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## Hot Topic: Subdivision Plat Approval

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**August 27, 2007**

## **SUBDIVISION PLAT APPROVAL**

**Josh Jones, Legal Consultant**

Public Chapter 137 gives municipal planning commissions 35 days after initial consideration to approve or disapprove a subdivision plat. Previous law required the plat to be approved or disapproved within 30 days after submission. The following is a discussion of this change and subdivision plat approval generally.

Colloquially, a subdivision is thought of as any grouped parceling of single family homes. Legally, however, there is a definition of subdivision under Tennessee law. T.C.A. §§ 13-3-401 and 13-4-301 define a subdivision as:

1. Dividing a tract or parcel into two or more lots, sites, or other divisions requiring new street or utility construction; or
2. Any division less than five acres for sale or building development.

Hence, any development meeting this definition will be subject to municipal or regional planning commission subdivision regulations.

As the subdivision of residential property is of inherently local character, the legislature has

long granted authority to regulate this process to local governments. The powers granted to municipal planning commissions are found in T.C.A. Title 13, Chapter 4. Under these provisions planning commission regulations may:

...provide for the harmonious development of the municipality and its environs, for the coordination of streets within subdivisions with other existing or planned streets or with the plan of the municipality or of the region in which the municipality is located, for adequate open spaces for traffic, recreation, light and air, and for a distribution of population and traffic which will tend to create conditions favorable to health, safety, convenience and prosperity. T.C.A. § 13-4-303 (a).

The statute also provides that subdivision regulations may extend to the streets and utilities servicing a subdivision. Hence, municipal planning commissions have initial approval of almost every aspect of a subdivision's development and may regulate according to the aforementioned factors.

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As state law is relatively silent as to the specific procedures required for plat approval, much of the process is based upon tradition, and practices can vary among local jurisdictions. Generally, however, the process is as follows.

Once a potential developer determines the jurisdiction and zoning classification of the property to be subdivided, he or she then locates all easements and restrictions upon the property in question. Next, the developer, usually in conjunction with a registered land surveyor, prepares a subdivision plat, which is submitted to the municipal planning department(s) for review. Subdivision plats must be submitted to the planning commission by the owner of the property, the holder of a written option or contract to purchase, or the attorney or agent of any of these persons. T.C.A. § 13-4-302 (a). In the case of two-lot developments, however, plats submitted to a regional planning commission may be approved by the commission's secretary if the subdivision meets all subdivision requirements. T.C.A. § 13-3-402.

Often, especially with larger subdivision developments, the first plat submitted to the local planning commission is a preliminary plat. It is this preliminary plat that receives initial consideration. Developers may begin work on a subdivision pursuant to a tentative approval of a plat by

the planning commission. In most cases a bond will be required prior to final approval of the plat. T.C.A. §13-4-303 (b). Once a subdivision plat has been properly filed, any amendment, modification, or correction to the plat requires planning commission approval. T.C.A. § 13-4-302.

Again, municipal planning commissions now have 35 days after initial consideration to approve or disapprove a submitted plat. The additional days allotted to municipal planning commissions help to ensure that once initial consideration occurs at a planning commission meeting, there will be a subsequent meeting scheduled within the time frame to act. With a 35-day timeframe, even commissions that meet only monthly have at least one additional meeting to approve or disapprove a plat after initial consideration.

Subdivision regulations place additional restrictions on property within a municipality and can often drastically affect the character of the surrounding lands. Hence it is necessary to give neighboring citizens an opportunity to comment and object to any encumbrances before approval. This concern has been statutorily addressed by the legislature, which has explicitly stated that subdivision regulations must undergo public hearing before adoption. T.C.A. § 13-4-303 (b).

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Alas, some developers may, by malice or negligence, attempt to skirt local subdivision regulations. Within the jurisdiction of a municipal planning commission, if an owner or his agents sells, transfers, or agrees to sell or transfer land without plat approval and recordation, he or she is guilty of a Class C misdemeanor. The municipality, via its city attorney or other designated official, may file an injunction to stop an illegal transfer. T.C.A. § 13-4-306. Likewise, in an area governed by a regional planning commission, it is a Class C misdemeanor for owners or their agents to sell or transfer land by reference to an unapproved subdivision or plat. The county attorney or other official designated by the county commission may file an injunction against such a transfer. T.C.A. § 13-4-410.

The subdivision plat approval process is an integral part of responsible local development. And as plat approval is an area where municipalities have broad leeway, they should take extra precaution to make decisions that balance the competing needs of developers, neighboring property owners, and future buyers. The additional days allotted by the legislature should ensure that every municipal and regional planning commission now has ample opportunity to do so. If you have any questions regarding this issue, please contact your MTAS management consultant.

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