

Department of Labor State of Georgia



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UNOFFICIAL OPINION U2005-5

To: County Commissioner

December 20, 2005

Re: The clerk of superior court is mandated by law to file and record in the real property records of the superior court any plat meeting the requirements of O.C.G.A. §15-6-67(b) and (d), whether or not such plat meets any other requirements which may have been imposed by a local government.

You have asked for guidance regarding the duties and responsibilities of the clerk of superior court in recording plats of survey in the real property records of the superior court in light of local planning ordinances and the plat recording requirements of O.C.G.A. § [15-6-67](#). As you are aware, this section of the Code underwent multiple changes in the General Assembly in the mid-1990s, largely because of the situations involving diverse and often conflicting local planning commission requirements that local governments were attempting to enforce through the clerks of the superior courts. The majority of the difficulties centered upon the definition of “plat of subdivision” as used in O.C.G.A. § [15-6-67\(d\)](#).

Previous versions of the plat recording statute permitted local governments to supplement the law with more restrictive requirements.¹ 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. The revisions to O.C.G.A. § [15-6-67\(c\)](#) require the clerk of the superior court to file and record any plat meeting the requirements of the statute, whether or not it meets any other requirements which may have been imposed 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 plat recording responsibility any locally required ordinance enforcement role. Therefore, in this case, state law fully preempts local ordinances in the arena of plat recording. This serves the public purpose of promoting uniformity of real property 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 bluelines 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. O.C.G.A. § [15-6-67\(b\)\(2\)\(E\)](#). These requirements of subsection (b) apply to all plats or maps submitted for recording, further promoting the free flow of commerce within the State.

O.C.G.A. 15-6-67(d) is 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, the last two sentences of the subsection provide an absolute exception to the requirement for planning commission approval:

Notwithstanding any other provision of this subsection to the contrary, *no approval shall be required* if no new streets or roads are created or no new utility improvements are required or no new sanitary sewer or approval of a septic tank is required. Any plat of survey containing thereon a certification from the licensed surveyor that the provisions relative to this subsection do not require approval *shall entitle* said plat to record.

O.C.G.A. 15-6-67(d) (emphasis supplied).

Therefore, 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 planning commission approval is required as a prerequisite for the filing and recording of the plat.

At this point, it is important to note that none of the provisions of subsection (d) applies unless the plat is a “plat of subdivision.” The Code, however, does not specifically define what is meant by a “plat of subdivision.” It is my understanding that some local jurisdictions have insisted that every plat with more than one tract on it be considered a “plat of subdivision” and therefore be required to have either a surveyor’s certification or planning commission approval. However, if the map or plat is not a “plat of subdivision,” then there is no statutory requirement for either an approval by a planning commission or a surveyor’s exemption certificate. Keeping in mind that 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 (*see* O.C.G.A. § [1-3-1\(a\)](#)), the entire issue turns on the definition of “plat of subdivision” as contemplated by O.C.G.A. § [15-6-67\(d\)](#).

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

(1) The subdivision consists of at least one larger tract of land being divided into two or more smaller tracts; (2) The subdivision consists of unimproved real property which is planned or intended to become residential property or lots for other purposes (such as an industrial park); (3) The subdivision creates or dedicates public areas for new streets, alleys, or parks; and (4) The subdivision evidences a comprehensive scheme for the development of the property.²

Unless the proposed plat has all four of the above characteristics, it is not a plat of subdivision as delineated by subsection (d). Further, it is clear that certain types of plats are also not plats of subdivision:

(1) A plat of a single lot in a subdivision; (2) A plat which divides a tract into one or more tracts, all fronting on an existing public road with access to utilities; (3) A plat aggregating several smaller tracts into one larger tract (generally referred to as a “recombination plat”); and (4) 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, the Department of Transportation, the Board of Regents, or the various state authorities because local ordinances of a city, county or political subdivision are not enforceable against the State.

See O.C.G.A. § [1-3-8](#); O.C.G.A. § [1-3-3\(8\)](#). See also *City of Atlanta v. State*, 181 Ga. 346 (1935); *Neil-Millard Co. v. Trustees of Chatham Acad.*, 121 Ga. 208 (1904); *City of Marietta v CSX Transp. Inc.*, 272 Ga. 612, 614 (2000); and *Mayor of Atlanta v. Central RR and Banking Co.*, 53 Ga. 120, 124 (1874); 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.³ All of the properly adopted ordinances and regulations of a county remain fully enforceable against the developer or owner seeking to create the subdivision. Such ordinances, however, may not alter the clerk’s mandatory duties concerning recording, as recording is not and never has been an indicia of legal compliance with local laws or regulations governing subdivisions. Recording provides only public notice of the real estate transaction. The General Assembly has clearly restricted recording to that purpose, and has preempted the ability of any local jurisdiction to add additional requirements for recording beyond those specifically prescribed in the statute.

Accordingly, the clerk should look for the four characteristics of a plat of subdivision set out above. If any one of the four does not exist, or if the plat falls within one of the exceptions listed above, then the 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. § [15-6-67\(b\)](#). Only if all four of the characteristics exist and none of the exceptions applies is the plat a “plat of subdivision,” thus permitting the clerk to require that either the planning commission approval or the exemption certification of the surveyor appears on the plat. Local government subdivision ordinances and regulations to the contrary are not enforceable through the recording duties of the clerk, as those duties are specifically mandated by general law which preempts the ability of a local jurisdiction to add to the real property recording requirements.

Therefore, it is my unofficial opinion that the clerk of superior court is mandated by law to file and record in the real property records of the superior court any plat meeting the requirements of O.C.G.A. § [15-6-67\(b\)](#) and (d), whether or not such plat meets any other requirements which may have been imposed by a local government.

Prepared by:

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Sample Surveyors Plat Certification

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

¹ The 1978 amendment to the Code section provided that the language in the Act requiring minimum standards and specifications “does not in any way modify or change any specific provisions in county, municipal or other State statutes and regulations which require higher minimum standards and specifications, in which case said specific provisions shall govern.” 1978 Ga. Laws 1616, § 1.

² *Eardley v. McGreevy*, 279 Ga. 562, 564, n.12 (2005).

³ “Home rule power” for counties and municipalities does not extend where “provision has been made by general law” or “matters in which the General Assembly by general law has preempted” local laws or ordinances. GA. CONST. art. IX, sec. II, par. I(a) and (c). Accordingly, a local subdivision ordinance may not alter the mandated duties of the clerk, which are established by general law.