 31, 1987 (in ETJ) or January 1, 1995 (in City Limits) with utility service and frontage on a public street (COA Code Sections 25-4-2(C) and 25-4-2(D)).

The City of Austin also has an exception clause for properties which have remained in their current configuration since August 8, 1992 and which are served by well water and septic systems (COA Code 25-4-2(B)). The purpose of the clause is to bypass the subdivision requirement in order to allow the owners of such properties to connect to public utility systems immediately, so that they may cease to utilize their septic systems and private water wells for health and safety reasons.

5.6. Travis County Local Exceptions. Travis County Code also has local exception clauses from the requirement to subdivide, the most prominent of which states that tracts which have not changed configuration since September 1, 1983 are exempt from the requirement to plat (Travis County Code Chapter 82.105; COA Code Section 30-2-4(A)).

Another county exception found less frequently allows a judge to partition a larger tract, creating two or more legal lots exclusive of the regulatory subdivision process.

6. Inter-local Subdivision Agreements for Land in ETJ

When real property is located in the ETJ of a municipality, Chapter 245 of the Local Government Code (and State of Texas House Bill 1445 of the 77th Legislative Session) mandates that the municipality and affected county enter into a written agreement which identifies the jurisdictional review and approval process for subdivision applications (Local Government Code



242.001). The authority could rest solely with the city or the county, be divided geographically among the city and county with each keeping authority in only one portion, or a single combined office could be implemented to create a joint subdivision review process.

6.1. City of Austin and Travis County. The City of Austin and Travis County have elected to use the single combined office process through an inter-local agreement, the result of which has been codified as Chapter 30 of Austin Code of Ordinances and Title 30 of the Travis County Code and is locally known as the “One Stop Shop”.

This inter-local agreement provides for a single review office consisting of staff from both the City and County and requires that a subdivision plat application be approved by both the appropriate City land use commission and Travis County Commissioner’s Court.

Chapter/Title 30 also provides provisions for the granting of variances from the respective codes and technical criteria waivers. In general, the City of Austin has such authority in near term annexation areas (within 3-year annexation plan), land already annexed for limited purposes, and land within in a Municipal Utility District, while Travis County has this authority outside of these areas.

6.2. City of Austin and Williamson County (and Bastrop County). The City of Austin and Williamson County have a much simpler inter-local agreement. Within those portions of the City of Austin 5-mile ETJ which are also in Williamson County, the City has the exclusive authority to regulate subdivision plat and approve related construction permits. This agreement also contains provisions that the City will comply with the Williamson County Multi-Corridor Transportation master plan with respect to county roads when reviewing subdivision plats. Furthermore, the City of Austin has agreed to commence annexation of any land in Williamson County which is included in an approved final plat and which is contiguous to the existing city limits within one year from plat recordation.

The City of Austin has a similar agreement with Bastrop County as they do with Williamson County.

6.3. City of Austin and Hays County. The City of Austin and Hays County also have an inter-local agreement in place. Hays County has ceded its subdivision review authority to most cities within its jurisdiction, including Austin, with the condition that the affected cities amend their regulations to incorporate minimum requirements to protect the public interest of the county primarily as it relates to private utility systems (water wells and septic systems). Hays County also requires the City of Austin to follow their transportation plan and authorizes the City to enforce the Capital Area Metropolitan Planning Organization (CAMPO) plan within its ETJ.



6.4. City of Round Rock and Williamson County. The inter-local agreement between Williamson County and the City of Round Rock gave most subdivision review authority in the ETJ to the City except for property located within several Municipal Utility Districts. An interesting provision of the agreement, which is in contrast to the agreement between Austin and Travis County, is that the City of Round Rock agreed to immediately annex any land in its ETJ which has been legally subdivided and is contiguous to the city limits.

