



A SELECTED READING

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Regulation of Subdivisions

Cities today are witness to substandard living conditions, congested traffic, insufficient and often dangerous surface drainage facilities, inadequate sewage disposal systems, lack of recreational open spaces, unmarked and improperly lighted streets, confusing block and house numbering systems, frequent excavations in streets to install larger utility lines, deficient fire hydrants, narrow undersized lots and streets that don't match. These conditions speak forcefully for the public need for planned physical and economic growth in urban areas. Alabama cities and towns have statutory authority to prevent costly, haphazard growth in the future. Every municipality in Alabama is authorized to establish a planning commission which has the power to develop a master plan for the future growth of the city or town, to regulate the subdivision of lands and to recommend zoning laws to the municipal governing body.

The power to regulate subdivisions has been delegated to cities and towns by the state and is a part of the police power of the state. It arises from the public's right to have reasonable regulations for the common good and welfare and is commensurate with the public need. That these needs coincide with the orderly development of urban areas has been recognized at all levels of government.

For the most part, the powers expressly granted to planning commissions for the regulation of subdivisions have been upheld by the courts as reasonable exercises of the police power. The approval or disapproval of subdivision plats exercised in a standardized and clearly-defined manner based upon reasonable conditions is within the police power. It is generally recognized that the health and welfare of the subdivision dweller depends upon adequate streets and safe water, sewer and drainage systems and that those profiting from the subdivision development should, in a substantial way, assist in making initial improvements.

Specifically, the following regulations have been upheld: Grading and paving of streets, minimum width of streets and of improved surfaces, limitation of access to highways, curbs and gutters, provisions for parks, sanitary sewers, surface water sewers, profile maps, water mains, bonds for completion of required improvements and reasonable fees for examination and approval of plats.

While subdivision regulations and zoning laws must be coordinated with the master plan, these three phases of urban growth control have separate and distinct features which may be regarded individually. To protect the municipal treasury, the power to establish and administer subdivision regulations is the most important planning tool available to cities and towns.

The of Planning Commission

The power to regulate subdivisions is granted to a municipal planning commission established by the municipal governing body. AGO 89-00050. It is important to note that the authority granted to the planning commission over subdivision regulation cannot be exercised by any other entity, including the city council. Unlike zoning, subdivision regulations do not need council approval to be finalized, applied and enforced. This is all done through the planning commission.

Sections 11-52-1, et seq., Code of Alabama 1975, provide statutory authority for all Alabama municipalities to create a planning commission. Section 11-52-3, Code of Alabama 1975, provides that the planning commission shall be composed of nine members. One member is the mayor or his or her designee, one member is an administrative officer of the municipality chosen by the mayor, one member is a member of the council chosen by the council, and the remaining six members are chosen by the mayor. All members of the commission serve without compensation. No appointed members of the planning commission can hold another municipal office, except that one of the appointed members may also serve on the zoning board of adjustment (except in cities of not less than 175,000 nor more than 275,000 in population, according to the most recent federal decennial census where no member may serve on the zoning board of adjustment).

The term “administrative officials of the municipality,” as used in section 11-52-3(a) of the Code of Alabama, may include employees who oversee a key municipal function or area but who do not supervise other people. AGO 2016-034. A member of the city council may not, under Section 11-52-3(a), Code of Alabama 1975, serve as the administrative official on the planning and zoning commission. Further, the mayor may appoint a city employee to serve on the planning commission (in addition to the mayor, administrative official, and council member) as one of the 6 general appointments provided for in Section 11-52-3(a). AGO 2005-101. Both the mayor’s designee and the administrative official selected by the mayor to sit on the planning commission are eligible to serve as chairman of the commission. AGO 1994-235.

Section 11-52-3.1, Code of Alabama 1975, provides that in a Class 2 municipality, two additional members of the municipal planning commission created under Section 11-52-3, shall be appointed by the mayor and shall reside outside the corporate limits of the municipality, but within the territorial jurisdiction of the planning commission at the time of the appointment.

