CHAPTER 9

# INTRODUCTION TO SUBDIVISIONS

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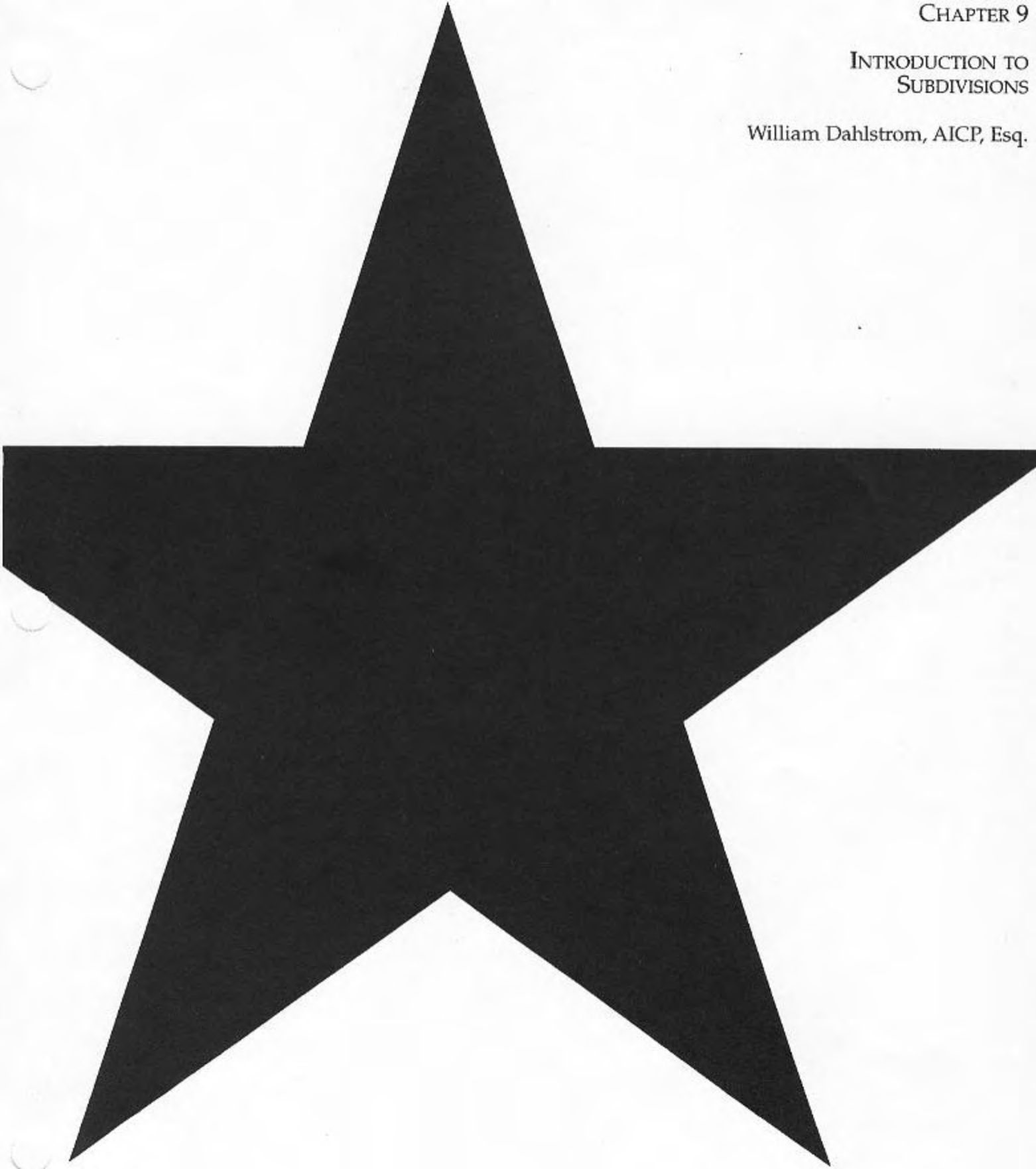

# INTRODUCTION TO SUBDIVISION CONTROLS

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In many regards subdivision platting is the most important governmental process yet many times the most misunderstood in terms of purpose and application. Platting is generally triggered by development and intended to assure that infrastructure and utilities are provided in accordance with plans for growth.

**Platting: An Introduction**

This chapter reviews the platting process, the purpose of platting and the different types of plats set forth in the Local Government Code ("LGC").