6.5. City of West Lake Hills and Travis County. Travis County and the City West Lake Hills entered into an inter-local agreement which provides the city the exclusive subdivision review authority in its ETJ, subject to two key conditions. The first condition would be that the minimum lot size for properties to be served by a septic system would be 1-acre, consistent with County regulations, and that the septic system operating permits would continue to be issued by Travis County. The second condition of the agreement states that the County shall remain the community administrator for the FEMA Federal Flood Insurance Program within the City of West Lake Hills ETJ.

7. Chapter 245 Rights

Chapter 245 of the Local Government Code provides regulatory guidelines for obtaining vested development rights on a specific project, often referred to as grandfathering rights. Commonly, the existence of vested rights is often referred to as “1704 Entitlements”. In fact, Texas House Bill (HB) 1704 has become codified as Chapter 245 of the Local Government Code.

Vested rights, or grandfathering, allow a project to be developed in compliance with only those rules and regulations which were in effect at the time of the original initial project application. For large, phased projects, these rights, and what is considered the date of the initial application, have very important implications.

In most cases, the preliminary subdivision plan or final subdivision plat is the basis for Chapter 245 vested rights claims. Any project located within a subdivision which was approved before September 1, 1997 should be entitled to some level of grandfathered rights. These rights may allow an increased level of impervious cover, exemptions from recent tree preservation ordinances, and required levels of water quality treatment, among many other land-use related items.

Section 245.002. Uniformity of Requirements. The key statement(s) of Chapter 245 are found in Section 245.002, specifically subsections (a), (b), and (d), and apply to all projects which are deemed to have started prior to September 1, 1997:

(a) Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any



orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time [the application is filed].

(b) If a series of permits is required for a project, the orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project. All permits required for the project are considered to be a single series of permits. Preliminary plans and related subdivision plats, site plans, and all other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits for a project.

(d) Notwithstanding any provision of this chapter to the contrary, a permit holder may take advantage of recorded subdivision plat notes, recorded restrictive covenants required by a regulatory agency, or a change to the laws, rules, regulations, or ordinances of a regulatory agency that enhance or protect the project, including changes that lengthen the effective life of the permit after the date the application for the permit was made, without forfeiting any rights under this chapter.

It should be noted that the Chapter 245 grandfathering rights do not apply to health and safety issues, such as building or fire codes, nor to construction means, methods, or materials. The effect of this is that both private improvements and public infrastructure must be constructed to current standards, regardless of the grandfathered land use entitlements which may exist on private property (Local Government Code Section 245.004).

8. Conclusion

All real property in the State of Texas is subject to subdivision regulations, whether imposed by a county, a municipality, or both. Land subdivision is becoming increasingly complicated, evolving from what was once a very simple exercise of dividing land into multiple parts, creating blocks and lots, and laying out streets and parkland.

The practice today invites a (potentially) complex review process that includes multiple applications, input from various jurisdictional review authorities, detailed engineering studies, and public notification and requisite public hearings prior to approval.

It is critical for the modern land development professional, be it attorney, engineer, developer, surveyor, or other real estate consultant to be knowledgeable about the land subdivision process in order to protect the best interests of those involved.



9. References

The following published codes and manuals were utilized in the preparation of this paper:

State of Texas Local Government Code

City of Austin Code of Ordinances

Travis County Policies, Procedures, and Regulations Manual (“Travis County Code”)

State of Texas Property Code

The following papers, which were prepared for previous Austin Bar Association Land Development Seminars, were also used as references, and are recommended for further reading:

“Subdivision: Fundamental and Selected Issues”; Mr. Jeffrey S. Howard; McLean and Howard, LLP; September 26, 2008

“Subdivision: The Statutory Framework”; Ms. Ann E. Vanderburg; Hurst, Savage & Vanderburg, LLP; 2005

“Subdivision Authority in the ETJ: Who’s the Boss?”; Mr. R. Allan Haywood; Graves, Dougherty, Hearon & Moody, P.C.; August 22, 2003

A copy of this paper and accompanying PowerPoint presentation can be downloaded from the BIG RED DOG Engineering | Consulting website at www.BIGREDDOG.com. A copy may also be obtained from the Austin Bar Association or by contacting the author directly at will.schnier@BIGREDDOG.com.