

NO. D-1-GV-10-000340

STATE OF TEXAS,

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IN THE DISTRICT COURT OF

Plaintiff,

v.

MANUEL J. MONTEMAYOR,
individually and as trustee of the
M.A.M. Family Trust and MANUEL
A. MONTEMAYOR, MELVA AIDA
MONTEMAYOR, and JOSEPHINE
S. MONTEMAYOR as beneficiaries
of the M.A.M. Family Trust

TRAVIS COUNTY, TEXAS

Defendants.

345th JUDICIAL DISTRICT

**STATE OF TEXAS'S ORIGINAL PETITION, REQUEST FOR
INJUNCTIVE RELIEF, AND REQUEST FOR DISCLOSURE**

The State of Texas, by and through Attorney General Greg Abbott (Plaintiff), files this original petition and Request for Disclosure against Manuel J. Montemayor, individually and as trustee of the M.A.M. Family Trust and Manuel A. Montemayor, Melva Aida Montemayor, and Josephine S. Montemayor, as beneficiaries of the M.A.M. Family Trust (Defendants). The State brings this lawsuit to enforce laws that regulate subdivision land sales and development of unsanitary residential areas along the Texas-Mexico border.

1. DISCOVERY CONTROL PLAN

1.1. Pursuant to Texas Rule of Civil Procedure 190, Plaintiff will conduct discovery in this case under a Level 2 discovery plan.

2. PARTIES AND SERVICE

2.1. Plaintiff, the State of Texas, is authorized to bring this suit pursuant to Texas Local Government Code, Section 232.037(a) and Texas Water Code, Sections 16.353(a) and 16.354. No filing fee or other security for costs is required of the State.¹

2.2. Defendant **Manuel J. Montemayor** is an individual residing in Cameron County and may be served with process at his residence at 344 Honey Dr., Brownsville, Texas 78520 or wherever he may be found.

2.3. Defendant **Manuel J. Montemayor, trustee of the M.A.M. Family Trust**, is a resident of Cameron County and may be served with process at his residence at 344 Honey Dr., Brownsville, Texas 78520 or wherever he may be found.

2.4. Defendant **Manuel A. Montemayor, beneficiary of the M.A.M. Family Trust**, is a resident of Cameron County and may be served with process at his residence at 116 Country Club Road, Brownsville, Texas 78520 or wherever he may be found.

2.5. Defendant **Melva Aida Montemayor, beneficiary of the M.A.M. Family Trust**, is a resident of Cameron County and may be served with process at her residence at 5262 Rustic Manor Dr., Brownsville, Texas 78526 or wherever she may be found.

2.6. Defendant **Josephine S. Montemayor, beneficiary of the M.A.M. Family Trust**, is a resident of Cameron County and may be served with process at her residence

¹ Tex. Civ. Prac. & Rem. Code § 6.001.

at 344 Honey Dr., Brownsville, Texas 78520 or wherever she may be found.

3. JURISDICTION AND VENUE

3.1. This Court has jurisdiction and venue over this suit pursuant to Texas Local Government Code, Sections 232.035(f), 232.037(a) and (d), and Texas Water Code, Sections 16.353 and 16.3545(3).

4. RESIDENTIAL SUBDIVISION REGULATION

4.1. This suit seeks to enjoin certain unlawful acts of Defendants and seeks the assessment of civil penalties, attorney's fees, costs of investigation, and court costs for violations of statutes adopted by the Texas Legislature to promote the safe and sanitary residential subdivision of land, particularly in the counties along the Texas-Mexico border.

4.2. Texas Local Government Code, Chapter 232, Subchapter B, Sections 232.021-.044 (Subchapter B), applies to land that is subdivided into two or more lots that are intended primarily for residential use in the jurisdiction of a county located within 50 miles of an international border. Land is considered to be in the jurisdiction of a county if the land is located in the county and outside the corporate limits of municipalities.²

4.3. A "subdivider" is "an individual, firm, corporation, or other legal entity that owns any interest in land and that directly or indirectly subdivides land into lots as part

² Tex. Loc. Gov't Code § 232.022(a)-(c).

of a common promotional plan in the ordinary course of business.”³

4.4. Under Subchapter B, residential lots must have water and wastewater facilities that meet minimum state standards before the lots may be sold.⁴ If these facilities are not already installed, their installation must be financially guaranteed.⁵

4.5. The minimum state standards for water and wastewater facilities are established by the Texas Water Development Board pursuant to Texas Water Code, Section 16.343. For water supply, minimum state standards require that lots either be provided with piped water from a centralized water system or with individual water wells meeting certain standards.⁶ For wastewater disposal, minimum state standards require that lots either be provided with piped sewer service from an organized sewerage facility or that wastewater disposal be provided by a proper, individual on-site sewage facility (e.g., a septic system).⁷

4.6. For a lot to be sold that lacks minimum state standard water and wastewater

³ Tex. Loc. Gov't Code § 232.021(12).

⁴ Tex. Loc. Gov't Code § 232.040.

