



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 6, 2022

Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
1917 South Interstate 35
Austin, Texas 78741-3702

Opinion No. KP-0409

Re: Whether a licensed professional engineer is authorized to certify a subdivision plat in specific circumstances (RQ-0440-KP)

Dear Dr. Kinney:

On behalf of the Texas Board of Professional Engineers and Land Surveyors, you ask about a potential conflict between the Professional Land Surveying Practices Act (the “Act”) and a statutory provision relating to county subdivision platting.¹ As background, subsection 232.023 of the Local Government Code provides that in certain counties, subdividing land into two or more lots primarily for residential use requires the preparation of a plat under certain circumstances. *See* TEX. LOC. GOV’T CODE §§ 232.022(a)–(b), .023(a). Subsection 232.023(b)(1) requires the plat to “be certified by a surveyor *or* engineer,” but you explain that the Act “reserves the platting of subdivision . . . land to only registered professional land surveyors.” *Id.* § 232.023(b)(1) (emphasis added); Request Letter at 3; *see also* TEX. OCC. CODE § 1071.251(b). Thus, you suggest that if an engineer certifies a plat in accordance with subsection 232.023(b)(1), the engineer might be engaged in the unauthorized practice of land surveying in violation of the Act. *See* Request Letter at 1. You ask four questions in relation to this quandary, but the underlying issue is how to reconcile the apparent conflict between the two statutes. *Id.* at 3–4. We direct our analysis accordingly, focusing first on what it means for a plat to “be certified” for purposes of subsection 232.023(b)(1).

¹*See* Letter from Lance Kinney, Ph.D., P.E., Exec. Dir., Tex. Bd. of Prof’l Eng’rs & Land Surveyors, to Honorable Ken Paxton, Tex. Att’y Gen. at 1–4 (Nov. 16, 2021), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2021/pdf/RQ0440KP.pdf> (“Request Letter”).

We begin with the text of subsection 232.023(b), which sets forth the requirements for a plat² under section 232.023:

(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

²For purposes of county subdivision regulations, a “plat” is “a map, chart, survey, plan, or replat containing a description of the subdivided land with ties to permanent landmarks or monuments.” TEX. LOC. GOV’T CODE § 232.021(8).

(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.

TEX. LOC. GOV'T CODE § 232.023(b). Subsection 232.023(b) uses the word “certify” or “certification” in several subparts which specify the person doing the certifying and the information being certified. *See id.* §§ 232.023(b)(7) (requiring an attached document prepared by an engineer “certifying that the water and sewer service facilities proposed under Subdivision (6) are in compliance with” certain model rules adopted under the Water Code), .023(b)(11) (requiring “a certification by” a registered surveyor or engineer regarding whether any area of the subdivision is in a floodplain), .023(b)(12) (providing for a “certification that the subdivider has complied with” the overall requirements of section 232.032 and that minimum state standards for water, sewer, electric and gas connections are, or will be, met). But subsection 232.023(b)(1), the subpart you ask about, states generally that the plat must “be certified,” including no further information or context and no definition by the Legislature that would explain the scope of term’s meaning. *Id.* § 232.023(b)(1).

When the Legislature does not define a term, a court uses the plain and ordinary meaning of the term and interprets it within the context of the statute. *Hogan v. Zoanni*, 627 S.W.3d 163, 169 (Tex. 2021). To “certify” means to “attest or confirm in a formal statement” or to “officially recognize (someone or something) as possessing certain qualifications or meeting certain standards.” NEW OXFORD AMERICAN DICTIONARY 284 (3rd. ed. 2010); *see also* BLACK’S LAW DICTIONARY 275 (10th ed. 2014) (defining the term to mean “authenticate or verify in writing; to

attest as being true or as meeting certain criteria”). This meaning is consistent with the portions of subsection 232.023(b) mentioned above, in which the Legislature identified the specific information to be attested to or confirmed and the person who must provide the attestation or confirmation.