**Why Is Platting Required** - The subdivision enabling legislation for Texas municipalities is set forth in Chapter 212 of the of the Local Government Code. That chapter states that a municipality may enact subdivision regulations "to promote the health, safety, morals or general welfare of the municipality and the safe, orderly and helpful development of the municipality" (LGC Section 212.002). In the case Lacy v. Hoff, 633 S.W.2d 605 (Tex.Civ.App.-Houston [14th Dist.] 1982, writ ref' n.r.e.) the court set forth the following purposes for platting:

1. To regulate subdivision development and implement planning policies;
2. To implement plans for orderly growth and development within the city's boundaries and extraterritorial jurisdiction;
3. To ensure adequate provision for streets, alleys, parks and other facilities indispensable to the community;
4. To protect future purchasers from inadequate police and fire protection;
5. To insure sanitary conditions and other governmental services;
6. To require compliance with certain standards as a condition precedent to plat approval; and,
7. To provide a land registration system.

**When Is A Plat Required** - The Local Government Code sets forth the following language for establishing when a plat is required:

> *"The owner of a tract of land located within the limits or in the extraterritorial jurisdiction of a municipality who divides the tract into two or more parts to lay out a subdivision of the tract, including an addition to the municipality, or to lay out suburban, building, or other lots, or to lay out 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 must have a plat of the subdivision prepared. A subdivision of a tract under this subsection 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 deed, by using a contract of sale or other executory contract to convey, or by using any other method."* (LGC Section 212.004)

The courts have liberally construed this language. In City of Weslaco v. Carpenter, 694 S.W.2d 601 (Tex. Civ. App.-Corpus Christi 1985, writ ref. n.r.e.), the court upheld a city's authority to impose subdivision regulations on a mobile home rental park located in the City's extraterritorial jurisdiction. In finding for the City, the Court stated that "(w)e decline to hold that the legislature intended a 'subdivision' to be specifically a partition of property into separate lots accompanied by a permanent transfer of ownership to the occupant of each separate lot. Rather a 'subdivision' of property may refer simply to the act of partition itself, regardless of whether an actual transfer of ownership - or even an intended transfer of ownership - occurs." Id. at 603.

Whether a plat wais required if a property owner is dividing a tract of land but not developing the property was a much debated issue for years. The central issue in this debate was the interpretation of the word "and" in the statute prior to 1993, that states a plat is necessary when a property owner divides a tract of land to "lay out a subdivision and to lay out streets, alleys, squares or other parts of the tract that...." The Texas Attorney General opined that this provision required platting only if the division of land also involves the layout of streets, alleys, squares, parks or other parts to be dedicated for use (Attorney General Opinions JM-1100 and L0-90-47). The Texas Legislature addressed this issue in 1993, by changing the word "and" to "or."

However, in Precision Sheet Metal Manufacturing Company, Inc. v. Yates, 794 S.W.2d 545 (Tex. App.-Dallas 1990, writ ref.), the Court reached a different opinion. In that case property owner divided a tract of land in 1980 without filing a plat and sold a portion of the tract to a purchaser. At that time the property was substantially developed. Six years later the purchaser was denied a building permit to expand an existing building because the seller had not platted the

property. The purchaser was told that in order to secure approval of a plat it would need to construct improvements on both properties. The purchaser brought a cause of action against the seller. The Court held that the purchaser had the right to rely on the presumption that the seller would obey the mandatory language of the platting statute and file a plat of the subdivision (Id. at 550) Because the tract had been substantially developed, the Court appears to be saying that a plat would be necessary upon a division of a tract of land whether or not development is intended.

Cities often require platting as a prerequisite to the issuance of a building permit. The Court in City of Corpus Christi v. Unitarian Church of Corpus Christi, 436 S.W.2d 923 (Tex.Civ.App.-Corpus Christi 1969, writ ref. n.r.e.), upheld the city's authority to require the filing of a plat as a prerequisite to the issuance of a building permit. However, the court further stated that the imposition of exactions and right-of-way dedications that were not related to the development were unenforceable if the purpose of the plat was solely to obtain a building permit.

**Process**

The municipal authority charged with the duty to approve plats is the municipal planning commission or, if the city has no planning commission, the governing body of the city. The city, by ordinance may require approval of plats by the governing body as well as the planning commission. (LGC Section 212.006)

The Local Government Code permits municipalities to adopt rules governing plats and subdivisions of land within the municipality's jurisdiction. (LGC Section 212.002) The city may extend by ordinance those rules to the extraterritorial jurisdiction of the city. However, the city may not regulate the following in the extraterritorial jurisdiction:

1. The use of any building or property for business, industrial, residential or other purposes;
2. The bulk, height or number of buildings constructed on a particular tract of land; and,
3. The size of a building that can be constructed on a particular tract of land including without limitation any restriction on the ratio of building floor space to the land square footage, or for the number of residential units that can be built per acre of land. (LGC Section 212.003)

The platting process may be outlined as follows:

1. Is a plat required? According to the Local Government Code, on the written request of a landowner, an entity that provides utility service, or the governing body of the municipality, the municipal authority responsible for approving plats must make the following determinations regarding land in question:

a. Whether a plat is required for the land; and,
b. If a plat is required, whether it has been prepared and whether it has been reviewed and approved by the authorities.