⁵ Tex. Loc. Gov't Code §§ 232.023, 232.027. Sections 3.4 and 3.5 of the Model Rules set out detailed requirements for financial guarantees applicable to water and wastewater facilities. Codified at 31 Tex. Admin. Code § 364.54 (2004) (Tex. Water Dev. Bd., Fin. Guar. for Improvements) and 31 Tex. Admin. Code § 364.55 (2004) (Tex. Water Dev. Bd., Review and Approval of Final Plats).

⁶ 31 Tex. Admin. Code § 364.32 (2004) (Tex. Water Dev. Bd., Water Facilities Dev.).

⁷ 31 Tex. Admin. Code § 364.33 (2004) (Tex. Water Dev. Bd., Wastewater Disposal).

services, these services must first be installed or the lot must be platted or replatted to provide such services.⁸ A purpose of this restriction is to deter growth within existing – but substandard – residential subdivisions.

4.7. Texas Local Government Code, Section 232.023(a) requires that a subdivider of Subchapter B land “must have a plat of the subdivision prepared.” A subdivision of a tract “includes a subdivision of real property by any method of conveyance, including a contract for deed, oral contract, contract for sale, or other type of executory contract, regardless of whether the subdivision is made by using a metes and bounds description.”⁹

4.8. Land may not be sold or leased from a subdivision without an approved plat.¹⁰ A properly approved plat is a prerequisite for connection of subdivided land to water, sewer, and electric utilities.¹¹

4.9. Texas Local Government Code, section 232.037(a) authorizes the State to take any action necessary in a court of competent jurisdiction to enjoin violations, require platting, recover penalties, and recover enforcement costs, including attorney’s fees.

⁸ Tex. Loc. Gov’t Code § 232.040(b). Excepted from this sales prohibition is a seller, other than a subdivider or the subdivider’s agent, who resides on the lot. *Id.* at § 232.040(c).

⁹ Tex. Loc. Gov’t Code § 232.023(a).

¹⁰ Tex. Loc. Gov’t Code §§ 232.031(a), 232.035(a).

¹¹ Tex. Loc. Gov’t Code § 232.029.

5. BACKGROUND

5.1. Defendants Manuel J. Montemayor¹², individually and as trustee of the M.A.M. Family Trust, and Manuel A. Montemayor, Melva Aida Montemayor, and Josephine S. Montemayor, beneficiaries of the M.A.M. Family Trust own and sell lots in various residential subdivisions in Cameron County, including Fresnos Land & Irrigation Company Subdivision (Los Fresnos) and El Jardin Re-Subdivision (El Jardin).

5.2. A plat of Los Fresnos was previously filed in Volume 3, Page 9 and 9A of the Map Records of Cameron County, Texas, and a plat of El Jardin was previously filed in Volume 4, Page 48 of the Map Records of Cameron County, Texas.

5.3. After purchasing the land in Los Fresnos and El Jardin, Defendants further subdivided Lots 205, 206, 208, and 215 of Los Fresnos and Lot 311 of El Jardin, cut these lots into smaller lots (the Montemayor Lots), and then sold these smaller lots without providing water or waterwater services and without filing a plat with Cameron County.

5.4. Cameron County is located within 50 miles of the international border

¹² On February 7, 2008, a Travis County district court entered a Default Judgment and Permanent Injunction against Defendant Manuel J. Montemayor d/b/a MG Joint Venture in cause no. D-1-GV-07-002134 in the 353rd District Court of Travis County, for violations of the residential subdivision platting requirements of Tex. Local Gov't Code §§ 232.035(a) and 232.031(a) and the water and sewer service requirements of Tex. Local Gov't Code §§ 232.027 and 232.040(b). These violations occurred at Tierra Linda Gardens Subdivision, which is not the subject of the instant lawsuit. The judgment assessed a civil penalty of \$30,000, attorney's fees of \$7,650, and court costs against Defendant Montemayor, and included an order that Montemayor and his agents are "permanently enjoined from subdividing, advertising, and selling property in violation of Tex. Local Gov't Code, Chapter 232, Subchapter B."

dividing the United States and Mexico.

5.5. The Montemayor Lots lie outside the corporate limits of any municipality.

5.6. One or more of the defendants sold lots from these subdivisions as follows:

Date	Subdivision	Lot Sold	Buyer
06-04-09	Los Fresnos	5.0 acres out of Block 208	Jose Angel de Leon and Irlanda de Leon
01-16-09	Los Fresnos	3.50 acres out of Block 206	Benito Errisuriz and Carlos Alvarez
06-26-08	Los Fresnos	5.0 acres out of Block 206 and 1.0 acres out of Block 206	Griselda Canales Sanchez
07-25-08	Los Fresnos	3.25 acre tract out of Block 206	Emilio N. Rodriguez
06-11-08	Los Fresnos	4.44 acres out of Block 215	Jose M. Moreno, et al
06-28-08	Los Fresnos	3.25 acres out of Block 205	Marciano Muñiz
08-12-08	El Jardin Re-subdivision	1.426 acres out of lot 12, Block 311	Adriana Edith Ortiz

5.7. On information and belief, Defendants have sold additional lots.

6. VIOLATIONS

Failure to Install or Bond Sewer Service Facilities

6.1. Prior to the sale of the Montemayor Lots, listed in Paragraph 5.6 above, Defendants failed to install sewer service facilities at the lots and failed to comply with the legal requirements of Texas Local Government Code, Section 232.027, pertaining to the

posting of a bond or other financial guarantee to ensure installation of sewer service facilities. Defendants' sales of lots without complying with the "build it or bond it" sewer service requirements violated Texas Local Government Code, Sections 232.027 and 232.040(b).

