CHAPTER 9
SUBDIVISION CONTROL ORDINANCES

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The term “subdivision” generally means the process of dividing land into smaller pieces that are easier to sell or develop. While a subdivision is most commonly thought of as a residential neighborhood, land is also subdivided for the purpose of commercial and industrial development. This chapter will not only discuss the history behind subdivisions, but also why and how subdivisions are regulated.

**HISTORY OF SUBDIVISIONS**

Documented land subdivision began during the early settlement of the United States. Back then, property was originally conveyed with lengthy legal descriptions using physical features of the local geography (trees, rivers, rocks), along with directions and distances measured with tools known as links, chains, and rods. Obviously, this system and the tools used varied from place to place and there was minimal consistency. Thankfully, the United States Public Land Survey System (USPLSS) was developed in the early 1800s to establish the uniform grid system of Sections, Townships, and Ranges and forms the foundation for the legal descriptions that we utilize today.

By the 1900s, the demand for smaller pieces of property increased as areas began to urbanize. Using the USPLSS as a base, the Lot and Block survey system evolved as an efficient way to allow cities and towns to expand into the surrounding rural areas. Property owners would subdivide their large properties into smaller blocks and lots, file the resulting “plat” with the official government record keeper, and then sell these pieces of property to buyers. While this method could efficiently identify and convey land, it did not take into consideration the impact of development and expansion on the communities that these lot splits generated.

**PURPOSE OF SUBDIVISION REGULATIONS**

In an effort to resolve the issues generated by growth and development that eventually resulted from divisions of land, communities began adopting subdivision regulations. These regulations were implemented to ensure that there are adequate facilities such as parks, streets, utilities, drainage, utilities, and other infrastructure to handle the development of the lots created by the subdivision.
In addition to ensuring adequate facilities exist, subdivision regulations were established to address the long-term maintenance of this infrastructure. It is common for public infrastructure to be dedicated (or given) to the local government, so this means that the local government would be responsible for maintenance. Therefore, if the local government is assuming the responsibility of long-term maintenance, the infrastructure that developers are installing needs to be constructed to certain minimum standards to ensure quality construction and longevity, thereby avoiding undue hardship on taxpayers in the future.

Unfortunately, it is easy to get caught up in making sure adequate infrastructure and utilities are provided and overlook the character of the subdivision. In addition to infrastructure, the subdivision process is one of the few opportunities for local government to influence physical design and character of a development. In Chapter 8 of *The Practice of Local Government Planning*, Richard Ducker states,

> “The manner in which land is subdivided, streets are laid out and lots and homes are sold sets out the pattern of community development for years to come. Once land is divided into building sites and streets, land ownership is only rarely consolidated, land is rarely re-subdivided, and a particular site is only rarely redeveloped. Subdivision regulations often give a community its only opportunity to ensure that new neighborhoods are properly designed.”

Establishing local subdivision regulations is critical in the process of developing and/or maintaining a certain community character as well as to promote the overall public health, safety, and general welfare.

**SUBDIVISIONS - DEFINITIONS AND TYPES**

Before considering subdivision regulations further, it is necessary to establish a clear and concise definition of “subdivision” and become familiar with the common types of subdivisions.

Basically, a subdivision is the division of a lot, tract, or parcel of land into two or more lots, tracts, parcels or other divisions of land for sale, development, or lease. Beyond this basic definition, there are many types of subdivisions based on intent of the subdivision and/or the intended land use. Some of the most common types include metes and bounds, residential, conservation, TND, conventional, commercial, and industrial. Additionally, subdivisions are often classified into major and minor subdivisions, which are typically defined locally.

**Minor and Major Subdivisions**

Many subdivision control ordinances define a “minor subdivision” and a “major subdivision.” While this definition is up to each individual community, a minor subdivision of land usually has a maximum number of lots and does not necessitate the construction or installation of new infrastructure. These can also be called “a simple subdivision of land.” For example, a minor subdivision could be defined as a subdivision that includes five or fewer lots and does not require construction of new public or private public ways or the installation of utility infrastructure. A major subdivision is usually defined as any subdivision of land that does not meet the definition of a minor subdivision.
Developers should be discouraged from creating a series of minor subdivisions as a way of bypassing the requirements of a major subdivision. The simplest way to do this is to specify that lots created as part of a minor subdivision of land are cannot be further separated unless the procedure and requirements for a major subdivision are followed.