For most municipalities, members of the planning commission do not have to be residents of the municipality. However, in cities having populations of not less than 175,000 nor more than 275,000 all members of the commission must be bona fide residents and qualified electors of such cities. Section 11-52-3(b), Code of Alabama 1975. In cities with a population of less than 175,000, the city may appoint individuals residing outside the corporate limits and police jurisdiction as members of the Planning Commission. AGO 2016-034. As discussed later, the planning jurisdiction extends beyond the corporate limits so it makes sense that members of the planning commission could be residents outside of the corporate limits.

The terms of the ex officio members – the mayor and the councilmember – shall correspond to their respective official tenures, except that the term of the administrative official selected by the mayor and the mayor’s designee shall terminate with the term of the mayor selecting him or her. The term of each appointed member shall be six years or until the successor takes office. The members serve on a staggered-term basis.

A member of the planning commission may also serve as a member of a separately incorporated water, sewer and fire protection authority established pursuant to Section 11-88-1, et seq., of the Code of Alabama 1975. A planning commission member does not hold an office of profit or a public office and is therefore not an officer of the municipality. AGO 2003-163. A part-time park employee and the mayor’s secretary are not municipal officers and therefore they are not prohibited from serving on the municipal planning commission. AGO 2003-127.

Members other than the member selected by the council may, after a public hearing, be removed by the mayor for inefficiency, neglect of duty or malfeasance in office. The council may for like cause remove the member selected by it. The mayor or council, as the case may be, must file a written statement of reasons for such removal. In addition, the mayor may establish the term for his or her designee provided the term is not less than one year.

Vacancies occurring other than through the expiration of a term shall be filled for the unexpired term by the mayor, in the case of members selected or appointed by the mayor or by the council.

Alternate structures and requirements for planning commissions have been established for Class 1 municipalities and for cities having populations of not less than 175,000 and not more than 275,000 according to the most recent federal decennial census. *See*, Section 11-52-3, Code of Alabama 1975. For Class 3 cities, *see*, Section 11-52-12, Code of Alabama 1975. For Class 5 cities, *see*, Sections 11-52-13 and 11-52-14, Code of Alabama 1975. For Class 6 cities with a council-manager form of government, *see*, Section 11-52-15.

A municipal planning commission must meet at least once each month. The planning commission is subject to the Alabama Open Meeting Act (OMA) and must provide notice and conduct their meetings according to the procedures set out in the OMA. For complete information on the OMA, refer to the article titled “The Open Meeting Act” in *The Selected Readings for the Municipal Official*. The quorum requirement for all municipal planning commissions, other than those in Class 3 municipalities, is a majority of the commission. Thus, at least five of the nine members must be present to conduct business. In addition, the approval of a subdivision plat requires a majority vote of the quorum present and voting. AGO 2000-171.

The law does not require that a council’s appointed representative to the planning commission consult with the other members of the council before casting votes on the planning commission. Further, a city council may only remove a member it selected to serve on the commission upon a finding of inefficiency, neglect of duty, or malfeasance in office. If such a finding is made, the majority of the members of the council could vote to remove their appointee to the commission. AGO 2003-010.

A League publication titled “Outline of Planning Board Procedure” is available upon request. This publication contains an ordinance which can be used to establish a planning commission.

The Planning Jurisdiction

Municipal subdivision regulation consists of the power to govern the subdivision of land within a given territorial jurisdiction within and outside the municipal corporate limits which is not located in any other municipality. This is known as the planning jurisdiction. In 2021, significant changes were made to Alabama's laws regarding municipal subdivision regulation, most importantly the changes dramatically reduced the planning jurisdiction. Prior to 2021, every municipality, regardless of size, had a planning jurisdiction that extended out five miles beyond the corporate limits of the municipality. Beginning January 1, 2023, the municipal planning jurisdiction for any municipality exercising subdivision regulation has been reduced to a mile and a half unless extended by local law to include all land not located in any other municipality within three miles outside the corporate limits.

Unlike police jurisdictions, which will shrink and eventually disappear as a municipality annexes contiguous territory, the mile and half planning jurisdiction will continue to buffer the municipality regardless of new annexations.

A municipal planning commission may limit its initial subdivision regulations to an area smaller than the statutory jurisdiction provided in the Code. AGO's to Hon. Charles J. Fleming, August 29, 1975 and to Hon. B. C. Hornady, December 20, 1977. See also AGO 2003-126.