Failure to Install or Bond Water Service Facilities

6.2. Prior to the sale of the Montemayor Lots, listed in paragraph 5.6 above, Defendants failed to install water service facilities at the lots and failed to comply with the legal requirements of Texas Local Government Code, Section 232.027, pertaining to the posting of a bond or other financial guarantee to ensure water service to each lot. Defendants' sales of lots without complying with the "build it or bond it" water service requirements violated Texas Local Government Code, Sections 232.027 and 232.040(b).

Sale of Unplatted Lots

6.3. Defendants subdivided land into smaller lots and then sold those lots, as provided in paragraph 5.6. above, without first preparing a plat of each subdivision and obtaining approval of the plat from Cameron County. Defendants' unplatted subdividing and selling violated Texas Local Government Code, Section 232.035(a).

7. INJUNCTIVE RELIEF

7.1. Pursuant to Texas Local Government Code, Section 232.037(a), the State may obtain temporary and permanent injunctive relief, both mandatory and prohibitory,

without bond, to redress the violations asserted in this petition. Accordingly, the State seeks appropriate injunctive orders to prevent violations or threatened violations and to obtain appropriate corrective actions.

7.2. The State requests a temporary injunction ordering Defendants, their agents, employees, and all persons in active concert or participation with them, on their behalf, or under their control, whether directly or indirectly to do the following:

DEFINITIONS

- A. "The State" means the State of Texas;
- B. "Defendants" means Manuel J. Montemayor, individually and as trustee for the M.A.M. Family Trust and Manuel A. Montemayor, Melva Aida Montemayor, and Josephine S. Montemayor as beneficiaries of the M.A.M. Family Trust;
- C. "Montemayor Lots" means those properties sold in Blocks 205, 206, 208, and 215 of Fresnos Land & Irrigation Company Subdivision, included in Section 5 of this petition and Lot 12, Block 311 of El Jardin Re-Subdivision, included in Section 5 of this petition;
- D. "Injunction" means the Temporary Injunction;
- E. "Effective Date" means the date the Court signs the temporary injunction order;
- F. "Day" or "Days" means calendar days;
- G. "Party" means Plaintiff or Defendant; and
- H. "Unaffiliated" means a person not a Party to this suit and not previously employed by or affiliated with Defendants.

INJUNCTION

- A. Immediately upon the Effective Date of the Injunction, Defendants their officers, agents, employees, and attorneys, and all other persons in active concert or participation with them are hereby enjoined from subdividing, advertising, and selling property in violation of Tex. Local Gov't Code Chapter 232, Subchapter B;
- B. Within Fifteen (15) Days of the Effective Date of the Injunction Defendants shall, offer refunds of all monies paid by all buyers of the Montemayor Lots via a letter: written in English and Spanish; mailed by certified mail, returned receipt requested; with a copy of the Injunction attached; mailed to addresses provided by the Office of the Attorney General of Texas; and with a copy to Office of the Attorney General of Texas at the address provided in E below.
- C. Within Thirty (30) Days of the Effective Date of this Injunction Defendants shall, obtain an engineering report prepared by and bearing the signed and dated seal of an Unaffiliated professional engineer registered in the State of Texas, which discusses the availability and methodology of providing water facilities and wastewater collection and treatment facilities which are necessary to serve each of the Montemayor Lots.
- D. Within Forty-five (45) Days of the Effective Date of the Injunction Defendants shall, submit a plat application for the lots sold to those buyers who do not elect to accept a refund, with the attached engineering report that complies with 31 Tex. Admin. Code § 364.51-364.57 and Tex. Local Gov't Code § 232.023, provided as **Attachment A** and incorporated herein by reference.
- E. Immediately upon the Effective Date of the Injunction, Defendants shall diligently pursue approval of the plat and take any further action required by Cameron County to secure approval of the plat.
- F. Within Fifteen (15) Days of complying with each injunctive provision Defendants shall, provide a notarized certificate of compliance sent to

the following address: Office of the Attorney General of Texas, Environmental Protection and Administrative Law Division, Attn: Kellie E. Billings, P.O. Box 12548, MC-018, Austin, Texas 78711-2548. If at any time, Defendants are unable to comply with any of the above injunctive provisions, Defendants shall provide a letter to the address above stating such and providing an explanation for the non-compliance.

- G. In addition to, and as a separate requirement from all other requirements in the Injunction, Defendants shall immediately use their best efforts to comply with the injunctive provisions A through F above. If Defendants fail to comply wholly with a specific provision in sections A through F of the Injunction but could have at least partially complied with any of these provisions, Defendants must do so.

