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THE LAND SUBDIVISION PROCESS
(La. R.S. 33:112 *et seq*.)

Subdivision regulations provide the procedural and technical requirements that must be met to create lots of record upon which a property owner can build. These technical requirements usually include the width of and engineering for streets, the need for sidewalks, curb and gutter, storm sewers and the placement of servitudes for utilities. Drainage requirements are often found in subdivision regulations and even sometimes tree preservation standards.

A. The Platting Process

A subdivision ordinance may require that a developer of larger parcels obtain different levels of subdivision plat approval – preliminary and final. Sometimes, particularly with Planned Unit Developments, there is an optional level of approval before the preliminary plat. This concept approval might only show the shape and size of the property being considered for development as well as the development concept.

In non-home rule charter communities, subdivisions are approved by the planning commission. The city (or parish) council has no say in the approval of plats of subdivision. A plat, whether preliminary or final, must be approved or denied by the planning commission within sixty (60) days of submission. (La. R.S. 33:113)

Most ordinances require preliminary plat approval when a development involves the creation of more than a lot or two. Because of the costs and time involved in preparing a final plat, both the developer and community want to be sure that they are on the "same page" prior to significant efforts being made. The larger the parcel the more likely that there are engineering concerns regarding the buildability of certain portions of the property as well as the placement of utilities and drainage. Obtaining preliminary plat approval also permits the planning commission

to assure the developer that their concept is acceptable so that the developer is able to obtain the financing needed to perform the additional technical studies necessary prior to construction and to ultimately build the project. Preliminary plat approval also permits the planning commission to set conditions for the protection of trees, placement and type of drainage, placement of sidewalks, open space and other items, while still leaving some flexibility as those items might need to be changed with final engineering.

Upon final plat approval, the approved subdivision must be recorded in the conveyance records within a specified period of time (often 30 days). Many ordinances provide that the failure to record a plat within the appropriate period of time makes it null and void. The final plat may also contain conditions relating to items such as open space and drainage and their maintenance as well as future road and utility extensions.

In addition to completion of an application for a subdivision or re-subdivision, the applicant should be prepared to submit a corporate resolution or appropriate partnership documents if the property is not owned by an individual to show that the person signing the application actually has authority to do so. Additionally, you need to check with the planning department of the community to make sure that you provide the correct number of plats and that they are properly formatted with the appropriate and necessary surveyor and engineer certifications and the appropriately worded signature blocks for planning commission approval. Most likely, the names and addresses of all abutting property owners will have to be provided so that they can be given notice of any public hearing(s).

In many cases, a public hearing is required prior to the grant of any subdivision. However, in a community with a population of over 150,000, the statute provides that no public hearing is necessary for subdivisions with fewer than six new lots created and no new street. (La. R.S. 33:113)

Additionally, a parish or municipality may, by ordinance, establish administrative procedures for approving certain plats that involve only minor modifications of existing lots. The realignment or shifting of lot lines, including their removal or addition, may be administratively approved when the subdivision (1) does not involve the creation of a new street or other public improvement, (2) does not involve more than two acres of land or 10 lots of record, (3) does not reduce a lot size below the minimum lot area or frontage requirements of the zoning ordinance, and, (2) meets all requirements of the subdivision regulations and zoning

ordinances. Also, administrative approval is available when a parcel of land has be expropriated or has been dedicated or sold to the parish or municipality. (La R.S. 33:113.1)

At the public hearing, opponents and proponents of the proposed subdivision must be able to present their arguments to the commission and the commission staff will probably present any recommendations that it has.

B. Inspections, Dedications and Vacations

Inspections are not part of the platting process, but rather are part of the building and occupancy permit processes. For substantial developments, building permits are usually given in phases. Before permits are issued to construct the buildings, permits for site grading and the construction of the public and quasi-public infrastructure are obtained. Prior to issuance of building permits for the structures, the community should perform an inspection making sure that roadways, sidewalks, drainage areas and utilities are being installed in the correct places and in compliance with the engineering standards in the subdivision code.

