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Subdivision Regulation

Subdivision is the process of dividing land into two or more pieces. All states have statutes allowing the regulation of subdivisions. These regulations establish a process so that proposals for the subdivision of land can be reviewed and recorded. They also allow for the development of subdivisions that satisfy the needs of both the developer and the community.

Subdivision regulations are beneficial in that they guarantee that each piece of land has an accurate description that can be legally enforced. They also ensure that each lot has access to a public right-of-way, as well as a source of water and sanitary sewage, and that roads are adequate to provide emergency services such as fire and ambulance. Along with zoning, subdivision regulations are used to implement a community's comprehensive plan.

When only a few lots are created it often is referred to as a minor subdivision. Minor subdivisions require few public improvements and, therefore, can be reviewed in an expedited manner. Some state and local laws exempt minor subdivisions from local review. Major subdivisions require a more extensive review.

Most subdivision regulations include a timetable for approval, as unexpected delays increase the cost of development. Fixed time limits allow the applicant to more accurately estimate costs and create a construction timetable.

Subdivision regulations generally incorporate both design and development standards. These can include road design, lot arrangement and dimensions, setbacks, utilities, parks, sidewalks, and fire hydrants, to name a few. While design standards vary in their level of specificity, they reflect community values and goals.

The subdivision approval process often begins with the submission of a sketch plat. Typically, the applicant will meet with planning staff to discuss the review process. Planners will review the sketch to determine if the proposal complies with applicable federal, state, and local laws, local zoning, and the comprehensive plan. Once the sketch has been deemed satisfactory, the applicant will submit a preliminary plat for approval.

The preliminary plat is a detailed rendering that shows topographic contour lines and other features such as streams, large trees, flood hazard areas, and existing structures. It includes lot configuration, street layout, and connections to utilities. Following a staff check for completeness and compliance with design and development standards, the plat is referred to the planning commission.

The primary responsibilities of the planning commission in reviewing proposed subdivisions are to ensure that the development:

- does not create health or safety hazards;
- does not overburden existing community services;
- pays its share of the cost necessary to provide required services and amenities;
- sets aside land for public rights-of-way, facilities, and amenities;
- is compatible with the surrounding area;
- is necessary and not speculative.

As part of its review, the planning commission may hold a public hearing.

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This hearing is quasi-judicial in nature and, therefore, due process should be strictly adhered to. Proper notice and an opportunity to testify should be given to the applicant and all interested parties. The commission's decision should be tied to findings of fact (see *Technical Brief 3: Ethical Meeting Conduct and How to Record Decisions*).

It is not unusual for a planning commission to impose conditions before granting preliminary plat approval. Those conditions might include the dedication of land for public parks, the construction of streets or trails, or the payment of impact fees. These fees are used to help finance off-site facilities needed to accommodate the new subdivision, such as schools, arterial roads, and sewer extensions. Once collected, impact fees are placed in a segregated fund and spent only in the benefit area from which they were collected. The commission must have been granted the authority to impose impact fees or other conditions on subdivisions and the exactions must be fair, reasonable, and rational to avoid legal challenges.

After the preliminary plat receives approval, with or without conditions, a surveyor prepares a final plat. This is a precise rendering that fixes the location of lots and streets. It also is the means by which public improvements are conveyed to the local government. Engineering drawings and technical analysis often accompany the plat when presented to the planning commission for final approval.

In many communities, final plat approval is not granted until the developer provides a guarantee that public improvements—roads, water, sewer, street lights, sidewalks—will be made in a timely manner. The developer also is required to post some form of collateral that the local government can use to finance public improvements should the developer fail to construct them. Such collateral can take the form of a performance bond; letter of credit from a lender; or escrow in cash, stocks, bonds, or title to real property held in trust by a bank or municipality. A subdivision improvement agreement, when properly drafted, serves to protect the community's interests. In some jurisdictions, these agreements are not set in stone but are open to negotiation.

There are communities where land was platted before local subdivision controls were enacted. The result has been the existence of dozens, hundreds or, in some cases, thousands of partially developed or undeveloped lots under separate ownership in subdivisions that did not meet regulatory standards. Local governments were stuck choosing between limiting development rights in the subdivision or allowing development and providing the needed infrastructure itself.

While zoning and subdivision regulations are generally separate and distinct, there are some communities that have moved to a unified code. Such a code brings all development regulations and procedures—not just zoning and subdivision, but floodplain, historic preservation, overlay zones, commission bylaws, and administrative procedures for filing plats and holding hearings—all under one roof. One of the primary advantages inherent in developing a unified code is that conflicting and inconsistent provisions are discovered and eliminated.

Whether separate and working in tandem, or unified in a single code, zoning and subdivision controls are the backbone of the planning process. When employed wisely, they are useful tools for guiding growth and development and helping achieve the community's vision.

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