7.3. Upon trial, the State requests that the temporary injunction be made permanent and such additional injunctive relief the facts may warrant.

8. CIVIL PENALTIES

8.1. Texas Local Government Code, Section 232.035(d) provides that a subdivider or agent who sells a lot in a subdivision that has not been legally platted "is subject to a civil penalty of not less than \$10,000 or more than \$15,000 for each lot conveyed. . . ." The State requests that this Court assess a civil penalty within the statutory range for each lot sold in violation of the law.

9. ATTORNEY'S FEES AND COSTS

9.1. The State requests recovery of its attorney's fees expended in the prosecution of this case from the Defendants as authorized by Texas Local Government Code,

Sections 232.035(a) and (d), 232.037(a)(3), and Texas Government Code, Section 402.006(c).

9.2. The State requests recovery of its costs of investigation and court costs expended in the prosecution of this case from the Defendants as authorized by Texas Local Government Code, Sections 232.035(a) and (d), 232.037(a)(3), and Texas Government Code, Section 402.006(c).

10. REQUEST FOR DISCLOSURE

10.1. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendants are requested to disclose to the State, within 50 days of service of this request, the information and material described in Rule 194.2(a), (b), (c), (e), (f), (i), and (l) and Rule 194.4.

PRAYER FOR RELIEF

Plaintiff, the State of Texas prays for judgment against Defendants as follows:

1. the Court issue citation for Defendants to be cited to appear and answer herein;
2. upon hearing, the Court grant a temporary injunction against Defendants, as requested above;
3. upon trial, the Court grant a permanent injunction against Defendants as requested above;
4. the Court grant judgment for appropriate civil penalties within the range allowed by law against Defendants as requested above;

5. the State be awarded its reasonable attorney's fees and all costs of Court;
6. the State be awarded post-judgment interest at the legal rate until fully paid; and
7. the State be awarded all such other and further relief, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

BARBARA B. DEANE
Chief, Environmental Law and
Administrative Law Division

DAVID PREISTER
Chief, Environmental Protection Section


KELLIE E. BILLINGS
State Bar No. 24042447
Assistant Attorney General
Office of the Attorney General

Environmental Protection and
Administrative Law Division
P.O. Box 12548, MC-018
Austin, Texas 78711-2548
Tel: (512) 463-2012
Fax: (512) 320-0052

ATTORNEYS FOR PLAINTIFF,
STATE OF TEXAS

STATE OF TEXAS }
 }
COUNTY OF CAMERON }

AFFIDAVIT OF LINDA STOCKWELL

BEFORE ME, the undersigned authority, on this day personally appeared Linda Stockwell, a person whose identity is known to me. After I administered an oath to her, upon her oath, she said:

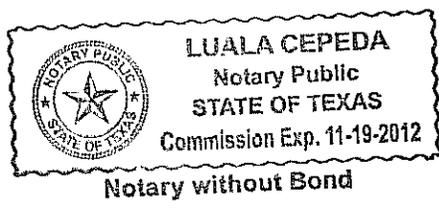
“My name is Linda Stockwell. I am over the age of eighteen years, of sound mind, and capable of making this affidavit. This affidavit is made on my personal knowledge, and the statements herein are true and correct.

I am an investigator for the Environmental Protection and Administrative Law Division of the Texas Attorney General’s Office. My duties include investigating compliance with state and county residential subdivision requirements. In this capacity, I personally investigated the residential subdivisions and the activities of the defendants that are the subject of the attached *State of Texas’s Original Petition, Request for Injunctive Relief, and Request for Disclosure*.

I reviewed the factual allegations in Part 5 of the this petition. These allegations are true and correct.”

Linda Stockwell
LINDA STOCKWELL

SWORN TO and SUBSCRIBED before me by LINDA STOCKWELL on the 17th
day of March, 2010.



[Signature]
Notary Public in and for the State of Texas
My commission expires: 11-19-12

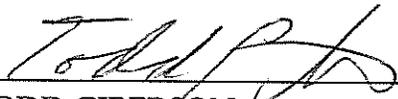
STATE OF TEXAS }
 }
COUNTY OF TRAVIS } **AFFIDAVIT OF TODD GIBERSON**

BEFORE ME, the undersigned authority, on this day personally appeared Todd Giberson, a person whose identity is known to me. After I administered an oath to him, upon his oath, he said:

“My name is Todd Giberson. I am over the age of eighteen years, of sound mind, and capable of making this affidavit. This affidavit is made on my personal knowledge, and the statements herein are true and correct.

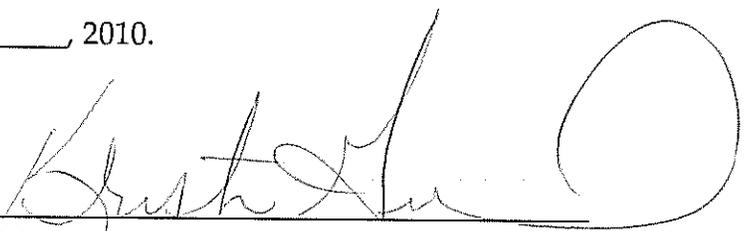
I am a systems analyst and cartographer in the Legal Technical Support Division of the Texas Attorney General’s Office. My duties include analyzing and mapping geographic boundaries, including the extraterritorial jurisdictions of municipalities in Texas counties that are subject to the colonias prevention laws.