Another inspection of these improvements is usually performed prior to issuance of final occupancy permits. At this time, the inspectors should be looking at the final product – the installed sidewalks, the finish paving on the street, etc. and creating a punch list prior to issuance of a final occupancy permit and the beginning of the acceptance process for the improvements.

Dedications are the roadways, servitudes, parks and open space given to the public as shown on the plat. Approval of a plat showing roadways, servitudes or open space does not constitute acceptance of the roadway by the community. (La R.S. 33:113) However, it arguably constitutes an irrevocable offer of the roadway, servitude or open space. Sometimes, a plat only shows a roadway and is called a "plat of dedication." However, any subdivision plat showing a public road or stating "hereby dedicated" is a plat of dedication and is an effective dedication when recorded.

In other states, a plat of vacation is used to eliminate a dedicated roadway, servitude or open space. In Louisiana, an ordinance must be passed by the governing authorities revoking the dedication (La R.S. 48:701). Such revocations usually take place as part of a re-subdivision of property, when the community determines it will never construct/extend an unimproved street or when a street becomes private. Normally, when a dedicated roadway is vacated, the roadway property is split at the centerline and attaches to the adjacent property on either side. The statute

provides that it becomes the property of the current owners of contiguous property. However, the statute also permits a community to trade an entire roadway to one party in exchange for other property. If the property was a park or a public square, the property is offered to the original dedicating property owners.

If there are utilities in an unimproved roadway they will either need to be moved or provisions for them to remain (with the roadway dedication becoming a servitude) must be included in either the subdivision code or as part of the vacation. Most subdivision codes provide that utilities can remain in a vacated roadway unless the property owner who will be receiving the roadway property pays for them to be moved.

C. Private or Public Streets

A public street is one that is dedicated to the public, is open for public use and is maintained by the public. Private streets are not dedicate, can be closed off or gated and are maintained by the property owners adjacent to the street. Most modern subdivision codes require that all streets be public streets or, at the very least, be built to the same standards as private streets. Many developers, in an effort to build more on their property have sought to construct narrower and with cheaper materials than standard streets (the excuse being there will be less traffic). Many communities have allowed this as long as the streets are private streets and as long as there are restrictions related to street parking so that emergency vehicles will not be impeded and as long as the streets are to be maintained by the homeowners or condominium association. Over time, many communities have discovered that the parking restrictions are not enforced, endangering all of the properties in a development and the streets are not maintained. Often the streets are not properly maintained and at some point, the homeowners come begging the community to take the street over as a public street.

D. Impact Fees and Dedications

Impact fees are also often part of a subdivision control ordinance. The fees allow governmental entities to obtain money or land from developers to recover the cost of planning and constructing public facilities such as roads, schools, water and sewer plants, drainage canals and recreational facilities that are made necessary by the new development. As an example, development of a new 200-unit residential subdivision may require a new school be built or that

roads are widened, sewer treatment plants expanded, even that a new fire station be built. Impact fees imposed on a developer based upon the number of lots and the size of the home to be constructed (because this coincides with population) can be used by the community to defray the cost of these new facilities instead of taxing its current residents for the costs of growth.

Impact fees are not used significantly in Louisiana. I am aware of only a few impact fee statutes. The first allows parishes and municipalities with a population of more than 425,000 that have adopted a recreation plan as part of their master plan to require that subdividers of land to donate not more than 5% of the land for park, playground and public school purposes to serve the people who will reside on the property. The community can require the developer to donate cash in lieu of land (or a combination of money and land). Any money donated can only be used to acquire land for parks, playgrounds and schools that will serve the people who will reside on the property.

