



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 2, 1993

Honorable Fred Hill
Chair
Committee on Urban Affairs
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 93-106

Re: Whether a municipality may require a single lot owner within its extraterritorial jurisdiction to file a subdivision plat before utilities may be connected (ID# 21598)

Dear Representative Hill:

You ask "whether a municipality may require a single lot owner of an existing unapproved subdivision in the city's extraterritorial jurisdiction to prepare and have approved a subdivision plat before utilities may be connected pursuant to [s]ections 212.0115 and 212.012 of the Texas Local Government Code." You indicate that "[t]he property in question was subdivided many years ago, although there has never been any city or county approval of a subdivision plat."

Chapters 212 and 232 of the Local Government Code provide respectively for municipal and county regulation of subdivisions, and generally require "owners of tracts of land" who subdivide such tracts, to prepare "a plat of the subdivision" and have it approved by the appropriate municipal or county authority. *Id.* §§ 212.001 *et seq.*; 232.001, *et seq.* The requirements for platting subdivisions of land within municipalities and their extraterritorial jurisdictions were first adopted in 1927; those applicable to land outside city boundaries were first adopted only in 1957. Acts 1927, 40th Leg., ch. 231, at 342; Acts 1957, 55th Leg., ch. 436, at 1302. These original acts applied only to certain municipalities and counties. Subsequent amendments increased the scope of the platting requirements. Notably, until codified in the Local Government Code in 1987, legislation imposing platting requirements generally contained language making its applicability prospective only. *See, e.g.*, the original 1927 act *supra* ("That *hereafter*, every owner of any tract of land . . . who may *hereafter* subdivide the same . . .") (emphasis added); *see also* Acts 1983, 68th Leg., ch. 327, at 1717 (expanding platting requirements for unincorporated areas, but providing in section 5 that those requirements applied only after effective date of act). The codification of these provisions in the Local Government Code, which was not intended to substantively change them--*see id.* section 1.001--presumably did not alter their "grandfathering" effect vis a vis divisions of land made prior to their adoption. We note also that municipalities have some flexibility in determining which particular divisions of land plats will be required for. Local Gov't Code § 212.0045 ("municipality may define and classify . . . divisions" to determine which are required to be platted, and "need not require platting for every division of land otherwise within" chapter 212 platting provisions). In any case, it is clear that some subdivisions, depending on

when and where they were made, have never been subject to platting requirements, even though they would have been subject if they had been done at a later time or in a different place.¹

Your questions refer to the provisions of sections 212.012 and 212.0015 of the Local Government Code which generally require that before utilities may be connected to a piece of land by certain utility providers, the provider must have a certificate issued by the municipal authority responsible for approving plats regarding the compliance with platting requirements for such piece of land.

Section 212.012 provides that a municipality, county, or special district, a municipally owned or public utility, or certain water supply or sewer service corporations, may not serve or connect "any land" with utility services "unless the entity has been presented with or otherwise holds a certificate applicable to the land issued under section 212.0015." Section 212.0115 provides generally for the issuance by "the municipal authority responsible for approving plats," on request of "an owner of land, an entity that provides utility service, or the governing body of the municipality" a certificate indicating with respect to land located within the jurisdiction of the municipality, including its extraterritorial jurisdiction, either 1) that a plat is not required to be submitted under chapter 212 for the land, or 2) that a plat is required and that one has been prepared and has been reviewed and approved by the authority."² (Subsection (a) of the section also provides for the issuance of the appropriate certificate whenever the municipal authority approves a plat submitted to it).

In answer to your question, we read sections 212.012 and 212.0115 to indicate that utilities may not be connected by one of the entities listed in section 212.012 unless the entity has been presented with or holds a certificate issued under section 212.0115 indicating either 1) that a plat is not required under chapter 212 for the land in question, or 2) that a plat is required and has been submitted reviewed and approved as provided in section 212.0115. If the municipal authority responsible for issuing certificates determines that a plat containing the land of a single lot owner was required by virtue of the subdividing of the larger tract of which the lot was a part, but that such plat was not prepared, reviewed or approved, it may not issue the section 212.0115 certificate, and the

¹Cities' annexation or inclusion within their extraterritorial jurisdictions of territory containing already existing subdivisions, for which platting had not been required at the time of subdividing, could also have led to this state of affairs.