I reviewed the facts regarding the location of the subdivision lots at issue and their relationship to the corporate limits of any municipality, as asserted in Paragraph 5.5 of the attached *State of Texas’s Original Petition, Request for Injunctive Relief, and Request for Disclosure*. These allegations are true and correct.”

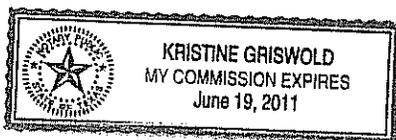


TODD GIBERSON

SWORN TO and SUBSCRIBED before me by TODD GIBERSON on the 19th
day of March, 2010.



Notary Public in and for the State of Texas



My commission expires: _____

ATTACHMENT A

DIVISION 3. PLAT APPROVAL
Texas Administrative Code §§364.51-364.57

§364.51. Applications for Plat Approval.

- (a) Owner representation. An application for approval of a plat shall be filed with the county by the record owner of the property to be subdivided or the duly authorized agent of the record owner.
- (b) Standards. Every plat creating two or more lots of five acres or less for residential use shall comply with the standards of Division 2 and the requirements of Division 3 of this subchapter.

Adopted effective 2/10/00

§364.52. Final Engineering Report. The final plat shall include on the plat or have attached to the plat an engineering report bearing the signed and dated seal of a professional engineer registered in the State of Texas. The engineering report shall discuss the availability and methodology of providing water facilities and wastewater treatment to individual lots within the subdivision. A detailed cost estimate per lot acceptable to the county shall be provided for those unconstructed water supply and distribution facilities and wastewater collection and treatment facilities which are necessary to serve each lot of the subdivision. The plan shall include a construction schedule for each significant element needed to provide adequate water or wastewater facilities. If financial guarantees are to be provided under §364.54 of this title, the schedule shall include the start dates and completion dates.

- (1) Public water systems.
 - (A) Where water supplies are to be provided by an existing public water system, the subdivider shall furnish an executed contractual agreement between the subdivider and the retail public utility in substantially the form attached in Appendix 1A and referenced in §364.32(a)(1) of this title. Before final plat approval, plans and specifications for the proposed water facilities shall have been approved by all entities having jurisdiction over the proposed project which may include in addition to the county the commission and the county health department. If groundwater is to be the source of the water supply, the final engineering report shall include a groundwater availability study that complies with the requirements of 30 TAC §§230.1 through 230.11 for water availability for a public water supply systems and certifies the long term (30 years) quantity and quality of available groundwater supplies relative to the ultimate needs of the subdivision.

- (B) Where there is no existing retail public utility to construct and maintain the proposed water facilities, the subdivider shall establish a retail public utility and obtain a Certificate of Convenience and Necessity (CCN) from the commission and include evidence of the CCN issuance with the plat. Before final plat approval, plans and specifications for the proposed water facilities shall have been approved by all entities having jurisdiction over the proposed project. If groundwater is to be the source of the water supply, the final engineering report shall include a groundwater availability study that complies with the requirements of 30 TAC §§230.1 through 230.11 for water availability for a public water supply systems and certifies the long term (30 years) quantity and quality of available groundwater supplies relative to the ultimate needs of the subdivision. If surface water is the source of supply then the final engineering report shall include evidence that sufficient water rights have been obtained and dedicated, either through acquisition or wholesale water supply agreement, that will provide a sufficient supply to serve the needs of the subdivision for a term of not less than 30 years.
- (2) Non-public water systems. Where individual wells are proposed for the supply of drinking water to residences, the final engineering report shall include the quantitative and qualitative results of sampling the test wells in accordance with §364.32 of this title. The results of such analyses shall be made available to the prospective property owners. If the water quality of the test well required pursuant to §364.32(b) of this title does not meet the water quality standards as set forth in that section without treatment by an identified and commercially available water treatment system, then the final report must state the type of treatment system that will treat the water produced from the well to the specified water quality standards, the location of at least one commercial establishment within the county at which the system is available for purchase, and the cost of such system, the cost of installation of the system, and the estimated monthly maintenance cost of the treatment system. The final engineering report shall include a groundwater availability study that complies with the requirements of 30 TAC §§230.1 through 230.11 for water availability for individual water supply wells on individual lots and certifies the long term (30 years) quantity and quality of available groundwater supplies relative to the ultimate needs of the subdivision. The description of the required sanitary control easement shall be included.

