

Duties and Responsibilities of the Clerk in Recording Plats of Survey in the Real Property Records of the Clerk of the Superior Court

I had a chance to talk with George Zier, the Assistant Attorney General, a few years ago, and he gave me this opinion.

The Honorable Larry Ellison Clerk of Superior Court
Glynn County P.O. Box 1355 Brunswick, Georgia 31521

RE: Duties and Responsibilities of the Clerk in Recording Plats of Survey in the Real Property Records of the Clerk of the Superior Court.

Our File No. 7700-MA-Jekyll Mitigation Property (10020146)

Dear Mr. Ellison:

In 1997, at the request of the Dawson County Clerk, we reviewed the applicability of local planning ordinances in light of the 1994 and 1996 revisions to the plat recording requirements of O.C.G.A. §15-6-67. In 2000, we also provided the same advice to the Clerk in Muscogee County. Because of some plat filing difficulties encountered by state agencies and the Board of Regents in certain recent transactions, we believe it would be helpful if the same information were also provided to you to explain the objectives behind the recent statutory changes, especially with respect to local planning commissions.

As you are aware, this section of the Code underwent multiple changes in the General Assembly, largely because of the situations involving local planning commission requirements. In addition, many of the difficulties encountered centered around the definition of a "plat of subdivision."

Previous versions of the plat recording statute permitted local governments to supplement the law with more restrictive requirements. The intent of the General Assembly in the 1994 and 1996 changes was to prevent local governments from adding such requirements for recording because such practices had resulted in widely varying standards from county to county.

In short, the new subsection (c) was to place a mandamus upon the Clerk to file of record any plat meeting the requirements of the statute, whether or not it met any or all the

requirements which might have been levied by a local government:

If the plat meets the requirements of subsections (b) and (d) of this Code section, it shall be the duty of the clerk of the superior court to file and record such map or plat or blueprint, tracing, photostatic copy, or other copy of a map or plat. O.C.G.A. §15-6-67(c) [emphasis supplied].

The effect of the change was to remove from the Clerk's responsibility any locally required ordinance enforcement role. Therefore, in almost all cases, state law preempts local ordinances in the arena of plat recording. This permits a uniformity of plat records statewide. For example, subsection (b) outlines the minimum requirements for plat size and legibility, the minimum features to be depicted, and adds certain required certifications as to accuracy. Of significance was the change which permits reproductions of plats, whether blueprints or photocopies, to be recorded so long as the registered surveyor (or county surveyor) who prepared the plat signs the copy in black ink across the surveyor's seal. These requirements of subsection (b) apply to all plats or maps submitted for recording.

O.C.G.A. §15-6-67(d) is the subsection at the root of the current controversy. If the map or plat is a "plat of subdivision," then it must be approved by the local planning commission or appropriate local government official. If the "plat of subdivision" does not have such approval, the clerk may not file or record the plat. However, there is also an exception. If the "plat of subdivision" does not create new streets or roads, or no utility improvements are required, or no new sanitary sewer lines or septic tanks are required, and the surveyor so certifies on the plat, then no new planning commission approval is required prior to filing for record.

Based upon local interpretations, some local officials were insisting that every plat with more than one tract on it be considered a "plat of subdivision" and have either a surveyor's certification or planning commission approval. These types of local interpretations were the specific evil which the General Assembly was seeking to remedy when the 1994 and 1996 amendments were enacted.

At the outset, none of the provisions of subsection (d) apply at all unless the plat is a “plat of subdivision.” Therefore, if the map or plat is not a “plat of subdivision,” planning commission approval (or the surveyor’s exemption certificate) is likewise not required. Therefore, the entire issue turns on a working definition for a “plat of subdivision” applicable to O.C.G.A. §15-6-67(d).

We have reviewed a number of references to subdivisions both in the county ordinances throughout the state, Georgia cases and legal treatises, and in other jurisdictions across the nation. Suffice it to say there is no single definition which emerges. However, there are four key characteristics of a plat of subdivision which extend back to the original surveys in Georgia when it was a Crown Colony. Accordingly, we can say with authority that all plats of subdivisions have all of the following characteristics:

- a. The subdivision consists of at least one larger tract of land being divided into two or more smaller tracts; and
- b. The subdivision consists of unimproved real property which is planned or intended to become residential property or lots for other purposes; and
- c. The subdivision creates or dedicates public areas for new streets, alleys, or parks.

Therefore, unless the proposed plat has all three of the above characteristics, it is not a plat of subdivision as delineated by subsection (d). Further, certain types of plats are clearly not plats of subdivision:

- i. A plat of a single lot in a subdivision is not a plat of subdivision;
- ii. A plat which divides a tract into one or more tracts, all fronting on a public road, is not a plat of subdivision;
- iii. A plat aggregating several smaller tracts into one larger tract is not a plat of subdivision.
- iv. Any plat, regardless of the creation or deletions of roads or parcels or utility lines, when the title is being vested in the State of Georgia, DOT, or the Board of Regents, because local ordinances of a city, county or political subdivision are not enforceable against the See O.C.G.A. §1-3-8; O.C.G.A. §1-3-3(8) (the definition of person does not include the State).

See also *City of Atlanta v. State of Georgia*, 181 Ga. 346(1935); *Neil-Millard Company v. Trustees of Chatham Academy*, 121 Ga. 208 (1904); *City of Marietta v CSX Transportation*, 272 Ga. 612, 614 (2000); and *Mayor & Council of Atlanta v. Central RR and Banking Co.*, 53 Ga. 120, 124 (1874). Similarly, there is a list of Attorney General opinions illustrating this result: *Ops. Att’y Gen.* 71-113, 73-164, and U76-59.

The application of the recording statute does not affect, in any way, the county’s ability to regulate the proper and lawful creation of a subdivision. All of the properly adopted ordinances and regulations of a county remain fully enforceable against the developer or owner seeking to create the subdivision. The fact of recording is not (and never has been) an indicia of legal compliance with the regulations governing subdivisions. Recording provides only public notice of the transaction. The only indicia that a subdivision is properly planned and approved is the planning commission approval.

Accordingly, the clerk should look for the three characteristics stated above. If any one of the three does not exist, or the plat falls within one of the exceptions listed above then plat is not a “plat of subdivision” and the clerk must record the plat if it meets the basic requirements set forth in O.C.G.A. §15-5-67(b). Only if all three of the characteristics do exist is the plat a “plat of subdivision,” and then the clerk should require either the planning commission approval or the exemption certification of the surveyor. Existing county subdivision regulations to the contrary are not enforceable, due to the 1994 and 1996 amendments to the state recording statute.

If you have any questions, please do not hesitate to contact me.

Sincerely,

GEORGE S. ZIER Senior Assistant Attorney General

I certify that this plat does not create any new streets or roads, requires no utility improvements, and requires no new sanitary sewer lines or septic tanks.

_____ Surveyor