Metes and Bounds Subdivision

The Metes and Bounds Subdivision occurs when a property owner simply divides the property into smaller parcels that are described with direction and distance in a legal description. The resulting legal description is then recorded in the office of the county recorder to make the lot splits official. This is a common practice in agricultural areas where large tracts of land still exist. While the resulting lots are conveyable, this type of subdivision occurs without local subdivision approval and no assurance that the resulting lots can be developed. Depending on the local subdivision regulations, an unknowing buyer who wishes to develop their new metes and bounds property may discover that it doesn’t meet the local development standards and therefore cannot obtain a building permit. Despite this potential stumbling block, there is nothing in Indiana law that legally prevents this practice from occurring. To circumvent this issue, some communities have utilized a couple of strategies:

- **“Rule 12” (865 IAC), the State Board of Regulation for Professional Surveyors:** Under Rule 12, it is implied that a licensed surveyor is bound to abide by the local zoning and subdivision regulations for the area in which they are performing services. Under this approach, it is felt that a surveyor who is asked to prepare a lot split should inform their client that the subdivision process through the local plan commission is warranted before the split can be recorded.

- **Inter-Departmental Agreements:** Some planning agencies have successfully worked with their local Recorder’s Offices to alleviate non-conforming lot splits. In these offices, authorization of a planning official is required before lot splits can be recorded. This sign-off can be as simple as an accompanying statement noting that the resulting lots may or may not be in compliance with the local zoning and subdivision regulations and therefore may not be deemed as buildable lots. Other communities prohibit lot splits without going through the required subdivision process. Either way, the subdivider and the buyer are put on notice that additional steps may be necessary.

Residential Subdivision

A Residential Subdivision is property that has been subdivided with local approval in accordance with the applicable development standards for residential use. This type of subdivision is common in the suburbs of cities and towns and lots typically vary slightly in size to accommodate single-family and/or two-family homes. A residential subdivision usually contains its own system of streets, drainage facilities, and other infrastructure, and may or may not include open space and recreational amenities.

Quick Quiz: What types of subdivisions are identified in your community’s subdivision control ordinance?
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- **Conservation Subdivision**: A Conservation Subdivision is a type of residential subdivision that is characterized by clustering the developable lots in certain areas of the parent tract of land and preserving/conserving the remaining areas on the parent tract. These areas might be conserved because they are valuable natural habitats, beautiful woodlands, floodplain, or simply as an open space amenity to the lot owners. The key is that these undeveloped lands are actually platted as part of the subdivision, are never divided into lots, are never developed, and are maintained by an owners association or dedicated to the local government to maintain as a public park.

- **Traditional Neighborhood Development (TND)**: TND subdivisions are historically found in the older parts of communities. Often, the original plat of a town/city was created before land use patterns were dominated by the automobile. As a result, traditional subdivisions tend to be characterized by mixed uses, smaller lots and setbacks, gridiron street patterns, and narrow alleys. The TND subdivision has recently been re-invented to include these same design principles. Like the older parts of cities, these subdivisions create a mix of uses including retail, office, and residential while creating a neighborhood with a pedestrian emphasis. Typically, home sites will have rear-loaded garages off of alleys. The home design emphasizes front porches and streetscape that encourages people to recreate in the front yard. These types of development tend to welcome a mixture of uses that zoning has historically separated.