2. Determination. Within 20 days, the municipal authority must provide written certification to the requesting party of its determination.

3. Application. Section 212.008 of the Local Government Code states that a person desiring approval of a plat must apply to and file a copy of the plat with the appropriate municipal authority.

4. Plat Review Cities' subdivision rules and regulations usually set forth the city's platting process which generally involves the following:
   a. Review by staff,
   b. Comments sent to the applicant,
   c. Applicant addresses comments,
   d. Consideration of the preliminary plat by the appropriate authority within 30 days after filing, in which the authority approves, denies, or approves subject to conditions,
   e. Preparation of final engineering plans,
   f. Preparation of final plat,
   g. Consideration of the final plat by the appropriate governing authority,
   h. Plat signed by presiding officer and attested by secretary, or signed by a majority of the members of the authority,
   i. Plat recorded in the courthouse, and
   j. Issuance of a certificate by the municipal authority to the applicant.

5. Recording: In order for a plat to be recorded, it must:
   a. Describe the subdivision by metes and bounds;
   b. Locate the subdivision with respect to a corner of the survey or tract or an original corner of the original survey of which it is a part;
   c. State the dimension of the subdivisions and of each street, alley, square, park or other part of the tract intended to be dedicated to public use or for the use of purchasers of owners of lots fronting on or adjacent to the street, alley, squares, park or other part; and,
   d. Contain the acknowledgment of the owner or proprietor of the tract or the owner's or proprietor's agent in the manner required for the acknowledgment of deeds. [LGC: Section 212.004(b) and (c)]

The Local Government Code sets forth that the appropriate municipal authority must act on a plat within 30 days after the plat is filed or the plat is deemed approved. If a city requires approval by the city council after recommendation by the planning commission, the city council must act on a plat within 30 days after the date the plat is approved by the planning commission, or else the plat is deemed approved by the inaction.

A municipal authority is obligated to approve a plat if:

1. It conforms to the general plan of the municipality in its current and future streets, alleys, parks, playgrounds, and public utility facilities;

2. It conforms to the general plan for the extension of the municipality and its roads, streets, and public highways within the municipality and in its extraterritorial jurisdiction, taking into account access to an extension of sewer and water mains in the instrumentalities of public utilities;

3. A bond, if required, is filed with the municipality; and,

4. It conforms to any rules adopted by the municipality on subdivision.

The Local Government Code requires that the appropriate municipal authority charged with approving plats must maintain a record of each application made and the action taken on the application by the authority. Furthermore, the authority must certify in writing the reasons taken on an application (on the request of the owner of the affected tract).

An often overlooked obligation of the cities is the necessity of the municipal authority to issue to the person applying for approval a certificate stating that the plat has been reviewed and approved by the authority. Such a certificate is necessary in order to obtain service or connection with water, sewer, electricity or other utility services. (Section 212.0115)

The approval of a plat does not manifest an acceptance of dedications and does not obligate the municipality to maintain or improve any dedicated parts until the appropriate municipal authority makes an actual appropriation of its dedicated parts by entry, use or improvement. If a property owner is required to construct such utilities, often times the city will accept only after the installation and approval of the utility construction by the appropriate municipal departments.

**Types of Plats**

The Local Government Code establishes different types of plats for municipal authorities as follows:

1. Minor Plat. A minor plat involving four or fewer lots fronting on an existing street and not requiring the creation of any new street or the extension of municipal facilities may be approved by an employee of the municipality. The employee's powers are limited to approval of the plat, or presenting the plat to the appropriate municipal authority to approve the plat. The employee does not have the authority to disapprove a plat. Any plat which the employee refuses to approve must be referred to the appropriate governmental authority. (Section 212.0065)

2. Municipal Determination. Cities have the authority to define and classify divisions of land within the city's subdivision jurisdiction. A city may determine that not all divisions of land require platting.

3. Replat. A subdivision or part of a subdivision may be replatted if the replat is signed and acknowledged by the owners of the property being replatted, is approved after a public hearing on the matter, and the replat does not attempt to amend or remove any covenants or restrictions. (Section 212.014)

4. Residential Replats. Replats for subdivisions, or parts of a subdivision must follow special notice and hearing provisions if the subdivision of any part was, during the preceding five years, subject
to zoning or deed restrictions for residential uses for not more than two residential units per lot. Notice of the replat hearing must be given the 15th day before the hearing by:

   a. Publication in an official newspaper or newspaper of general circulation in the county in which the municipality is located; and,
   b. By written notice to the owners of property within 200 feet of the property which is being replatted.

   Such notice must contain a statement that the affirmative vote of at least three-fourths members of the appropriate body must approve the plat if written protests signed by the owners of at least 20 percent of the area of lots or lying immediately adjoining the area covered by the proposed replat and extending 200 feet from that area, but within the original subdivision are filed with the appropriate reviewing body. Streets and alleys are included in computing the percentage of land area.

