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Texas

## Subdivision and Plats

Practical Application and Hot  
Topics

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City of Dripping Springs

*Outline*

- **Shot Clock**
- **Plat Vacations**
- **Plat Notes and Deed Restrictions**
- **Condominium regimes**
- **Moratorium**



# Approving Plats: Shot Clock – House Bill 3167

Approve, Approve with Conditions, or Disapprove

- 30 day original review after filing
- 15 day for staff to respond to comments after disapproval by planning and zoning
- No Waivers.



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Disapprovals must include specific references to the City Code or state law.

*“The municipal authority . . . must approve a plat or replat . . . that satisfies all applicable regulations.” LGC §212.005*

# Shot Clock

## After Disapproval:

- Developer has unlimited amount of time to respond to disapproval;
- City only has 15 days to respond to the response.



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If a plat or plan is not approved or disapproved within the deadlines it is **Deemed Approved.**

# Tools for Timely Approvals



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- Complete Application equals inclusion of proof that all approvals occur before the plat or plan can even be filed, including Utility Evaluations (City and third party), TxDOT or County Road Approvals (curb cuts/driveways), Traffic Impact Analysis completed (if required), and Any Variance Approvals happen prior to filing.
- Uniform Submittal Schedules
- Multiple P&Z Meetings a month (alternates to P&Z)



# Example Schedule

- Prior to Filing:** Utility Evaluations, Road Approvals, and Variances Approved.
- Day 1:** Submission is sent (review for completeness is done before filing is accepted).
- Day 10:** Administrative completeness check completed and filing of application.
- Day 40:** Disapproval with Specific Conditions by P&Z Commission (Commission cannot postpone but must act.)  
(Administrative approval in some instances can occur).
- Day 40-?:** Applicant drafts responses.
- Day 1a:** Applicant responds to conditions (submitted on Uniform Submittal Schedule).
- Day 15a:** P&Z Commission has another meeting and either approves the plat or plan or disapproves listing noncompliance with prior conditions.



# Plats/Permits Approved in Error

General rule – City is not estopped from revoking permits issued in error.



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## Unless:

*Garza v. City of Austin* - city is estopped to deny the validity of a plat, even if improperly approved if city accepts benefit of plat.

Validation Statute- LGC 51.003 applies after 3 yrs.

# How to Replat: Vacations

**Replat– Plat of previously platted area.**

**Replat with Vacation:**

- Lots are sold; and
- Restrictions on the Plat itself are being changed or removed  
exs: Easements, Setbacks, Plat Notes that include restrictions  
Not: Deed Restrictions (for most cities)

**Replat without Vacation:**

- Lots are not sold; or
- No restriction is being changed or removed



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# Consequences of Vacation



- If Vacation is determined to be needed:
  - Vacation requires signatures of all property owners on the plat
  - Plat will require signatures of all property owners
  - Issues with utility easements could arise if the utility providers don't want the easements to change



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*Cities greatly differ on what requires a vacation.*

# Removal of Dedicated Streets



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IF NOT ACCEPTED, BY REPLAT.

LGC §212.011(a) – Plat approval is not acceptance

LGC §212.014 – Replat is controlling over prior plat

IF ACCEPTED, BY ABANDONMENT and then RePlat if Platted.

Ensure that other utility easements in the area are handled appropriately. (Removal, new dedication, license to encroach).

# Plat Notes and Deed Restrictions

**Plat Note --** Any notation on the face of the plat outside of the dedicatory certificate or city regulatory limitations.

Not statutorily defined, but referenced in LGC Chap. 245:

“Notwithstanding any provision of this chapter to the contrary, a permit holder may take advantage of recorded subdivision plat notes,”

Enforced against the City in *City of Austin v. Garza*:

“This subdivision shall be developed, constructed and maintained in accordance with the terms and conditions of Chapter 13–2, Article V, and chapter 13–7, Article V, dated June 1, 1988.”