But other subparts of subsection 232.023(b), such as subpart (b)(2) (defining the subdivision by metes and bounds) and subpart (b)(3) (locating the subdivision with respect to an original corner of the original survey), constitute professional land surveying. *See* TEX. OCC. CODE § 1071.002(6)(A)(ii) (defining professional surveying to include applying specialized knowledge to the measurement or location of various elements to determine areas and volumes for “platting and laying out land and subdivisions of land”). And the Legislature provided that professional surveying tasks may be performed only by a professional land surveyor and not by an engineer. *See id.* §§ 1071.251(b) (restricting the practice of land surveying to persons registered, licensed, or certified under the Act), 1071.351(b) (requiring land surveyors to obtain an authorized seal for their professional work), 1001.003(a)(2), (c)(6) (providing that an engineering survey otherwise permitted under the Texas Engineering Practice Act “does not include the surveying of real property or other activity regulated under [the Professional Land Surveying Practices Act]”). Thus, reading subsection 232.023(b)(1) to allow a land surveyor *or* an engineer to attest that the land surveying tasks meet the professional standards for the practice of land surveying would be inconsistent with the legislative intent restricting such tasks to land surveyors only.

In construing a statute, a court’s goal is to ascertain the Legislature’s intent and give it effect. *El Paso Educ. Initiative, Inc. v. Amex Props., LLC*, 602 S.W.3d 521, 531 (Tex. 2020). A court interprets statutes together and harmonizes them, if possible, to give effect to all the statutory provisions. *See State v. Wood*, 575 S.W.3d 929, 935 (Tex. App.—Austin 2019, pet. ref’d). Apparent from the face of the statute, the subdivision platting process in subsection 232.023(b) requires the participation of a land surveyor—because of the specific land surveying tasks required—and an engineer, because subsection 232.023(b)(7) expressly requires an engineer. Furthermore, subsection 232.023 is part of subchapter B, a subchapter which the Legislature added to the Local Government Code to address the proliferation of certain economically distressed subdivisions. *See* Act of May 23, 1995, 74th Leg., R.S., ch. 979, § 4, 1995 Tex. Gen. Laws 4895, 4896–4906. The Legislature made a number of findings in the bill that added subchapter B, noting the lack of adequate water and sewer services in these areas and declaring that the location, proliferation, and conditions in the unregulated subdivisions posed “a clear and substantial threat to the environment” that required “adequate remedial steps” in order to address the “compelling crisis.” *Id.* § 1 at 4895–96. Given this context, it is unlikely the Legislature intended to permit a regulated profession such as land surveying to be performed or certified by someone other than a member of that profession. While “the terms ‘and’ and ‘or’ are not interchangeable in general, they may be interpreted as synonymous when necessary to effectuate the legislature’s intent or to prevent an ambiguity, absurdity, or mistake.” *State v. Gammill*, 442 S.W.3d 538, 541 (Tex. App.—Dallas 2014, pet. ref’d). A court would likely construe subsection 232.023(b)(1) to require both a land surveyor *and* an engineer to formally attest to the requirements of the subdivision platting process corresponding to their respective areas of professional expertise or as otherwise provided in other subparts of subsection 232.023(b). Accordingly, no conflict exists between subsection 232.023(b)(1) and the Act.

S U M M A R Y

Subsection 232.023(b) of the Local Government Code establishes county subdivision platting requirements under certain circumstances and provides in subsection 232.023(b)(1) that the plat must be certified by a land surveyor or an engineer. Given the context of subsection 232.023(b) as a whole, a court would likely construe subsection 232.023(b)(1) to require both a land surveyor *and* an engineer to formally attest to the portions of the subdivision platting requirements corresponding to their respective areas of professional expertise or as otherwise provided in other subparts of subsection 232.023(b). Accordingly, no conflict exists between subsection 232.023(b)(1) and the Professional Land Surveying Practices Act.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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