A study must be performed and appropriate formula developed to determine the amount of land needed for these purposes and assure that land is actually needed because of the development and not solely due to existing needs of the community. (La R.S. 33:112)

Another impact fee allows St. Tammany Parish to assess development impact fees for planning and engineering associated with sewerage and water systems in the parish. Under the statute, impact fees of $5.00 per building permit application plus one cent per square foot residential and mobile home plan review and two cents for commercial plan review and $20.00 plus $5.00 per lot for tentative plan approval of a subdivision, $10.00 per lot upon application for preliminary plan approval and $15.00 per lot upon an application for final plan approval. (La R.S. 33:4064.5)

In 2006 the legislature enacted La R.S. 33:3091 that, after a referendum, permitted Folsom to impose an impact fee on any new development – "the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of a building or structure, any change in the use of a building or structure, or any change in the use of land, any of which creates additional demand and need for capital improvements." The statute defines capital improvements very broadly, including virtually any public facility. Folsom began imposing the impact fees on January 1, 2008.

E. Planning Commissions

The land use planning process in most parishes and municipalities is handled through a planning commission. State law provides for the creation of a planning commission as well as some of its jurisdiction and authority. (La R.S. 33.101 *et seq.*) Nearly all planning commissions work on the creation, amendment, and implementation of master plans for the community as well as create/administer the community's sub-division regulations. In many communities, the planning commission also holds hearings and makes recommendations to the council or police jury regarding amendments to the Zoning Ordinance or Map and the approval of Special Exceptions or Conditional Use Permits, including Planned Unit Developments.

In non-home rule communities, the planning commission has the final (non-judicial) say on subdivisions. The municipal council or parish police jury does not have any authority to overturn a subdivision decision of the planning commission. (La R.S. 33:113 and *Brownlee Development Corp. v. Taylor*, 438 So.2d 618 (La App. 2 Cir., 1983).)

F. Subdivision is Not Zoning

Most local zoning ordinances prohibit more than one principal structure to be located on a single lot of record. (Exceptions to this rule are planned unit developments.) Most zoning ordinances also prohibit a single building to be constructed across lot lines onto two or more lots of records. Either one of these situations would require that a re-subdivision be obtained. Also, without a variance from the Board of Zoning Adjustment, a subdivision or re-subdivision of property should not be granted where the lots to be created are smaller than the minimum lot size required in the zoning district. Additionally, requirements for the placement of utilities and the widths of the roadways limit the uses that would otherwise be available under the zoning ordinance.

However, the denial of a plat of subdivision will be reviewed on the same basis as a zoning decision. There is a presumption of validity to any decision of a planning commission. The decision will only be overturned if the court finds that the planning commission acted arbitrarily or capriciously – that the decision bears no relation to the health, safety or personal welfare of the public. *Christopher Estates, Inc. v. East Baton Rouge Parish*, 413 So.2d 1336 (1st Cir. 1982). Even where the proposed subdivision is in full compliance with all of the subdivision regulations and the zoning code, the decision to approve or disapprove a subdivision plat is

considered a legislative function and is not subject to a suit for mandamus. *Meloncon v. Police Jury of Lafayette*, 301 So.2d 715 (La App. 3rd Cir., 1974)

G. "Regular" Subdivisions vs. Planned Unit Developments ("PUD") or Traditional Neighborhood Developments ("TND").

What I call a "regular" subdivision entails laying out the lots, streets and utilities in a somewhat conservative form. While not necessarily in a grid - with streets at right angles, the lots of such a subdivision would generally be consistent in size and, more than likely, contain only single family homes or a small commercial development. A "regular" subdivision, meeting all of the subdivision regulations and zoning code requirements is usually approved fairly quickly, with little opposition.

Larger residential developments, multi-building shopping centers and mixed use developments are often required to be submitted for approval as a Planned Unit Development or PUD. A PUD is a zoning device that permits flexibility in large scale developments allowing uses and/configurations that otherwise could not be developed under the applicable zoning classification. In many instances an application for a PUD combines what would otherwise be applications for multiple variations and special exceptions. If the property is large enough, the development might combine several different uses such as shopping centers, multiple family residential and an office building, or it may be a single use development. A single detailed plan submitted by the developer and approved by the municipality or parish usually includes, not only the uses and layout of the development, but specific details regarding the architecture, building materials, and landscaping to be used in construction.

