

## VII. Subdivision Regulations

Subdivision regulations have a large impact on how land develops. While zoning regulations determine acceptable uses of land, it is the subdivision regulations that determine the physical layout of development. "Subdivision regulations direct the separation of one or more parcels of land from a larger parcel, setting standards for ultimate development."<sup>30</sup> They address the pattern of lots and the location of streets. "Subdivision regulations often give a community its only opportunity to ensure that new neighborhoods are properly designed."<sup>31</sup> Like zoning, the subdivision regulations are the law. Subdivision regulations are another implementation tool to help fulfill the goals of the comprehensive plan.

It should be noted that subdivision regulations and zoning ordinances can be combined into a single set of regulations often called a "land development code." A land development code offers the advantage of a more integrated or coordinated tool for land use management.

### A. Function

Subdivision regulations are intended to address the following topics:

- Subdivision location and layout consistency with the county comprehensive plan or a city master plan
- Street locations and continuity, and capacity to facilitate fire protection
- Drainage and utility easements or rights-of-way
- Dedication and reservation of land for public use
- Hazard mitigation
- Standards for public improvements such as streets, curb and gutters, water and sewage facilities.
- Provisions to ensure completion of public improvements
- Provisions for recreation, light, air, avoidance of congestion
- Easements for building setback lines

### B. Distinctions

As noted in Chapter IV, North Dakota enabling legislation gives cities and counties the authority to regulate the subdivision of land, but not townships. The following paragraphs summarize the main points about subdivision regulation in North Dakota:

- For cities, planning commissions must adopt regulations governing the "subdivision of land" that provides for proper arrangement of streets in relation to existing and planned streets and to a master plan before exercising the powers conferred by Chapter 40-48 of the NDCC.

- For counties, planning commissions appointed to exercise county zoning authority are to prepare proposed regulations controlling the subdivision of land.
- The area in which counties may regulate subdivision excludes any area within the corporate limits of a city. The area within a city's extraterritorial zoning authority is also excluded.<sup>32</sup>
- As with county's zoning authority, their subdivision regulations may not "prohibit or prevent the use of land or buildings for farming or any of the normal incidents of farming."<sup>33</sup>
- A county requiring the approval of plats as a prerequisite to the subdivision of land must request a township board of supervisors and the county planning commission make a recommendation to the governing body on the plat request prior to making a decision about the plat. However, these recommendations are not binding on the county board of commissioners.
- A county has the option to regulate the subdivision of land in one of two ways: either by requiring the approval of plats as a prerequisite to the subdivision of land; or without the requirement for plat approval prior to the subdivision of land.<sup>34</sup>
- A city has territorial jurisdiction over the subdivision or platting of land within the corporate limits of the city, and the area outside its municipal boundaries over which it has extended, by ordinance, its subdivision regulations. The extent of this extension of subdivision regulatory authority is limited by certain rules pertaining to the population size of a community and other factors.<sup>35</sup>
- The exact guidelines about the agency (governing body or planning commission) having authority over the division of land are not clear. If there is any question pertaining to this issue, it is best to consult an attorney. It would also make sense to submit an inquiry to the Attorney General's office to clarify some of the finer points.
- A city planning commission may contract for services as it may require, however the governing body has the authority to set the limits of the funding available to the planning commission. The basis of funding for the planning commission may include a tax levy as described by NDCC 57-15-10 subs. 14. (See 40-48-07.)

### C. Components

The North Dakota Century Code does not address the components of subdivision regulations to the extent it does for zoning regulations. One may, however, infer components from the stated purposes and authority of subdivision regulations.

Typically, subdivision regulations have the following parts:

- Design standards for land parcels – establish minimum lot sizes, easements required, minimum right-of-way widths and other street requirements, drainage plan requirements, and other similar types of requirements.

- Criteria establishing the conditions under which the division of land will be allowed – identify the circumstances under which platting is required; define the types of improvements which must be provided before land can be divided or sold; and similar types of requirements.
- Contents of the plat – define what the plat must contain including such details as the relationship of the land to one hundred year flood elevations; adjacent land parcels; existing and proposed easements; proposed property lines and pins; property descriptions; standards of measurement; and similar types of requirements.
- Administrative and enforcement procedures – explain the processes that must be followed for the review and approval of plats; establish procedures to deal with cases where plats are not developed in accordance with approved plans; and establish guidelines pertaining to variances.
- General provisions – include definitions of key words, and the geographic extent of its authority.
- Introductory provisions – include items such as the title and purpose of the ordinance; the legal basis for its authority; and the effective date.
- Exactions – the required dedication of land for easements, right-of-way, and park land or other public uses.

## D. Procedures

### 1. *Adoption*

The process for adoption of subdivision regulations has been described in general terms in chapter II. It is recommended that an attorney be consulted about the adoption process prior to its initiation in order to reduce the potential for dispute. As with zoning regulations, a public hearing process must be followed prior to the adoption of subdivision regulations.

