



TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

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OPINION COMMITTEE

June 1, 2005

RQ-0348-GA

The Honorable Greg Abbott
Texas Attorney General
209 West 14th Street
Austin, Texas 78711-2548

FILE # ML-44233-05

I.D. # 044233

Re: Enforcement of Subdivision Platting Requirements

Dear Attorney General Abbott:

Texas Board of Professional Land Surveying is concerned about actions that Cherokee County has taken affecting the practice of land surveying. The County has exercised its authority under Chapter 232, Subchapter A of the Local Government Code, relating to subdivision platting requirements, to adopt a local platting order. The Board, however, has three concerns regarding aspects of Cherokee County's implementation and enforcement of the local platting order.

First, we understand that the county is holding surveyors and others that assist in the subdivision of property responsible for violations of the statute. While the language of the statute may appear to authorize such actions, the Board considers that surveyors and other persons should not be held accountable for an offense that they lacked the capacity to commit. Section 232.005(b) provides that "[a] person commits an offense if the person knowingly or intentionally violates a requirement established by, or adopted by, the commissioners court under a preceding section of this chapter." While "a person" might be construed to apply to anyone involved in the subdivision of property, the subdivision of a tract can only be carried out by the property owner. While a surveyor may assist in describing the boundaries of a tract and its subdivisions and while realtors, title companies, and others may assist in the transfer of property, the actual subdivision of a tract can only occur when the property owner signs a deed or files a plat that divides a tract into two or more parts. Only the property owner has the authority to subdivide a tract.

Other provisions of Subchapter A explicitly identify that the property owner is the party with the authority and responsibility for subdividing a tract: §§232.001(a) (The owner of a tract . . . if the owner divides the tract into two or more parts), 232.001(c) (The owner or proprietor of the tract or the owner's or proprietor's agent must acknowledge the plat), 232.015(c), (e)-(g), & (i)-(k) (A county may not require the owner of a tract of land), 232.015(h) (this subchapter shall not apply to a subdivision of land belonging to the state or any state agency, board, or commission or owned by the permanent school fund), 232.021(c) (The owner of the tract to be subdivided must pay the fee), 232.025(f)(1) (if agreed to in writing by the applicant), 232.025(h) (may not compel an applicant),

The Honorable Greg Abbo
Texas Attorney General
June 1, 2005
Page 2

232.025(i)(3) (the applicant may apply to a district court), 232.003(6) (require that each purchase contract made between a subdivider and a purchaser of land in the subdivision), 232.003(7) (require that the owner of the tract to be subdivided), and 232.004 (If the commissioners court requires the owner of the tract to execute a bond, the owner must do so before subdividing the tract).

Question: When a surveyor prepares a survey describing the boundaries of a tract of land then a land owner subdivides the tract in violation of a county's local platting order, can the surveyor be held accountable for the violation?

The second issue of concern is the retroactive application of the county's order. The county is applying its new local platting order to survey work that was done prior to adoption of the order in January of this year. The Board contends that a surveyor should not be held responsible for complying with laws that are adopted after work is performed. A surveyor should only be held responsible for the laws in effect at the time the work is done.

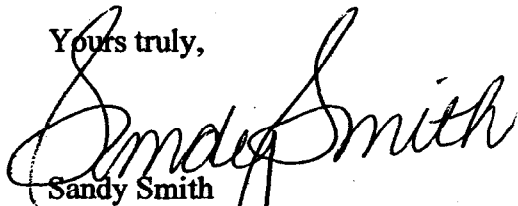
Question: Can surveyors be held responsible for complying with laws that were adopted after the completion date of work products?

In addition, the Board contends that a surveyor should not be held responsible for how a property owner uses their work products. It is common practice for property owners to rely on a valid survey or a metes and bounds description for years after the surveyor completes their work. If a property owner attempts to record a deed today that incorporates work performed by a surveyor prior to the adoption of the county's local platting order, it is the property owner, not the surveyor, that should be held accountable. A surveyor should only be held accountable for the integrity of their own work.

Question: Can surveyors be held responsible for how a property owner uses their work products?

A majority of the Board supports this request. If you have questions or need additional information, please contact me or our Assistant Attorney General Jeb Boyt, he has been most helpful in assisting the Board with this issue.

Yours truly,


Sandy Smith
Executive Director