- **Conventional Subdivisions**: A conventional subdivision is most typically found in suburban areas. These subdivisions were first created after World War II during the first tier of suburban development. In the 1960s, traditional gridiron street patterns gave way to curvilinear street patterns in an attempt to soften the look of neighborhoods and to cater to automobile travel. Many new subdivisions today continue to use the conventional subdivision style. However, contemporary practice also incorporates modification of existing conventional subdivisions to enforce greater connectivity and walkability standards. In the future, the lines between conventional and traditional subdivisions may be blurred, reducing the need to differentiate between the two.
Commercial Subdivision

Commercial Subdivision. A Commercial Subdivision is property that has been subdivided with local approval in accordance with the applicable development standards for commercial use. Commercial lots can vary greatly in size depending on the type of uses they are designed for. A commercial subdivision usually fronts on a major road and has driveways with direct access to these roads. Lots may be independent for one business/structure, or several lots may be connected with shared parking and signage.

Industrial Subdivision

An Industrial Subdivision is property that has been subdivided into lots or blocks (for further subdivision) with local approval in accordance with the applicable development standards for industrial use. By the nature of industrial land uses, industrial lots can vary greatly in size depending on the type of uses they are attracting. An industrial subdivision is usually in proximity to major thoroughfares and interstates in order to allow convenient access for large trucks and semis.

THE SUBDIVISION CONTROL ORDINANCE

A community’s authority to adopt a local subdivision control ordinance (SCO) relating to the character and design of subdivisions is controlled by Indiana State Statute, IC 36-7-4-700 series. Furthermore, State Statute specifies what standards the SCO must contain and what standards the SCO may contain.

Required Standards

Indiana State Law outlines the standards that the SCO must contain. These standards are:

1) The minimum width, depth, and area of lots in the subdivision;
2) Public way widths, grades, curves, and the coordination of subdivision public ways with current and planned public ways; and
3) The extension of water, sewer, and other municipal services.
Optional Standards

Indiana Code also outlines the optional standards that the SCO may contain. These include standards for the allocation of areas to be used as:

1) Public ways;
2) Parks;
3) Schools;
4) Public and semi-public buildings;
5) Homes;
6) Businesses;
7) Utilities (size/capacity, overhead vs. underground, the need for easements, etc.); and
8) Any other standards related to the purposes of subdivision control.

Other Standards

Other standards that communities often establish as part of their SCO address more specific construction standards as well as community character. These standards include:

1) Access – how and where driveways connect to public streets;
2) Open Space – the minimum area, water features, and amenities contained in the open spaces;
3) Street Lighting – the required placement and fixtures used for lighting roadways;
4) Erosion Control and Stormwater – managing soil erosion, water run-off, and the disturbance of protected areas during construction;
5) Landscaping – establish natural buffers between developments as well as internal vegetation such as street trees, entrance improvements, etc.;
6) Street Name and Development Name – review of street names and development names to ensure compatibility with the local Emergency 911 system;
7) Street Signs – establish standards for street signs to set the character of a development or community;
8) Owner Associations – require professional management of the public areas and collection of resident/owner assessments to ensure the longevity of shared spaces and infrastructure; and
9) Dedication of Public Infrastructure, Surety – the procedures for accepting roads and other infrastructure by the legislative body for public use and maintenance as well as performance and maintenance surety during construction.
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PROCEDURES FOR SUBDIVISION APPROVAL

Per IC 36-7-4-701, the legislative body (county commissioners or town/city council) adopts the ordinance for subdivision control after the plan commission has made their recommendation to them. After adoption of the SCO, the plan commission has exclusive control over the review and approval of all subdivisions covered by the SCO.

Per statute, the subdivision review process is broken into two parts: Primary Plat and Secondary Plat.

Primary Plat

The Primary Plat is the initial plat, plans, and supporting documentation showing the proposed layout of the subdivision in conformance with the zoning ordinance and SCO. Per statute, the minimum steps for primary plat consideration include:

1) Pre-Application: Many communities utilize a “pre-application” step in the primary plat process. While not required by state statute, this step has two purposes:
   • It helps the subdivider become familiar with the local zoning and subdivision process; and
   • It provides the planning staff with necessary information about the proposed project in advance of filing the petition.

2) Application: The applicant will submit an application for Primary Plat in accordance with the local jurisdiction’s application procedures. The application may also include a request for waivers from any of the SCO standards that can’t reasonably be met (see Waivers and Conditions below).

3) Internal Review: The Staff of the plan commission will review the application and plans for technical conformity with the zoning ordinance and SCO.