- (3) Organized sewerage facilities.
 - (A) Where wastewater treatment is to be provided by an existing retail public utility, the subdivider shall furnish evidence of a contractual agreement between the subdivider and the retail public utility in substantially the form attached in Appendix 1B and referenced in §364.33(a)(2) of this title. Before final plat approval, an appropriate permit to dispose of wastes shall have been obtained from the commission and plans and specifications for the proposed wastewater collection and treatment facilities shall have been approved by all entities having jurisdiction over the proposed project.
 - (B) Where there is no existing retail public utility to construct and maintain the proposed sewerage facilities, the subdivider shall establish a retail public utility and obtain a CCN from the commission. Before final plat approval, a wastewater treatment permit authorizing the treatment of the wastewater for the ultimate build-out population of the subdivision shall have been obtained from the commission and plans and specifications for the proposed sewerage facilities shall have been approved by all entities having jurisdiction over the proposed project.
- (4) On-site sewerage facilities. Where private on-site sewerage facilities are proposed, the final engineering report shall include planning materials required by 30 TAC §285.4(c), including the site evaluation described by 30 TAC §285.30 and all other information required by the county's OSSF order.

Adopted effective 2/10/00

Amended effective February 10, 2004

§364.53. Additional Information. The county may, at its option, require additional information necessary to determine the adequacy of proposed water and wastewater improvements as part of the plat approval process. Such information may include, but not be limited to:

- (1) layout of proposed street and drainage work;
- (2) legal description of the property;
- (3) existing area features;
- (4) topography;
- (5) flood plains;
- (6) description of existing easements;
- (7) layout of other utilities;
- (8) notation of deed restrictions;
- (9) public use areas; or
- (10) proposed area features.

Adopted effective 2/10/00

§364.54. Financial Guarantees for Improvements.

- (a) Applicability. If an adequate public or non-public water system or sewerage facility is not

available from a retail public utility, or are not constructed by the subdivider, to serve lots intended for residential purposes of five acres or less at the time final plat approval is sought, then the commissioners court shall require the owner of the subdivided tract to execute an agreement with the county in substantially the form attached in Appendix 2A secured by a bond, irrevocable letter of credit, or other alternative financial guarantee such as a cash deposit which meet the requirements set forth below. Figure: 31 TAC §364.54(a)

- (b) Bonds. A bond that is submitted in compliance with subsection (a) of this section shall meet the following requirements.
- (1) The bond or financial guarantee shall be payable to the county judge of the county, in his official capacity, or the judge's successor in office.
 - (2) The bond or financial guarantee shall be in an amount determined by the commissioners court to be adequate to ensure proper construction or installation of the public or non-public water facilities, and wastewater facilities to service the subdivision, including reasonable contingencies, but in no event shall the amount of the bond be less than the total amount needed to serve the subdivision as established by the engineer who certifies the plat.
 - (3) The bond shall be executed with sureties as may be approved by the commissioners court. The county shall establish criteria for acceptability of the surety companies issuing bonds that include but are not limited to:
 - (A) registration with the Secretary of State and be authorized to do business in Texas;
 - (B) authorization to issue bonds in the amount required by the commissioners court; and
 - (C) rating of at least B from Best's Key Rating Guide; or if the surety company does not have any such rating due to the length of time it has been a surety company, the surety company must demonstrate eligibility to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety company listed in the current United States Department of Treasury Circular 570. Such bonds shall meet the criteria contained in the rules and regulations promulgated by the United States Department of Treasury.

- (4) The bond shall be conditioned upon construction or installation of water and wastewater facilities meeting the criteria established by Division 2 of this subchapter and upon construction of facilities within the time stated on the plat, or on the document attached to the plat for the subdivision, or within any extension of time granted by the commissioners court.
- (c) Letter of credit. A letter of credit that is submitted in compliance with subsection (a) of this section shall meet the following requirements.
- (1) Any letter of credit submitted as a financial guarantee for combined amounts greater than \$10,000 and less than \$250,000 must be from financial institutions which meet the following qualifications.
 - (A) Bank qualifications:
 - (i) must be federally insured;
 - (ii) Sheshunoff rating must be 10 or better and primary capital must be at least 6.0% of total assets; and
 - (iii) total assets must be at least \$25 million.
 - (B) Savings and loan association qualifications:
 - (i) must be federally insured;
 - (ii) tangible capital must be at least 1.5% of total assets and total assets must be greater than \$25 million or tangible capital must be at least 3.0% of total assets if total assets are less than \$25 million; and
 - (iii) Sheshunoff rating must be 30 or better.
 - (C) Other financial institutions qualifications:
 - (i) the letter of credit must be 110% collateralized by an investment instrument that would meet the qualifications for a county investment; and
 - (ii) the investment instrument must be registered in the county's name and the county must receive safekeeping receipts for all collateral before the letter of credit is accepted.
 - (2) Any letter of credit submitted as a financial guarantee for combined amounts greater than \$250,000 must be from financial institutions which meet the following qualifications.
 - (A) Bank qualifications:
 - (i) must be federally insured;
 - (ii) Sheshunoff rating must be thirty or better and primary capital must be at least 7.0% of total assets; and
 - (iii) total assets must be at least \$75 million.

