



Subdivision Regulation

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Subdivision Regulation

Reference Number: MTAS-483

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 authorized representative of any of these. T.C.A. § 13-3-402(a), T.C.A. § 13-4-302(a). "Subdivision" means:

- dividing a tract or parcel into two or more lots, sites, or other divisions requiring new street or utility construction; or
- any division of five or fewer acres for sale or building development.

The term "utility construction" does not include the extension of individual service pipes or lines to connect a single site to an existing utility main. T.C.A. § 13-3-401, T.C.A. § 13-4-301.

T.C.A. § 13-4-302 prohibits county registers from recording an amendment, modification, or correction to a subdivision plat without the approval of the planning commission. This statute also provides, however, that an easement or survey attached to an easement granted to the state, a county, a municipality, or metropolitan government, or any of their entities is not an amendment, modification, or correction to the plat.

Except in Davidson, Hamilton, and Knox counties, curbs, gutters or sidewalks may not be required in a subdivision outside the limits of a municipality in an area governed by a regional planning commission unless public water and sewage systems are available within 18 months after a subdivider requests plan approval. T.C.A. § 13-7-301.

Plats submitted to a regional planning commission may be approved by the commission's secretary if the subdivision has only two lots and meets all subdivision requirements, and provided further that no request for a variance has been requested. T.C.A. § 13-3-402.

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. § 13-3-410.

Gated Communities

The developer or owner of a proposed gated community must obtain a permit from the planning commission and board of zoning appeals, or the municipal governing body if neither of these exists, before installing or replacing a security gate or barrier. The municipal building or codes inspector must inspect the security gate or barrier. Gates and barriers must be equipped with a radio-operated receiver/controller capable of receiving signals from police, fire, utility and emergency medical services radio transceivers serving the facility.

These requirements apply in multi-family residential, commercial, and industrial gated communities and facilities with a gate or barrier to block entrance to the facility or community from a public street. Additionally, these requirements are applicable only where the driveway or access road leading to the gate is 24 feet or more in width. T.C.A. §§ 13-8-101 *et seq.*

Subdivision Plat Approval

Reference Number: MTAS-1430

T.C.A. §§ 13-3-401 and 13-4-301 define a subdivision as:

- Dividing any tract or parcel into two or more lots, site, or other divisions requiring new street or utility construction; or
- Any division less than five acres for sale of building development.

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

T.C.A. § 13-4-304(a) provides that a subdivision plat shall be approved or disapproved by the planning commission within sixty (60) days after initial consideration by the commission (with extensions for city celebrated holidays). Failure to act within 60 days shall be deemed an approval of the plat. The plat is required to be placed on the agenda of the planning commission within 30 days of its filing or at the next regularly scheduled meeting after the thirty-day period. The applicant may waive the time frame requirement for the appearance of the plat on the agenda.

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.

As state law is not very specific as to the procedures required for plat approval, the practices among local jurisdictions vary. 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 for review. Subdivision plats must be submitted to the planning commission by the owner of the property, or a governmental entity. Owner is defined as the legal owner, 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 (b). In the case of a two lot development, 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 called 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 the preliminary plat by the planning commission. In most cases a bond will be required prior to final approval of the plat to ensure the completion of infrastructure improvements. T.C.A. §13-4-303. 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.

T.C.A. § 13-4-304(a) states:

"The commission shall approve or disapprove a plat within sixty (60) days after the initial consideration of the plat by the commission meeting in a regularly scheduled session, unless at the end of the sixty-day period there is a holiday or an unexpected interceding event that would close municipal or county offices and thus affect the normal computation of the sixty-day period, in which case the plat shall be approved or disapproved after the interrupted sixty-day period at the next regularly scheduled meeting of the commission; otherwise, the plat shall be deemed approved and a certificate to that effect shall be issued by the commission on demand. The applicant for the commission's approval may waive the time requirement set in this subsection (a) and consent to an extension or extensions of the applicable time period. When a plat has been filed with the appropriate officials of the planning commission, the plat shall be placed on the agenda of the planning commission within thirty (30) days of the filing or the next regularly scheduled planning commission meeting after the thirty-day period. The applicant may waive the time frame requirement for the appearance of the plat on the agenda."

During the period when the hearing is being scheduled, interested parties must be notified of the hearing, pursuant to T.C.A. §13-4-304(c) which states:

"Any plat submitted to the commission shall contain the name and address of a person to whom notice of hearing shall be sent; and no plat shall be acted upon by the commission without affording a hearing thereon, notice of the time and place of which shall be sent by mail to such address not less than five (5) days before the date fixed for such hearing."

If the planning commission disapproves the plat, the grounds must be stated upon the record. T.C.A. §13-4-304(b).

So long as a quorum is present, only by a majority of the planning commission members present and voting need to approve a plat is required. Tenn. Op. Atty. Gen. No. 08-135 (August 15, 2008).

The approval of a plat shall not be deemed to constitute or effect an acceptance by the municipality, county or public of the dedication of any street or other ground shown upon the plat. T.C.A. § 13-4-305.

In addition to plat approval, subdivision regulations place additional restrictions on property within a municipality and can often drastically affect the character of the surrounding lands. It is therefore necessary to give citizens an opportunity to comment on the proposed regulations in a public hearing before approval by the planning commission. T.C.A. § 13-4-303(c).

Once the plat has been approved, it may be recorded. T.C.A. § 13-4-306. *Thompson v. Department of Codes Admin., Metropolitan Government of Nashville and Davidson County*, 20 S.W.3d 654, (1999). Just because the plat is recorded does not mean the municipality accepted the dedication of any street or other ground shown upon the plat, however. T.C.A. § 13-4-305.

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. § 13-3-410.

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, extra precaution should be taken to make decisions that fairly balance the competing needs of developers, neighboring property owners, and future buyers.

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

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