4) Set Public Hearing Date: Within 30 days of receiving a completed application, Staff shall announce the date of the public hearing before the plan commission and public notice shall and notice to surrounding property owners shall be provided.

5) Plan Commission Hearing: At the public hearing, the plan commission shall determine whether or not the application and plat comply with the standards of the SCO and whether any requested waivers should be granted.
   • If the plans are found to meet the standards of the SCO, the applicant shall be notified of the approval along with any conditions of approval (see Waivers and Conditions below). The applicant may then proceed with filing the Secondary Plat.
   • If it is determined that the plans do not meet the standards of the SCO, the applicant shall be notified of the reasons for disapproval and the plans’ deficiencies.

6) Appeal: The applicant or interested party may appeal the plan commission’s approval or disapproval of the primary plat within five days of the decision.
Secondary Plat

The Secondary Plat is the final plat, supporting documentation, and detailed engineering drawings of the proposed subdivision that is in conformance with the zoning ordinance, SCO, and substantially conforms to the approved primary plat. The plan commission may grant approval or they may delegate this authority to Staff or a Plat Committee. No notice or hearing is required. The typical steps for secondary plat consideration usually includes:

1) **Application:** The applicant will submit an application for Secondary Plat in accordance with the local jurisdiction’s application procedures and filing requirements.

2) **Internal Review:** The staff of the plan commission will review the application and plans for technical conformity with the zoning ordinance and SCO.

3) **Secondary Plat Consideration:** The plan commission, plat committee, or staff shall consider whether or not the plans comply with the SCO. Plans are generally revised by the applicant until full compliance is achieved for approval.

4) **Record Plat:** Once approved, the applicant submits the final plat for signature by official designated in the SCO, and then records it.

5) **Begin Construction and/or Post Surety:** After recording the plat, the applicant may begin construction and/or post performance surety in accordance with the provisions of the SCO. Performance surety ensures that the required improvements will be satisfactorily completed.

Waivers and Conditions

Allows the plan commission to grant waivers of the development standards specified in the SCO, which provides some flexibility if the standards conflict with what the plan commission would consider to be desirable design.

In addition, Indiana State Law allows the plan commission to impose conditions as part of the approval of a primary plat. These may include:

1) The manner in which public ways shall be laid out, graded, and improved;
2) A provision for water, sewage, and other utility services;
3) A provision for lot size, number, and location;
4) A provision for drainage design; and
5) A provision for other services as specified in the SCO.

It is important to note that Indiana Code does not allow the plan commission to waive development standards that are contained in the zoning ordinance, only those of the SCO. To change the applicability of the development standards in the zoning ordinance, an applicant would have to first seek relief from the board of zoning appeals before proceeding with an application for primary plat.
Sometimes, a developer may propose that the infrastructure for their development should be private and therefore, should not have to be developed to the required public standards. It is up to the plan commission to decide if improvements are required to be public or may be considered private. Regardless of what they decide, the long term maintenance plan of private improvements should be clearly defined to ensure that the public doesn’t inherit substandard infrastructure in the future.

Covenants and Restrictions
A covenant is a type of contractual agreement between the property owners in a subdivision that limits what the individual owners of the land can do with their property. They are intended to enhance property values by controlling development. A person who purchases a lot in a subdivision with restrictive covenants must honor the restrictions as part of their purchase agreement. If a property owner violates a covenant, another property owner (neighbor) may sue the offender in order to enforce the restrictions.
The governing mechanism of the covenants is usually an established “owners association”, in which each owner of a lot is required to become a member. The local plan commission/local government is not responsible for enforcing covenants, so they typically spell out a mechanism for enforcement. The developer typically acts as the owners association (and the enforcement authority) until responsibilities are turned over to the property owners within the development (usually when a pre-determined majority of lots are sold). As part of the review process, the SCO may require that Staff review the proposed covenants for a subdivision to ensure they do not conflict with local ordinances and contain the appropriate provisions for maintenance of infrastructure, landscaping, and common land.