- (B) Savings and loan association qualifications:
 - (i) must be federally insured;
 - (ii) tangible capital must be at least 3.0% of total assets and total assets must be greater than \$75 million, or tangible capital must be at least 5.0% of total assets if total assets are less than \$75 million; and
 - (iii) Sheshunoff rating must be 30 or better.
- (C) Other financial institutions qualifications:
 - (i) the letter of credit must be 110% collateralized by an investment instrument that would meet the qualifications for a county investment; and
 - (ii) the investment instrument must be registered in the county's name and the county must receive safekeeping receipts for all collateral before the letter of credit is accepted.
- (3) The letter of credit shall list as sole beneficiary the county judge of the county, in his official capacity, or the judge's successor in office, and must be approved by the county judge of the county. The form of the letter of credit shall be modeled after the form attached in Appendix 2B. Figure: 31 TAC §364.54(c)(3)
- (4) The letter of credit shall be conditioned upon installation or construction of water and wastewater facilities meeting the criteria established under Division 2 of this subchapter and upon construction of facilities within the time stated on the plat, or on the document attached to the plat for the subdivision, or within any extension of time granted by the commissioners court.
- (d) Financial guarantee. The county will determine the amount of the bond, letter of credit, or cash deposit required to ensure proper construction of adequate water and wastewater facilities in the subdivision.
- (e) Alternative to county accepting a financial guarantee. The county may approve a final plat under this section without receiving a financial guarantee in the name of the county if:
 - (1) the property being subdivided lies wholly within the jurisdiction of the county;
 - (2) the property being subdivided lies wholly within the extra-territorial jurisdiction of a municipality; and
 - (3) the municipality has executed an interlocal agreement with the county that imposes the obligation on the municipality to:
 - (A) accept the bonds, letters of credit, or other financial guarantees, that meet the requirements of this section;
 - (B) execute the construction agreement with the subdivider; and

- (C) assume the obligations to enforce the terms of the financial guarantee under the conditions set forth therein and complete construction of the facilities identified in the construction agreement.

Adopted effective 2/10/00

Amended effective February 10, 2004

§364.55. Review and Approval of Final Plats.

- (a) Scope of review. The county will review the final plat to determine whether it meets the standards of Division 2 and the requirements of Division 3 of this subchapter.
- (b) Disapproval authority. The commissioners court shall refuse to approve a plat if it does not meet the requirements prescribed by or under these rules.
- (c) Prerequisites to approval. Final plat approval shall not be granted unless the subdivider has accomplished the following:
 - (1) dedicated the sites for the adequate water and sewerage facilities identified in the final plat to the appropriate retail public utility responsible for operation and maintenance of the facilities; and
 - (2) provided evidence that the water facilities and sewerage facilities have been constructed and installed in accordance with the criteria established within these rules and the approvals from the commission of the plans and specifications for such construction, including any change orders filed with these agencies; or
 - (3) obtained all necessary permits for the proposed water facilities and sewerage facilities (other than for OSSF permits on individual lots within the proposed subdivision) and has entered into a financial agreement with the county secured by a bond or other alternative financial guarantee such as a cash deposit or letter of credit for the provision of water and sewerage facilities with the bond or financial guarantee meeting the criteria established in Division 3 of this subchapter.

Adopted effective 2/10/00

Amended effective February 10, 2004

§364.56. Time Extensions for Providing Facilities.

- (a) Reasonableness. The commissioners court may extend, beyond the date specified on the plat or on the document attached to the plat, the date by which the required water and sewer service facilities must be fully operable if:
 - (1) any financial guarantees provided with the final plat as originally submitted are effective for the time of the requested extension or new financial guarantees that comply with §364.54 are submitted which will be effective for the period of the extension; and

- (2) the court finds the extension is reasonable and not contrary to the public interest.
- (b) Timeliness. If the facilities are fully operable before the expiration of the extension period, the facilities are considered to have been made fully operable in a timely manner.
- (c) Unreasonableness. An extension is not reasonable if it would allow a residence in the subdivision to be inhabited without water or sewer services that meet the standards of Division 2 of this subchapter.

Adopted effective 2/10/00

§364.57. Criteria for Subdivisions that Occurred Prior to September 1, 1989.

- (a) Authority and scope. This section shall apply only to tracts of land that were divided into two or more parts to lay out a subdivision before September 1, 1989 and have not been platted or recorded. This section is in addition to the authority of the county to grant a delay or variance pursuant to Local Government Code §232.043 or a rule of the county adopted pursuant to such provision.
- (b) Purpose. It is the purpose of this section to promote the public health of the county residents, to ensure that adequate water and sewerage facilities are provided in subdivisions within the jurisdiction of this county, and to establish the minimum standards for pre-1989 subdivisions for which no plat has been filed or recorded in the records of the county.
- (c) Required plat. In the event that the owner of tract of land located outside the limits of a municipality who subdivided the tract into two or more parts to lay out a subdivision of the tract prior to September 1, 1989, including an addition, or to lay out suburban lots or building lots, and to lay out streets, alleys, squares, parks or other parts 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 streets, alleys, squares, parks, or other parts, was legally obligated to, but has failed to have a plat of the subdivision prepared, approved by the commissioners court, and filed, the owner of a residential lot which was created by the subdivision may have a plat of the individual lot prepared and approved by the commissioners court as provided in this section in lieu of the filing of a plat of the subdivision.
- (d) Special criteria. The commissioners court may approve the plat of a residential lot which does not comply with the provisions of §§364.15(b) of this title (sale restrictions), 364.36 of this title (Setbacks), 364.37 of this title (Number of Dwellings per Lot), 364.52 of this title (Final Engineering Report), and 364.54 of this title (Financial Guarantees for Improvements) as applied to an individual subdivided lot if such approval is in harmony with the general purpose and intent of these rules so that the public health, safety, and welfare may be secured and substantial justice done.
 - (1) Owners of individual lots in a single unplatted subdivision may file a joint request for approval of their respective individual residential lots.
 - (2) An application for approval of the plat of an individual lot shall be made in writing. The application shall state specifically the chapter, section, or subsection with which the plat