What is a Subdivision

The term "subdivision" is defined in Section 11-52-1, Code of Alabama 1975, as the "division of a lot, tract or parcel of land into two or more lots, plats, sites or other divisions of land for the purpose, whether immediate or future, of sale or of building development. Such term includes re-subdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided." In the book, *The Law of Subdivisions*, E.C. Yokley points out that this definition is almost universally used in enabling statutes relating to subdivision control and planning.

In order to determine whether there has been a subdivision of an owner's land, one must look to 1) the intent of the owner and 2) the purpose for which he transfers his land. AGO 83-00327. The Attorney General of Alabama ruled that a subdivision is created when a person divides a tract of land into two or more lots with the intent to convey, either presently or in the future, more than one of the lots. However, the opinion pointed out that a subdivision is not created by a person who sells or offers to sell only one lot which is part of a larger tract owned by him. If the owner intends to convey both lots, a subdivision would be created. This opinion makes the answer hinge on the intent of the owner as a question of fact to be decided in each case.

What is Not a Subdivision

In 2021, the Alabama Legislature provided for an exception to the strict definition of subdivision by providing that within a municipal planning jurisdiction outside the corporate limits of a municipality, municipal subdivision regulations shall not be applied to any transaction resulting in the direct sale, deed, or transfer of land by the owner to any individual who may be eligible to inherit that land from the owner under Article 3 of Chapter 8 of Title 43, relating to intestate succession. In other words, the family exception. However, any transaction resulting in the direct sale, deed, or transfer of that land within 24 months of the excepted transfer shall be subject to municipal subdivision regulation. Section 11-52-30(b)(2). This exception only applies outside the corporate limits and within the planning jurisdiction.

The giving of a mortgage on only a portion of a person's overall parcel of property, coupled with the possibility that such mortgage could be foreclosed, does not constitute a subdivision under applicable law. AGO 2003-140.

Yokley points to cases which have held that a sale of lots which does not disturb existing lot lines on a map which has been filed does not constitute a subdivision, that a cemetery plat is not a subdivision and that a municipality is without authority to make its own definition of subdivision by adding exceptions.

Regulation of Subdivisions

In describing the powers of subdivision regulation, Section 11-52-31, Code of Alabama 1975, states that the planning commission may provide for the proper management of streets in relation to other existing or planned streets and to the master plan, for adequate and convenient open spaces for traffic, utilities, access of firefighting apparatus, recreation, light and air and for the avoidance of congestion of population, including minimum width and area of lots, the extent to which streets and other ways shall be graded and improved and to which water and sewer and other utility mains, piping and other facilities shall be installed as a condition precedent to the approval of the plat. The commission is authorized to accept a bond with surety to secure to the municipality the actual construction and installation of required improvements or utilities at a time and pursuant to specifications fixed by or in accordance with the regulations of the commission. The municipality

is given the authority to enforce the bond by all appropriate legal and equitable remedies. Section 11-52-31(a), Code of Alabama 1975.

The planning commission has complete authority to establish minimum standards for public facilities within the subdivision regulations. The regulations should include standards for drains, streets, curbs, gutters, electric lines, gas lines, telephone lines, water mains, street signs and so forth. If no minimum standards are developed for these public facilities, different sets of standards will develop for different subdivisions. This will cause future maintenance problems for the city when these areas become part of the city. Many municipalities have suffered from problems which could have been prevented by the proper requirements.

A city may not regulate subdivision development where plats were approved prior to the adoption of subdivision regulations. AGO 1979-237 (to Hon. B. C. Hornady, June 29, 1979). Subdivision regulations must apply prospectively and, therefore, do not apply to subdivisions in which the subdivision plats were approved and recorded prior to adoption of the regulations. AGO 95-00223.