5. Amending Plat. Amending plats are intended to correct minor errors or make minor adjustments to an existing plat. According to the Local Government Code, the appropriate reviewing agency may approve and issue an amending plat, which controls over the preceding plat, without vacation of the plat if the amending plat is signed by the applicants and is for one of the following purposes:

   a. To correct an error in a course or distance showing on the preceding plat,
   b. To add a course or distance that was omitted on the preceding plat;
   c. To correct an error in a real property description as shown on the preceding plat;
   d. To indicate monuments set after the death, disability, or retirement from practice of the engineer or surveyor responsible for city monuments;
   e. To show the location or character of a monument that has been changed in location or character or that is shown incorrectly as to location or character on the preceding plat;
   f. To correct any other type of scrivener or clerical error or omission previously approved by the municipal authority responsible for approving plats, including lot numbers, acreage, street names, and identification of adjacent recorded plats;
   g. To correct an error in courses and distances of lot lines between two adjacent lots if:
      1. Both lot owners join in the application for amending the plat;
      2. Neither lot is abolished:

3. The amendment does not attempt to remove recorded covenants or restrictions; and,
4. The amendment does not have a material adverse effect on the property rights of the other owners in the plat;

h. To relocate a lot line to eliminate new encroachment of a building or other improvement on a lot line or easement;

i. To relocate one or more lot lines between one or more adjacent lots if
   1. The owners of all those lots join in the application for amending the plat;
   2. The amendment does not attempt to remove recorded covenants or restrictions; and,
   3. The amendment does not increase the number of lots; or

j. To make necessary changes to the preceding plat to create six or fewer lots in the subdivision or if part of the subdivision covered by the preceding plat if;
   1. Changes do not affect applicable zoning and other regulations of the municipality
   2. The changes do not attempt to amend or remove any covenants or restrictions; and
   3. The area covered by the changes is located in an area that the municipal planning commission or other appropriate governing body of a municipality has approved, after public hearing, as a residential improvement area.

6. Vacating Plat. Plats may be vacated in order to terminate the effectiveness of the recorded instrument. A plat may be vacated any time prior to the selling of any lots upon the approval by the appropriate governmental body and upon recording of a signed acknowledged instrument declaring the plat is vacated. If any lots are sold in the plat, the plat may only be vacated upon the application of all owners of the lots in the plat and approved by the appropriate governmental body. Once the vacating plat is submitted to the county, the county clerk writes the word vacated and enters on the plat a reference to the volume and page at which the vacating instrument is recorded. (Section 212.013)

**Subdivision Controls**

A plat must be approved if it conforms to all plans for the orderly growth of the city. In order to accomplish certain plans for growth, cities impose various conditions on the platting process including the following:

1. Rights-of-way;
2. Utilities;
3. Parks, schools and services;
4. Impact fees;
5. Other dedications; and,
6. Development agreements.

Such exactions have been the topics of several significant U.S. Supreme Court cases that require a nexus between the regulation and the impact of the development. In Nolan v. California Coastal Commission, the property owner attempted to obtain a building permit to rebuild a

structure but was required to dedicate an access easement across a beach. The U.S. Supreme Court established the requirement for a nexus between the severity of the exaction and the need to offset the effect on the city's infrastructure. This ruling was consistent with a Texas Supreme Court decision in City of College Station v. Turtle Rock Corporation in which the court upheld a parkland dedication or fee in lieu of and established the nexus requirements in Texas as follows: the regulation must be adopted to accomplish a legitimate goal and must be reasonable. Courts will uphold the regulation as being valid as long as the nexus exists.

**Enforcement**

Subdivision regulations may be enforced in the following manner:

1. Injunction against the violation or threatened violation of subdivision regulations by the owner;
2. Recovery of damages by the city to undertake any construction or other activity necessary to bring about compliance with the subdivision regulations;
3. Refusal to serve or connect any land with water, electricity, gas or other utility service;
4. Civil action pursuant to Chapter 54 of the local government code for violation of an ordinance that establishes criteria for land subdivision; and/or,
5. An attorney general action to ensure water and sewer service in certain water districts.

**Conclusion**

There remain many issues to be addressed by the Texas Legislature concerning plats. As evidenced in the difference of opinion between the attorney general's office and the Yates case, the operative language in the statute must be clarified. Additionally the legislature should address whether plats are needed in the following circumstances:

1. Foreclosure in which a lienholder takes a portion of a tract of land;
2. Judicial partition whereby a court divides property;
3. Release of portion of a tract from a note;
4. The granting of an easement which may be interpreted to be a "division of property"; and,
5. Eminent domain which results in a governmental agency acquiring a portion of land.