

Legal Q&A, Part 2

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(Editor's note: This is the final part of a two-part Q&A on platting regulations in Texas. The first part appeared in the December 2021 edition of *Texas Town & City*.)

Q Who may approve a plat application?

A Typically, the authority responsible for approving plats is: (1) the planning commission; (2) the city council, if the city has no planning commission; or (3) both if required by ordinance. Tex. Loc. Gov't Code § 212.006. City council may also delegate to employees or officers of the city or of a utility owned or operated by the city authority to approve: (1) amending plats; (2) minor plats or replats involving four or fewer lots fronting on an existing street and not requiring the creation of any new street or the extension of municipal facilities; or (3) certain replats that do not require the creation of any new street or the extension of municipal facilities. *Id.* § 212.0065.

Q What procedures must a city follow to approve a plat application?

A A city's plat and/or subdivision regulations will dictate the procedures required in approving a plat. Generally, a property owner or developer files a plat application with the city or the planning commission. Tex. Loc. Gov't Code § 212.008. Following the application deadline, the proposed plat is reviewed by city staff or consultants to determine whether the plat complies with applicable city regulations.

The approval of a plat is a ministerial duty and the approving authority must approve a plat if the plat application complies with: (1) the general plan of the city; (2) the general plan for the extension of the city and its roads, streets, and public highways within the city and in its extraterritorial jurisdiction, taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities; (3) a bond required under state law, if applicable, is filed with the city; and (4) any rules adopted governing plats and subdivisions of land within the city's jurisdiction. *Id.* §§ 212.005; 212.010. An applicant may choose an alternative procedure adopted by the city if the process allows for a shorter approval period. *Id.* § 212.0096(a).

If a plat is approved, the approving authority must endorse the plat with a certificate indicating the approval. *Id.* §212.009(c). The certificate must be signed by: (1) the approving authority's presiding officer and attested by the authority's secretary; or (2) a majority of the members of the approving authority. *Id.*

Q Is there a deadline by which a plat must be approved or disapproved?

A Yes. The authority responsible for approving plats, whether it is the planning commission or city council, must, within 30 days after the date the plat is filed, either approve the plat, approve the plat with conditions, or disapprove the plat. Tex. Loc. Gov't Code § 212.009(a). If the city's plat or subdivision regulations require that a plat be approved by the city council, in addition to the planning commission, the council must act on the plat within 30 days after the date the planning commission approves the plat. *Id.* § 212.009(b).

A plat is deemed approved unless it is disapproved within the required timeframe. *Id.* § 212.009(a), (b). If a plat is approved due to the approving authority's failure to act, the authority, upon the applicant's request, must issue a certificate stating the date the plat was filed and that the approving authority failed to act on the plat within the requisite period. *Id.* § 212.009(d).

Q Can a city conditionally approve or disapprove a plat application?

A Yes. The approving authority may conditionally approve or disapprove a plat. Tex. Loc. Gov't Code § 212.0091(a). If the authority does so, it must provide the applicant with a written statement that clearly articulates specific conditions for the conditional approval or the reasons for disapproval. *Id.* Each condition or reason specified in the written statement may not be arbitrary and must: (1) be directly related to the city's adopted regulations; and (2) include a citation to the law, including a statute or city ordinance, that is the basis for the conditional approval or disapproval, if applicable. *Id.* § 212.0091(b).

After the conditional approval or disapproval of a plat, the applicant may submit to the approving authority a written response that satisfies each condition for the conditional approval or remedies each reason for disapproval provided. *Id.* § 212.0093. The approving authority may not establish a deadline for an applicant to submit the response. *Id.* Once the approving authority receives the applicant's response, it must determine whether to approve or disapprove the applicant's previously conditionally approved or disapproved plat no later than the 15th day after the date the applicant submits the response. *Id.* § 212.0095.

Q Can the approving authority request or require a plat applicant waive the approval timeframe?

A No. The approving authority may not request or require an applicant waive a deadline or other approval procedure set by state law. Tex. Loc. Gov't Code § 212.0097. However, upon mutual agreement, the city and the applicant may extend the 30-day approval period for an additional period not to exceed 30 days if: (1) the applicant requests the extension in writing to the approving authority; and (2) the approving authority agrees to the extension request. *Id.* § 212.009(b-2).

Q Where is a plat filed once approved?

A An approved plat must be filed and recorded with the county clerk in the county in which the tract is located. Tex. Loc. Gov't Code § 212.004(d). Before a plat may be recorded, the plat must: (1) describe the subdivision by metes and bounds; (2) locate the subdivision with respect to a corner of the surveyor tract or an original corner of the original survey of which it is a part; and (3) state the dimensions of the subdivision and of each street, alley, square, park, or other part of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, alley, square, park, or other part. *Id.* § 212.004(b). A plat must also: (1) have attached to it an original tax certificate from each taxing unit with jurisdiction of the real property indicating that no delinquent ad valorem taxes are owed on the real property; and (2) be acknowledged and notarized in the same manner as deeds are. *Id.* § 212.004(c), (e); Tex. Prop. Code § 12.002.

Q When can a plat be vacated?