Prior to the adoption of subdivision regulations, the planning commission shall hold a public hearing thereon. The notice provisions of the OMA apply to this hearing. Although the statutes are silent as to the manner or length of notice of the public hearings, it has been suggested that the planning commission give at least six days notice of the hearing by publication once in a newspaper of general circulation published in the municipality or if no such newspaper exists, then by posting in four conspicuous places in the municipality. The adoption of subdivision regulations shall be done by a resolution of the planning commission carried by the affirmative votes of not less than five members of the commission. While the statute does not specify the number of votes necessary to adopt subdivision regulations, it is the opinion of the League that a majority of the whole number of members on the commission should at least be required for adoption of subdivision regulations. The adopted regulations must be published in the same manner as are ordinances of the municipality. *See*, Section 11-52-31, Code of Alabama 1975. The secretary of the commission shall file a certified copy of the regulations with the probate judge of the county in which the municipality and territory are located. Once a planning commission has properly exercised its authority by adopting regulations that regulate subdivision development, it is bound by its regulations. AGO 2003-089. The planning commission may adopt new subdivision regulations by reference as provided in Section 11-45-8 (c), Code of Alabama 1975, provided there is compliance with the procedure set out in Sections 11-45-8(c) and Section 6-8-60, Code of Alabama 1975, and a copy of the regulations is certified to the probate judge as required by Section 11-52-31, Code of Alabama 1975.

Special Note - County Subdivision Regulation Outside the Corporate Limits

Prior to 1979, counties did not have any statewide authority to regulate subdivisions. In 1979, the Legislature gave county governing bodies the authority to adopt subdivision regulations. *See*, Sections 11-24-1 through 11-24-7, Code of Alabama 1975. Because municipalities have authority to regulate subdivisions outside of their corporate limits, there have been several changes to Alabama law over the years to deal with the authority to regulate subdivisions within the municipal planning jurisdiction outside the corporate limits of a municipality. Keep in mind that just as not all municipalities exercise subdivision regulation, not all counties do either. For those counties that do exercise subdivision regulation, the county commission nor the county engineer have authority to regulate subdivision development or approve maps or plats for any developments within the corporate limits of a municipality. Section 11-52-30(p), Code of Alabama 1975.

Section 11-52-30(e)(1)b.1, Code of Alabama 1975 provides that a county commission and the municipal planning commission may enter into a written agreement providing that the municipal planning commission shall be responsible for the regulation and enforcement of the development of subdivisions within the planning jurisdiction of the municipal planning commission under the terms and conditions of the agreement. In order to be effective, the agreement shall be approved by a resolution adopted by the county commission, an ordinance adopted the municipal governing body, and a resolution of the municipal planning commission of the municipality, respectively.

If the county commission and the municipal planning commission are unsuccessful in reaching an agreement, Section 11-52-30(e)(2)a, provides that the municipal planning commission shall discontinue the regulation of subdivisions outside of the corporate limits and shall cease levying any charges or fees relating to subdivision regulation within the planning jurisdiction, no later than 24 months after receipt of written notice by the municipal planning commission from the county commission detailing that the county commission has adopted subdivision regulations.

For those counties who have taken over subdivision regulation outside of the corporate limits of a municipality but within the planning commission, Section 11-52-30(e)(2)b, provides that the county commission, by resolution, can withdraw jurisdiction over future subdivisions located outside the corporate limits but within the municipal planning jurisdiction, effective six months after providing notice to the municipal planning commission of its intent to withdraw. After withdrawal by the county, the municipal planning commission may resume subdivision regulation and the levying of related charges or

fees within its planning jurisdiction outside of the corporate limits.

Required Procedures

Subject to penalties which are noted later, any person desiring to subdivide land within the planning commission's jurisdiction must submit a plat of the proposed subdivision for the approval of the commission. Section 11-52-32(a), Code of Alabama 1975, requires a municipal planning commission to approve or disapprove a plat within 30 days after submission. The Alabama Supreme Court has held that the 30 days begins to run from the date of the public hearing. *Boulder Corp. v. Vann*, 345 So.2d 272 (Ala. 1977). If the plat is disapproved, the grounds for disapproval must be stated upon the records of the commission within 30 days. The minutes of the hearing of the applicant's application and the notation of the denial are sufficient to satisfy the requirements of Section 11-52-32(a). *Smith v. Eufaula Planning Commission*, 765 So.2d 670 (Ala. Civ. App. 2000). However, the subdivider may waive this and consent to an extension of time. If the commission refuses to act, the plat is deemed approved.