- Typically, can amend by replat.
- Should not be private restriction enforceable by neighbors

STATE OF TEXAS  
COUNTY OF HARRIS

**Dedication of streets and access easements**

20070052776  
01/26/2007 10:2 160.00  
FILED  
2007 JAN 26 PM 1:50  
County Clerk  
HARRIS COUNTY, TEXAS

Recording info

North Arrow

Scale

**Dedication of Utility easements**

**Covenants for single-family use on lots**

**Covenants for no septic drainage**

**Dedication of natural drainageways**

**Executed by Land Owner and Acknowledged**

By: C. Shane Johnson  
Name: C. Shane Johnson  
Title: Division President

By: R. Niles  
Name: R. Niles  
Title: Director of Land

# Plat Notes and Deed Restrictions

**Deed Restrictions:** Deed restrictions are restrictions on land use on particular parcels created by contract within deeds – owner has to agree to the restrictions, but are often mandatory in order to purchase the property.

- Deed restrictions are not limited by the Local Government Code or other limitations on counties or cities' land use authority-but must meet any state or federal law applied to property, ex. civil rights law.
- Enforceable privately by neighbors and homeowner associations.
- Not enforceable my most municipalities or counties.
- State law allows the City of Houston to enforce deed restrictions. LGC §§ 203.001 et seq.

***Tex. Prop. Code § 202.003. CONSTRUCTION OF RESTRICTIVE COVENANTS. (a) A restrictive covenant shall be liberally construed to give effect to its purposes and intent.***

# Condominiums – Chapter 82 (Property Code)

## Property Code Section 82.051 – Creation of Condos

Condominiums are created by recording a Condo Declaration in the Deed Records at the County:

**LGC 212.004. PLAT REQUIRED.** (a) The owner of a tract of land located within the limits or in the extraterritorial jurisdiction of a municipality ***who divides the tract in two or more parts to lay out a subdivision of the tract, . . .*** A division 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 a deed, by using a contract of sale or other executory contract to convey, or by using any other method.***

**Property Code Section 82.006** – A zoning, subdivision, building code, or other real property use law, ordinance, or regulation ***may not prohibit the condominium form of ownership or impose any requirement on a condominium that it would not impose on a physically identical development*** under a different form of ownership. Otherwise, this chapter ***does not invalidate or modify any provision of any zoning, subdivision, building code, or other real property use law, ordinance, or regulation.***

# CONDOMINIUMS MEET SUBDIVISION REGULATIONS

Condominium regimes are treated the same as other types of ownership. If the condominium regime breaks a parcel up into different parts where property rights rest in different individuals then the property is treated the same other types of ownership when it comes to platting.

## ***Practical Effects:***

1. If a plat is divided into parts where ownership rests in multiple individuals, it may have to be replatted.
2. If an unplatted parcel is being broken up through any ownerships document, including condominium regime or deed or any other contract and the project doesn't fit an exemption under order, ordinance, or statute, the regime may need to plat.
3. *Development Agreements or Planned Development Districts can be used to handle these situations where strict application of subdivision regulations may not be a viable option for the governmental entities.*
4. ***An entity has to treat property under a condominium regime like any other project, the entity cannot have Condo specific regulations or treat a piece of property more or less favorably because it is a condominium regime.***

***Recommended Reading:*** Regulating Condominium Projects-Skye Masson and Tad Cleaves – 2019 TCAA Summer Conference

# Temporary Development Moratorium – City

Delays new development based on needs which can include an update land use regulations or lack of critical infrastructure, such as water, wastewater, or similar. The moratorium can apply to city limits and the extraterritorial jurisdiction.

Requires two public hearings, 2 readings, and an ordinance

- P&Z Hearing
- 2 City Council meetings (1`public hearing and 2 readings)
- Newspaper Notice
- Maximum of 180 days (in 90 day intervals) for land use; or
- 120 day intervals for public infrastructure.

***Temporary Moratorium begins 5 business days after the notice is published, moratorium is extended by ordinance after the public hearings and readings.***

# Practical Effect of Temporary Development Moratorium

- No development applications will be accepted by the Building and Planning Departments without a waiver
- Waivers may be granted by the city council for projects that are recognized to not detrimentally affect the City.

## **For Example:**

Projects within Approved Development Agreements would continue

Projects that do not require public infrastructure could continue

Projects where infrastructure connections have been approved by agreement

Projects with vested rights due to previous approvals

New Plats or Replats that do not fall within the waiver requirements are delayed until the moratorium is over.





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**QUESTIONS?**