Though there is no specific statutory provision in Louisiana for PUDs, many zoning ordinances provide for them, either as a Special Exception/Conditional Use or sometimes as its own zoning classification. Most zoning ordinances contain specific procedures for granting PUDs that are much more extensive than are required to obtain a simple Special Exception or Conditional Use.

The PUD process usually combines a site plan review process with subdivision. Depending on the proposed use and those already existing on surrounding properties, a "concept" plan may be required to determine if the planning commission and council/police jury will even consider this type of development prior to substantial funds being spent on engineering

and architectural design. Virtually all ordinances require a preliminary plan to be presented. Such a plan will include the layout of the property, including the size and location of roads and buildings, and the specific uses to be placed on the property. Preliminary plan approval also usually includes a fair amount of engineering to show that drainage can be taken care of and that utilities can be brought to the site.

After preliminary plan approval, the developer may pull permits and begin clearing the land and constructing the utility infrastructure. At some point, prior to anything actually being built, the developer will need to appear before the planning commission again, this time for final plan approval. Final plan approval should include detailed engineering plans, the exact location of utilities, and depth of drainage facilities. It will also include detailed architectural sketches of the buildings, material samples and a detailed landscaping plan.

Because PUDs can be hundreds of acres, specific items are sometimes left to be decided later, such as the placement and size of signage or even the specific use and architectural plans for a portion of the property that the developer is not yet ready to developed.

Depending on the size and scope of the development, it may be appropriate for an entire team of experts to present the plan. These experts may include architects, land planners, landscape architects, traffic engineers and civil engineers. A developer planning a multi-million dollar project would be a fool to skimp on the presentation and risk leaving the community with unanswered questions that can delay approval or make the community believe that the developer will skimp on the quality and aesthetics of the development.

Usually, a PUD must be approved by the council/police jury. Approval is given through an ordinance specifically allowing the development. For both the protection of the developer and the community, the ordinance should be very detailed. It should incorporate all of the final exhibits presented on the development. If modifications to those exhibits are necessary, it should specify exactly what those modifications will show and state when those modified exhibits must be approved (and by whom). Even though "deviations" (the variances from "standard" zoning requirements) should be shown on the plans, a well written ordinance specifies each and every use, set back or bulk deviation to avoid any questions as construction progresses. If appropriate, the ordinance should also include a timetable for the completion of the development, or at least, certain public and quasi-public improvements.

There are inherent advantages and disadvantages to PUDs. Critics contend that PUDs are akin to "contract" or "spot" zoning. However, most agree that requiring the developer to take advantage of the unique characteristics of an area and coordinate living, recreational and commercial aspects of the development in one design permits a better quality development. Further, PUDs allow the means of obtaining large, open or recreational spaces while still giving the developer the density that he needs in order to economically make the development happen. In addition, the community makes sure that the development is aesthetically pleasing and that it serves the needs of not only the developer, but of the community at large.

Traditional Neighborhood Developments or TNDs are really nothing more than a mixed use PUD with specific "new urbanism" requirements. New urbanism is a planning trend that seeks to move away from suburban sprawl type development. The idea is that a single development will include various types of housing as well as retail and offices so that people can live and work without the need to commute. Other aspects of new urbanism design includes smaller lots, alleys for garage access and front porches.

There are many developers who claim they are building TNDs, but the scale of the development – a couple of hundred residential units and some convenience type strip shopping centers do not really provide for the "live/work" model. These developers are claiming the mantel of "new urbanism" simply to generate more income from their property than a standard single family residential development would allow. Without the "new urbanism" label, many communities would probably not approve the small scale commercial, multiple family residential and smaller lot single family homes that are being proposed.

An example of a true TND is River Ranch in Lafayette – beginning with over 250 acres, the new "Village" includes retail, office, apartments, condos, townhouses and single family neighborhoods. (See www.riverranchdevelopment.com)