Properly adopted planning commission by-laws have the same force and effect as properly enacted statutes. *Lynnwood Property Owners Association v. Lands Described in Complaint*, 359 So.2d 357 (Ala. 1978). In *Smith v. Mobile*, 374 So.2d 305 (1979), the Alabama Supreme Court held that a city planning commission's disapproval of a proposed re-subdivision of a lot on grounds that it was "out of character with other lots in the area" was unrelated to the regulation of the commission and was improper. The court stated that the planning commission, in exercising this function in approving or disapproving any particular subdivision plat, acts in an administrative capacity and is bound by any limitations on its authority contained in the state statutes authorizing it to act, as well as any limits contained in its own regulations. *See also, Sigler v. Mobile*, 387 So.2d 813 (Ala. 1980).

No plat can be acted upon by the commission without affording a hearing. Notice is sent by registered mail of the time and place of the hearing at least five days prior thereto. Notices must be given to the person set out in the petition for plat approval and to the owners of land immediately adjoining the platted land as their names appear upon the plats in the county tax assessor's office at their addresses as they appear on the tax records of the municipality or the county. Section 11-52-32(a), Code of Alabama 1975. Failure to provide notice to adjoining landowners as required by law invalidates the approval of a subdivision plat. The planning commission may set a new hearing to consider the subdivision plat and must provide proper notice to the adjoining landowners. AGO 2001-045.

In approving a plat, the commission may agree with special restrictions included by the subdivider upon the use, height, area or bulk requirements or restrictions governing buildings and premises within the subdivision, provided they do not conflict with the zoning laws of the municipality. Any special restrictions must be set out on the plat before it is approved and recorded. The restrictions have the force of law and are enforceable in the same manner and with the same sanctions and penalties and subject to the same power of amendment or repeal as though set out as a part of the zoning ordinance or map of the municipality. This feature of subdivision regulation is quite important, especially in areas beyond the municipality where the exercise of zoning regulations may not be authorized or is doubtful.

Where a property owner complies with all applicable ordinances and regulations, he or she may not be denied legal use of his or her land merely because adjoining landowners object to that use. *Ex parte Frazer*, 587 So.2d 330 (Ala. 1991).

Effect of Approval

The approval of a plat does not constitute or effect an acceptance by the municipality of any street or other open space shown on the plat. A town council may only accept streets after review by the municipal planning commission. Section 11-52-34, Code of Alabama 1975. The fact that a municipal engineer states that the improvements established in a subdivision meet the minimum standards required by the municipality for such improvements does not constitute an acceptance of these improvements by the municipality. This is expressly provided in Section 11-52-32, Code of Alabama 1975, and the Supreme Court of Alabama upheld it in the case of *Oliver v. Water Works & Sanitary Sewer Board*, 261 Ala. 234, 73 So.2d 552 (1954). This case points out that an acceptance of dedication of streets is necessary for them to become public. Mere approval required by statute as a condition to recording of a plat is not an acceptance of dedication. A distinct act by the city through a formal resolution or by acts and conduct of the authorities recognizing it as a dedicated street is requisite to constitute acceptance. *See also, CRW, Inc. v. Twin Lakes Property Owners Association*, 521 So.2d 939 (Ala. 1988) Where there has been no dedication and acceptance, a city has no authority or obligation to maintain private property. AGO 97-00249. *Oliver* goes further to point out that even though private owners build streets and lay sewer lines and storm systems, a municipality may, after accepting dedication of the streets to public use, collect service fees for controlling the streets and sewers and permitting connection of the sewer system with that of the city. This statutory protection allows a municipality to ensure against the costly job of having to take over inadequate public improvements for upkeep and maintenance.

Subdivisions are not subject to regulations adopted after plats are recorded, but new construction may be regulated

through the zoning ordinance and use of municipal police powers. AGO 1992-056. A prior injunction barring the sale of improperly subdivided land by a husband binds the wife as well. *Shelby County Commission v. Seals*, 564 So.2d 900 (Ala. 1990).