A A property owner may vacate (eliminate) a tract covered by a plat at any time before any lot in the plat is sold. Tex. Loc. Gov't Code § 212.013. The plat is considered vacated when: (1) the approving authority approves a signed, acknowledged document declaring the plat vacated; and (2) the document is recorded in the same manner as the original plat. *Id.* If one or more lots in the plat have been sold, the plat, or any part of the plat, may be vacated on the application of all the owners of lots in the plat with approval obtained in the same manner prescribed for the original plat. *Id.* § 212.013(b). Once executed and recorded, a vacated plat has no effect. *Id.* § 212.013(d).

Q What is a replat?

A A replat is a new plat of all or a portion of a previously approved plat. Replats can either eliminate (vacate) or keep (without vacating) a prior plat. *Id.* §§ 212.013; .014—.0155.

A replat of a subdivision or part of a subdivision may be recorded and is controlling over the preceding plat without vacating that plat if the replat: (1) is signed and acknowledged by only the owners of the property being replatted; (2) is approved by the authority responsible for approving plats; and (3) does not attempt to amend or remove any covenants or restrictions. *Id.* § 212.014(a).

Additional requirements apply to certain residential replats if: (1) during the preceding five years, any of the area to be replatted was limited by an interim or permanent zoning classification to residential use for not more than two residential units per lot; or (2) any lot in the preceding plat was limited by deed restrictions to residential use for not more than two residential units per lot.

Id. § 212.015. Moreover, additional requirements apply to replatting of subdivisions in cities with a population of 1.3 million or more. *Id.* §§ 212.0145; 212.0146.

Q What is an amending plat?

A An amending plat is essentially a replat that does not vacate the preceding plat and is for the purpose of addressing minor changes, correcting clerical errors or making minor modifications affecting a limited number of property owners or lots. Tex. Loc. Gov't Code § 212.016.

An amending plat may be recorded and is controlling over the preceding plat without vacating that plat, if the amending plat is signed by the applicants only and is solely for one or more of the following purposes:

- (1) to correct an error: (a) in a course or distance; (b) in a real property description; (c) in courses and distances of lot lines between two adjacent lots (if certain requirements are met); or (d) any other type of scrivener or clerical error or omission previously approved by the municipal authority responsible for approving plats, including lot numbers, acreage, street names, and identification of adjacent recorded plats;
- (2) to add: (a) a course or distance that was omitted; (b) an indication of monuments set after the death, disability, or retirement from practice of the engineer or surveyor responsible for setting monuments; or (c) the location or character of a monument

that has been changed in location or character or that is shown incorrectly as to location or character on the preceding plat;

- (3) to relocate: (a) a lot line to eliminate an inadvertent encroachment of a building or other improvement on a lot line or easement; (b) one or more lot lines between one or more adjacent lots (if certain requirements are met); or (c) to make necessary changes to the preceding plat to create six or fewer lots in the subdivision or a part of the subdivision covered by the preceding plat (if certain requirements are met); or
- (4) to replat one or more lots fronting on an existing street (if certain requirements are met).

Id. § 212.016(a)(1)–(11). The approving authority may approve and issue an amending plat. *Id.* Alternatively, city council may delegate approval authority of amending plats to city staff. *Id.* § 212.0065(a)(1). Approval of an amending plat does not require notice to adjacent property owners or a public hearing. *Id.* § 212.016.

Q Does a plat need to be amended so as to change the name of a street?

A Not necessarily. State law does not require a plat to name streets. State law only requires that a plat state the dimensions of the subdivision and of each street, alley, square, park, or other part of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, alley, square, park, or other part. Tex. Loc. Gov't Code § 212.004.

A city may have additional local regulations or requirements that are more detailed and require street names rather than simply showing that a street exists. If the city is only changing the street name and not the fact that there is a right of way present, then the city may not need to amend a plat. When in doubt, cities should consult with their local legal counsel.

Q Can a city be held liable for improperly approving a plat?

A It depends. Plat approval is considered a governmental function for which the city is immune from liability. *City of Round Rock v. Smith*, 687 S.W.2d 300, 303 (Tex. 1985) (city's approval of subdivision plat, as a discretionary function that only governmental unit could perform, was a "governmental function" and city was immune from liability for its alleged negligence in approving plat, which authorized filling of watercourses, allegedly resulting in flooding); *see also* Tex. Civ. Prac. & Rem. Code § 101.0215(b)(29).

One appellate court did not find a takings claim for an inadvertent mistake or error in approving a plat. *See City of Mason v. Lee*, No. 04-18-00275-CV, 2018 WL 5808260, at *2 (Tex. App.—San Antonio 2018, no pet. h.) (mem. op.) (city was not held liable where plaintiff asserted immunity did not bar their regulatory takings claim because the city engaged in an intentional affirmative action by "illicitly approving the plat").

However, a plat approved in spite of non-compliance with duly adopted local regulations may be the basis for an estoppel defense against a city if the city has received substantial benefits as result of its own mistake. *City of Austin v. Garza*, 124 S.W.3d 867 (Tex. App.—Austin 2003, no pet. h.) (holding the city was bound to a note on a final recorded plat upon which the city relied for dedications in the face of allegations by the city that it approved the note as a “mistake” since it would be “manifestly unjust for the city to retain the benefits of its mistake yet avoid its obligations”). Because such matters are fact intensive, a city should consult with its local legal counsel.