Plat Expiration
State statute does not stipulate any type of expiration for the approval of primary plats or unrecorded secondary plats. Because development standards may change over time, it may be reasonable for the SCO to outline a policy on how long the approval of a primary plat or an unrecorded secondary plat is valid to ensure that when development does commence, it is in compliance with the most current ordinances that are in place. Many SCOs stipulate that the approval of a primary plat expires within one year if a secondary plat has not been approved within that time. In addition, some SCOs require that a secondary plat should be recorded within two years of approval to ensure compliance with current ordinances and development standards.

Plat Amendments, Replats, and Plat Vacation
The plan commission has authority over all plat amendments, replats, and plat vacations.

**Plat Amendment and Replat**
A plat amendment or a replat is a change in a previously recorded subdivision plat that affects the street layout, easements, area reserved for public use, or any lot line. The only difference between a plat amendment and a replat is the degree to which the plat is amended. The process for consideration is the same as that for a primary plat and secondary plat.

**Plat Vacation**
A plat vacation is the process to legally void all or a portion of a recorded subdivision. A petition for plat vacation may also include a request to vacate any recorded covenants that are part of the plat. The request to vacate goes before the plan commission at a publically noticed public hearing.

The plan commission may approve the vacation of all or part of the plat only upon a determination that:

1. Conditions in the platted area have changed so as to defeat the original purpose of the plat;
2. It is in the public interest to vacate all or part of the plat; and
3. The value of that part of the land in the plat not owned by the petitioner will not be diminished by the vacation.
Additionally, the plan commission may approve the vacation of all or part of the subdivision covenants only upon a determination that:

1) The platted area is within an area needing redevelopment and the covenant vacation would promote a recovery of property values in the area needing redevelopment by allowing or encouraging normal development and occupancy of the platted area;

2) The covenant vacation is needed to secure for the public adequate light, air, convenience of access, or safety from fire, flood, or other danger; or

3) The covenant vacation is needed to lessen or avoid congestion in public ways.

Financing Improvements

**Land Dedication**

In Indiana it is most common for the developer to bear the cost for the right-of-way (which eventually becomes public or “common” land) and the cost of the infrastructure improvements developed onsite to serve the lots the developer is creating: streets, utilities, drainage, sidewalks, lift stations, hydrants, etc. A developer should be able to recoup these costs in the sale of the individual lots. The right-of-way and infrastructure is “dedicated” to the local government for public use. The local government bears the cost of perpetual maintenance of the infrastructure that becomes part of its existing systems. Should the local government require oversizing of lines/streets to accommodate future growth unrelated to the specific subdivision being approved, it should be prepared to bear the additional cost.

**Off Site Improvements**

Occasionally, improvements are required off the site of the subdivision. For instance, a large residential subdivision or a commercial subdivision may require the addition of a deceleration lane or a turning lane on a street outside of the actual subdivision. Generally, the developer bears the cost of these improvements which are necessitated by the new subdivision. There might be some cases where a new subdivisions necessitates the need for a facility that is common to the community. In these cases, the developer bears a proportionate share of the costs of providing common facility.

**Fees in lieu of Dedication**

Some SCOs call for developers to pay fees in lieu of dedicating land for a specific improvement. For example, it may be determined that a smaller subdivision does not warrant the addition of a new park, yet a park is desired. Rather than the developer setting aside land for a park, an arrangement can be made in which the developer pays to finance a portion of the new park. The SCO must be specific in how these fees are calculated and the fees must be used for the intended purpose.
Condominiums

A condominium development is real estate in which a portion is designed for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of the portions. In Indiana, condominiums were formerly referred to as “horizontal property regimes.” Indiana Code states that condominiums are exempt from local SCOs. The land stays under one ownership interest while the buildings located on that undivided ground are sold to homeowners.

The separate regulation of condominium development means local government cannot use the SCO for regulating the look of this type of development. If a local government wishes to influence and regulate the design and implementation of condominium developments, it is important that the local zoning ordinance institutes development controls for this type of land use.

Adding requirements in a unified development ordinance and requiring all land development to go through a planned development process assures that condominiums can be required to meet municipal goals such as street design and other elements typically found in the subdivision control code.