²The requirement of section 212.012 that utilities may not be connected without presentation of a section 212.0115 certificate does not by the former section's own terms apply to land covered by a "development plat" approved under subchapter B of chapter 212. Local Gov't Code § 212(c). We assume that the land you are asking about is not covered by a subchapter B plat.

entity providing utility services thus may not, under section, 212.012 connect utilities to the lot.³

It might be argued that a single lot should not itself be considered to be "required" to be platted within the meaning of section 212.0015, but only the subdivision of which it is a part. We do not, however, read the applicable provisions to make such a distinction. Sections 212.0015 and 212.012 appear on their face to be directed at "any" land. If the legislature had intended to make this distinction, we think it would have done so specifically. *Compare id.* § 212.018(b) ("owner of tract" in provision authorizing city to seek injunctive relief or damages against such owner for non-compliance with platting requirements "does not include the owner of an individual lot in a subdivided tract of land"). Moreover, as a practical matter, it would, we think, defeat the purpose of the section 212.012 prohibition on connecting utilities without the requisite certificate of compliance with the platting requirements if the prohibition went only to the connecting of the whole subdivided tract rather than the individual lots.

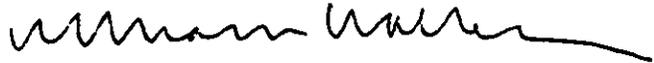
We note, however, that except for not issuing the certificate necessary to have the utilities connected to the lot, the city may not, in such circumstances, proceed against such individual lot owner, so as to "require" *him* to file the required plat. Under the applicable provisions, the legal duty to prepare and file the plat has always been the subdivider's, not the single lot owner's. *See now id.* § 212.004. Pursuant to section 212.018, the city may proceed against the latter for injunctive relief or monetary damages; but section 212.018 expressly indicates that the enforcement authority provided the city thereunder may not be used against the single lot owner. We note, too, that the single lot owner may himself be able to seek relief against the subdivider for damages he incurs by reason of the latter's failure to comply with the platting requirements. *See Precision Sheet Metal Mfg. Co. v. Yates*, 794 S.W.2d 545 (Tex. App.--Dallas 1990, writ denied); *Major Investments Inc. v. De Castillo*, 673 S.W.2d 276 (Tex. App.--Corpus Christi 1984, writ ref'd n.r.e.). *See generally* Attorney General Opinion JM-508 (1986).

³While we limit our discussion here to the platting provisions applicable to municipalities and their extraterritorial jurisdictions under chapter 212, we note that the fact of the location of the lot in question in the extraterritorial jurisdiction of a city may make such lot subject as well to the counterpart provisions in chapter 232--sections 232.0046 and 232.0047--which require, in certain counties, county certification of compliance with plat requirements in order to have utilities connected. *See Le Cour Du Roi, Inc. v. Montgomery County*, 698 S.W.2d 178 (Tex. App.--Beaumont 1985, writ ref'd n.r.e.); Attorney General Opinion JM-365 (1985) (county and city have concurrent subdivision regulatory jurisdiction in municipality's extraterritorial jurisdiction).

S U M M A R Y

If the municipal authority responsible for approving plats of subdivisions determines that a plat containing the land of a single lot owner was required to be filed by virtue of the subdividing of the larger tract of which the lot was a part, but that such plat was not prepared, reviewed or approved, it may not issue the certificate provided for by Local Government Code section 212.0115, and the entity providing utility services under section 212.012 may not connect utilities to the lot.

Yours very truly,

A handwritten signature in black ink, appearing to read "William Walker", with a long horizontal flourish extending to the right.

**William Walker
Assistant Attorney General
Opinion Committee**