Enforcement Method

Any owner or agent of the owner of any land located in a subdivision who transfers or sells or agrees to sell land by reference to or exhibition of or by use of a plat of a subdivision before it has been approved by the planning commission and recorded in the office of the probate judge of the appropriate county shall forfeit a penalty of \$100 for each plat or parcel so transferred, sold or agreed to be sold. A municipality may enjoin such transfers in a court of competent jurisdiction. Section 11-52-33, Code of Alabama 1975. Neither a municipality nor its planning and zoning commission has the authority to impose a fine in excess of the \$100 penalty authorized by Section 11-52-33, Code of Alabama 1975, for selling lots in subdivision prior to receiving municipal approval. AGO 2000-054. It shall be the duty of every probate judge in this state to decline to receive for record in his office any map or plat upon which any lands lying within the corporate limits or police jurisdiction of any city of this state having a population of more than 10,000 inhabitants are platted or mapped as streets, alleys or other public ways, unless such map or plat shall have noted thereon the approval of the governing body or city engineer of such city. Section 35-2-52, Code of Alabama 1975.

Limitation of Powers

Since the power to regulate subdivisions has been delegated to municipalities, it follows that cities and towns, through planning commissions, may not enlarge or materially modify express statutory provisions. Subdivision powers are not unbridled. The planning commission must act within the terms of the statutory grant. *See, Smith v. Mobile*, 374 So.2d 305 (Ala. 1979). Procedures prescribed by statute are mandatory. *See, Noojin v. Mobile City Planning Commission*, 480 So.2d 587 (Ala. Civ. App. 1985). The planning commission must adopt adequate standards for its guidance and the guidance of subdividers in the approval of plats. It has often been held that subdividers may not be required to pay fees which in effect amount to taxes, regardless of the purpose for the fee. *See, Montgomery v. Crosslands Land Co.*, 355 So.2d 363 (Ala. 1978).

In the approval or disapproval of a plat, the planning commission acts in an administrative or ministerial capacity and the subdivider may bring an action to mandamus the commission to approve the plat where it refuses to act. *See, Noojin, supra*. As noted, the planning commission must act within 30 days after the submission of the plat in Alabama. Further, once approved, neither the municipality nor the planning commission may impose further burdens on the subdivider.

While courts strictly construe subdivision regulations by rules applicable to the exercise of the police power, they presume such regulations to be valid and place the burden on any person assailing them to show unreasonableness. Furthermore, persons assailing subdivision regulations must have a real interest in the question submitted and must have exhausted their administrative remedies before seeking relief in court.

Performance Bond

As stated above, a planning commission may require a bond with sureties to secure the installation of required improvements prior to approval of the plat. Section 11-52-31(a), Code of Alabama 1975. Bonds are made payable to the municipality which has the burden of maintaining the improvements after they are established. Any action for recovery under these bonds must be brought by the municipality. It has been held that these bonds are not for the benefit of third parties under which subdivision lot owners might recover.

Word of Caution

The development of subdivisions brings with it an increased flow of surface water from streets, sidewalks and buildings. Particular care should be exercised to ensure that drainage is adequate not only within the subdivision platted but also for subservient lands below the subdivision. Georgia courts have held that a subdivider could be held jointly liable with the municipality for negligence in channeling drainage water in such a way as to damage property of subservient owners beyond the limits of the subdivision. *See, Bass Canning Co. v. MacDougald Construction Co.*, 174 Ga. 222, 162 S.E. 687 (Ga. 1932). Another court held that a city, in accepting a subdivision drainage system as part of its public works, would be held liable for collecting water and throwing it off in such a manner as to erode a subservient landowner's property. *See, Myotte v. Village of Mayfield*, 54 Ohio App.2d 97, 375 N.E.2d 816 (Ohio Ct. App. 1977).

Court Decisions and Opinions of the Attorney General

Several court decisions and opinions of the Attorney General regarding subdivision controls are noted as follows:

- In *Ex parte Pine Brook Lakes, Inc.*, 617 So.2d 1014 (1992), the Alabama Supreme Court held that approval of subdivision plans may be secured through a writ of mandamus where the reason offered for disapproval fails to comply with applicable statutes.
- If work being done at a mobile home park falls within the definition of what constitutes a subdivision under Section 11-52-1 (6), Code of Alabama 1975, the city may regulate the mobile home park under its power to regulate subdivisions. AGO 1995-028.
- In *Mobile v. Southern Region Developers*, 628 So.2d 739 (1993), the Alabama Court of Civil Appeals held that the circuit court's findings that the city planning commission had denied the developer's application for subdivision without timely stating the valid reason for denial and without specifying any nonconformity with subdivision regulations, was not clearly erroneous.
- Unimproved lots in a subdivision are subject to subsequent zoning ordinances. AGO 1995-223.
- Subdivision regulations apply to privately owned land that is subdivided for sale, but in which roadways will remain private. AGO 1997-077.
- In *Haley v. Daphne Planning Comm'n*, 740 So.2d 415 (1999), the Alabama Court of Civil Appeals held that the Daphne Planning Commission narrowly but consistently interpreted its zoning ordinance by allowing withdrawal of the rezoning application and filing of a subsequent application less than 12 months later, provided that the initial application was not considered by the planning commission. Therefore, consideration of the later rezoning application less than 12 months later is allowed.
- Subdivision regulation permitting the totally discretionary determination of the buffer zone needed in a particular location, unguided by any objective, clearly stated criteria, failed to set forth sufficient standards to give applicants notice of what was required of them and thus, planning commission's imposition of an additional 10 feet of buffer space to a proposed 10 foot buffer in a commercial subdivision plan was arbitrary and capricious and exceeded the commission's power. *Providence Park v. Mobile City Planning Comm'n*, 824 So.2d 769 (Ala. Civ. App. 2001).
- While a city council may delegate to the planning commission the responsibility to review site development plans and make recommendations, the council may not delegate the function of making a final determination of whether a plan meets all state and local laws. AGO 2004-103.
- Condos and apartments are subdivisions. *See, Dyess v. Bay John Developers*, 13 So.3d
- 390 (Ala. Civ. App. 2007).
- A municipality is required to organize neither a zoning commission nor a municipal
- planning commission before enacting a comprehensive zoning ordinance; both such commissions are optional and, even if created, are strictly advisory. *Peebles v. Mooresville Town Council*, 985 So.2d 388 (Ala. 2007)
- Statutory provisions requiring subdivision plat approval prior to negotiation or contract for the sale of a subdivision lot was not limited to lot purchases made by individuals, and could also apply to purchasers that were developers. The purchase contract was illegal in that it was executed prior to plat approval. A contract obtained in violation of the subdivision control statutes is void. *Kilgore Development, Inc. v. Woodland Place, LLC*, 47 So.3d 267 (Ala. Civ. App. 2009).
- Industrial parks are subject to the subdivision regulations of the county commission. AGO. 2012-047.
- A Town may not accept a gift of undeveloped lots from a limited liability company in exchange for an agreement from the Town to complete and repair roads within a subdivision developed by the limited liability company where the Town intends to sell the undeveloped lots to offset the cost to complete and repair the roads. AGO 2015-056.
- A subdivision in the corporate limits of the Town recorded without the approval of the county engineer, may be regulated by the town and is subject to subdivision regulations adopted by the town after the subdivision plat was recorded. AGO 2014-024.
- A town and its planning commission may not institute a moratorium, lawful or otherwise, solely to disregard their statutory duty to evaluate a particular plat application that has no apparent flaws without a reasonable "public welfare" explanation. *Lee v. Houser*, 148 So. 3d 406, 416 (Ala. 2013) (citing *Mobile City Planning Comm'n v. Stanley*, 775 So.2d 226 (Ala. Civ.App.2000) (holding that a municipal planning commission's decision should not be invalidated unless it is clearly arbitrary and unreasonable and has no substantial relation to the public health, safety, morals, or general welfare of the community))).
- Even if a municipal planning commission has the authority to institute a moratorium on subdivision-plat applications, it may not use that authority, pursuant to § 11-52-32, without regard for the public welfare, to prevent the development of

the private property of one individual. *Lee v. Houser*, 148 So. 3d 406, 415 (Ala. 2013).

- Because the proposed recreational vehicle park involves building development, it is a subdivision under section 11-52-1(6) of the Code of Alabama and the Town of Magnolia Springs Subdivision Regulations that is subject to regulation by the Magnolia Springs Planning Commission. AGO 2018-027.
- Work that county performed in a subdivision did not mean that county had voluntarily assumed responsibility over the entire drainage system. *Richardson v. County of Mobile*, 327 So.3d 1130 (Ala. 2020).

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