does not comply and from which a waiver is being requested. The application shall contain available information and documentation which supports the requested approval. The applicant shall also provide such additional documentation as the commissioners court may request to support the application, including:

- (A) a copy of a dated plat, sales contract, utility records, or other acceptable documentation that the subdivision occurred prior to September 1, 1989;
 - (B) the name and address of the original subdivider or the subdivider's authorized agent, if known;
 - (C) a survey and plat of the lot for which approval is requested, showing existing residences, roads, and utilities; and
 - (D) a deed, an affidavit of ownership or other evidence of ownership of the lot for which approval is requested.
- (3) Approval of plats of individual lots shall be granted subject to the limitations of state law, and based on written findings by the commissioners court that:
- (A) the lot for which approval is requested is within a tract that was subdivided prior to September 1, 1989, and is not owned by the original subdivider;
 - (B) a plat was required for the subdivision, but has not been filed with the county by the subdivider legally obligated to file it;
 - (C) an existing, currently occupied residential dwelling is located on the lot;
 - (D) existing water and sewer services which comply with the minimum standards set forth herein are available to the lot; and
 - (E) the request is reasonable, compliance with specified sections of these rules is impractical, and a waiver is not contrary to the public health and safety.
- (e) Final determination. The commissioners court shall make the final decision on an application for a waiver, following review and recommendation by the county planning commission or department, if any. The applicant may withdraw a request for a waiver at any point in the process. If the requested waiver application is approved by the commissioners court, the county shall issue a certificate stating that a plat of the residential lot has been reviewed and approved.

Adopted effective 2/10/00

Vernon's Texas Statutes and Codes Annotated

Local Government Code

Title 7. Regulation of Land Use, Structures, Businesses, and Related Activities

Subtitle B. County Regulatory Authority

Chapter 232. County Regulation of Subdivisions

Subchapter B. Subdivision Platting Requirements in County Near International Border

§ 232.023. Plat Required

(a) A subdivider of land must have a plat of the subdivision prepared. A subdivision of a tract under this subsection includes a subdivision of real property by any method of conveyance, including a contract for deed, oral contract, contract of sale, or other type of executory contract, regardless of whether the subdivision is made by using a metes and bounds description.

(b) A plat required under this section must:

(1) be certified by a surveyor or engineer registered to practice in this state;

(2) define the subdivision by metes and bounds;

(3) locate the subdivision with respect to an original corner of the original survey of which it is a part;

(4) describe each lot, number each lot in progression, and give the dimensions of each lot;

(5) state the dimensions of and accurately describe each lot, 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;

(6) include or have attached a document containing a description in English and Spanish of the water and sewer facilities and roadways and easements dedicated for the provision of water and sewer facilities that will be constructed or installed to service the subdivision and a statement specifying the date by which the facilities will be fully operable;

(7) have attached a document prepared by an engineer registered to practice in this state certifying that the water and sewer service facilities proposed under Subdivision (6) are in compliance with the model rules adopted under Section 16.343, Water Code, and a certified estimate of the cost to install water and sewer service facilities;

(8) provide for drainage in the subdivision to:

(A) avoid concentration of storm drainage water from each lot to adjacent lots;

(B) provide positive drainage away from all buildings; and

(C) coordinate individual lot drainage with the general storm drainage pattern for the area;

(9) include a description of the drainage requirements as provided in Subdivision (8);

(10) identify the topography of the area;

(11) include a certification by a surveyor or engineer registered to practice in this state describing any area of the subdivision that is in a floodplain or stating that no area is in a floodplain; and

(12) include certification that the subdivider has complied with the requirements of Section 232.032 and that:

(A) the water quality and connections to the lots meet, or will meet, the minimum state standards;

(B) sewer connections to the lots or septic tanks meet, or will meet, the minimum requirements of state standards;

(C) electrical connections provided to the lot meet, or will meet, the minimum state standards; and

(D) gas connections, if available, provided to the lot meet, or will meet, the minimum state standards.

(c) A subdivider may meet the requirements of Subsection (b)(12)(B) through the use of a certificate issued by the appropriate county or state official having jurisdiction over the approval of septic systems stating that lots in the subdivision can be adequately and legally served by septic systems.

(d) The subdivider of the tract must acknowledge the plat by signing the plat and attached documents and attest to the veracity and completeness of the matters asserted in the attached documents and in the plat.

(e) The plat must be filed and recorded with the county clerk of the county in which the tract is located. The plat is subject to the filing and recording provisions of Section 12.002, Property Code.