### 2. *Administration*

Once subdivision regulations have been adopted, it must be applied to the jurisdiction in order to accomplish its objectives. Typically, a person or local government department is appointed by the governing body to act as the administrator of the regulations. This person or agency functions in several capacities, including:

- Serving as the initial point of contact for any person having questions about platting.
- Acting as a liaison or point of contact between an applicant and the government agencies involved in the review process.
- Explaining the platting requirements and the purpose of the requirements to both the applicant and relevant government agencies.
- Reviewing plat applications and preparing reports and agendas for proposed plats.

- Maintaining appropriate records of all proceedings.

However, the review process is also aided by county or city attorneys, engineers, and other staff people.

### 3. *Variances*

The NDCC contains language that allows some change from the literal application of the ordinance. This “variance” process has the potential to be misused, often times for over-use. A good rule of thumb is that when a variance is routinely applied to an approval process, it is time to re-examine the ordinance and change its language so that what is commonly being approved via variance can become an accepted situation within the ordinance. This allows the community and the applicants a cleaner, less time-consuming process to permit that which is being allowed through the variance process. While the term “variance” is not used in the enabling legislation, a similar function is conferred to County Commissions by NDCC 11-33.2-08.

### 4. *Plat Approval*

The main function of subdivision regulations is to manage the division of land and approve proposed plats upon conformance with all relevant requirements. The basic plat approval process includes the following steps:

- Sketch Plan – The applicant presents a conceptual plan or general layout of the proposed plat in terms of streets, lots, and blocks. The sketch plan also shows existing conditions, surrounding land uses, and characteristics of the land where the proposed plat will be located. The planning staff review the proposed conceptual design and existing site conditions, and comment on issues to resolve. If it appears that the proposed concept will be able to meet local government requirements, the applicant will move on to the next phase: Preliminary Plat.
- Preliminary Plat – The applicant presents more technical information such as the exact measurements, the names of the subdividers, legal descriptions, the name of the plat; locations of easements; statement of proposed use of the subdivision; means to provide for streets blocks, lots, street names, etc. At this stage, the administrator circulates the proposed plat to a technical committee for their review of such issues as consistency with stormwater drainage plans; future street network requirements; and future land use plans and zoning requirements. The planning/zoning commission reviews the plat and recommendations from the technical committee, and considers major issues such as the following:
  - Does the subdivision conform to the comprehensive plan?
  - Are public services available to serve the proposed development?
  - Does the subdivision fit the established capital improvements plan?
  - Is the public capable of providing the supporting services for the proposed development?
  - Are there any outstanding problems unique to the proposal which might threaten the public welfare?

- Does the subdivision conform to the requirements of the subdivision regulation?

Typically, the applicant will receive preliminary plat approval with conditions which must be met in order to receive final plat approval. If the preliminary plat is approved (with or without conditions), the applicant can move on to the final stage: Final Plat.

- Final Plat – The applicant now prepares a final version of the plat which addresses all concerns noted in the previous review process, and which provides all final details required by the subdivision regulations. At this stage, the applicant typically must: provide proof of a clear title to the property to be subdivided; provide any required guarantees for the installation of required improvements; transfer titles for land being dedicated to the public; and meet such other conditions as were required during the preliminary plat review process. An applicant may wish to phase the development of the area approved in the preliminary plat in order to reduce the upfront cost of development. It is typically allowable to present only a part of the preliminary plat for approval as a final plat as long as this phasing is consistent with the capital improvements plan of the local government. As each phase of a final plat is presented for approval, it should be evaluated for consistency with the preliminary plat as approved. When it has been determined that a final plat meets all the requirements, it is forwarded to the local governing body for approval.

Subdivision regulations often contain a shorter or less rigorous process for small subdivisions such as lot splits.

##### *5. Enforcement*

While subdivision regulations generally do not have the same type of enforcement issues which zoning regulations do, there are enforcement issues. It is necessary to state in the text what the consequences of non-compliance are under state law. One of the stipulations of most subdivision regulations is that no land shall be sold until after the platting process has been completed. In most cases the local governing body retains the final authority to direct the enforcement of the regulations. One of the critical issues in subdivision regulations is the appropriate implementation by the applicant of the proposed and required improvements to the subdivision. As noted previously, a governing body may require guarantees such as a surety bonds for improvements. If an applicant fails to properly install the required improvements, the local government may make the improvements itself and pay for the cost of the improvements from the surety bond. A local government also retains the right to enforce its regulations like any other ordinance.

## 6. *Appeals*

An appeals process pertaining to subdivision regulations of cities is not specified in the NDCC. However, the same language which pertains to county zoning regulations applies to county subdivision regulations. Any person or persons who are dissatisfied by platting decision of the governing body may appeal the matter to a district court. The process for an appeal to district court is identified in NDCC 28-34-01.

## 7. *Amendments*

As noted earlier, subdivision regulations are likely in need of fine-tuning or even major changes over time. The NDCC provides a process for amending subdivision regulations. Generally, this process is the same as the process for enacting the subdivision regulations in the first place. Key aspects of the process include review and recommendation by the planning/zoning commission, public hearings with appropriate public notice, and adoption by the governing body.