

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
PO BOX 20207  
NASHVILLE, TENNESSEE 37202

March 5, 2013

Opinion No. 13-17

Correction of Recorded Subdivision Plat

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**QUESTIONS**

1. What responsibility, if any, does a county have to seek correction of a subdivision plat or related record filed with the register of deeds that either is or is suspected to be improperly approved by the regional planning commission?

2. What is the legal process for correction of recorded subdivision plats or related documents that the regional planning commission did or may have incorrectly approved and that have been filed with the county register of deeds?

3. In *Lake County v. Truett*, 758 S.W.2d 529 (Tenn. Ct. App. 1988), the Court of Appeals addressed the sale of lots from a subdivision. Three plats had not been approved by the planning commission but had nonetheless been filed with the county register of deeds. Among other rulings, the Court stated that the county "...should take whatever steps are necessary to cause the illegally recorded plats to be expunged from the records of the county." *Id.* at 537. In light of this ruling, what steps, if any, should county officials take once it becomes known that the regional planning commission did or may have improperly approved a subdivision plat now recorded with the register of deeds?

4. Does *Lake County v. Truett* grant authority to a county to make corrections to filed subdivision plats or related records once the county becomes aware these documents were or may have been erroneously filed?

5. What impact, if any, do erroneously filed subdivision plats or related records have upon individual property owners if such documents are not withdrawn or corrected?

6. If the regional planning commission incorrectly approved a subdivision plat or related record for filing, is the county required to commence litigation to remedy the problem?

**OPINIONS**

1. Absent a legal determination to the contrary, the regional planning commission's approval and the register's recording of a subdivision plat or related document should be

presumed to be valid. Tenn. Code Ann. § 13-3-410(a), which requires the commission to approve a subdivision plat before it is filed with the county register, does not address what actions a county may take if evidence comes to light that the planning commission's approval of a subdivision plat is or may be invalid. Under Tenn. Code Ann. § 13-3-410(a), the county commission may authorize the county attorney to bring a lawsuit to prevent the sale by the original owner of land in a subdivision that the regional planning commission has not approved. However, no Tennessee statute requires the county to remove or seek to remove a subdivision plat from the county register's office because the planning commission's approval is, or may be, erroneous or invalid.

2. No Tennessee statute appears to specifically address this subject. If it is undisputed that a subdivision plat was filed in error and the regional planning commission has the responsibility to correct this error, an interested party could possibly file a writ of mandamus to compel the commission to perform its nondiscretionary duties.

3 & 4. In *Lake County*, the Court found that the plat in question had never been approved by the regional planning commission as required by law. Under the facts presented with this opinion request, no court has definitively ruled that the plat was illegally approved or recorded. For this reason, *Lake County* does not authorize county officials to expunge a recorded plat that may or may not have been properly approved.

5. Under the facts presented, the possibility that the subdivision plat or related records were erroneously filed should not adversely impact the title of deeds obtained by individual lot owners in the subdivision.

6. No, this Office is unaware of any Tennessee law requiring a county to bring litigation to invalidate a regional planning commission's approval of a subdivision plat should the county suspect, or even know, the approval was invalid.

### **ANALYSIS**

This Office has on several occasions addressed the creation and duties of regional planning commissions, observing as follows:

Local governments in Tennessee lack the inherent authority to control the use of land within their boundaries. *Family Golf of Nashville, Inc. v. Metropolitan Gov't of Nashville*, 964 S.W.2d 254, 257 (Tenn. Ct. App. 1997). Such power resides with the State of Tennessee, and whatever authority local governments have to control the use of land within their territories has been delegated by the General Assembly to local governments. *Id.* The General Assembly has the prerogative to decide when and how that authority will be exercised, subject only to the limitations in the state and federal constitutions. *Motlow v. State*, 125 Tenn. 547, 589-90, 145 S.W. 177, 188 (1911).

Chapters 3, 4 and 7 of Title 13 of the Tennessee Code Annotated delegate the authority of the State of Tennessee to local governments to regulate land use

through local planning and zoning. Regional planning commissions are created and operate under Tenn. Code Ann. §§ 13-3-301, *et seq.* Under that statutory scheme, the Tennessee Department of Economic and Community Development may create and establish planning regions and define the boundaries of each region. Tenn. Code Ann. § 13-3-102. Generally, a regional planning commission is required to make and adopt a general regional plan for the physical development of the territory of the region for which it is responsible. Tenn. Code Ann. § 13-3-301(a). Once a regional planning commission has adopted and filed its plan with the county register of the county or counties that lie in whole or in part in the region, then the regional planning commission must approve any plat of a subdivision of land within the region before the plat may be filed with the county register. Tenn. Code Ann. § 13-3-402.

Tenn. Att’y Gen. Op. 08-79 at 2 (April 2, 2008). *See also* Tenn. Att’y Gen. Op. 07-121 (Aug. 16, 2007); Tenn. Att’y Gen. Op. 05-119 (July 27, 2005).

Under Tenn. Code Ann. § 13-3-402, once a regional planning commission has adopted and filed its regional plan with the county register, then no plat of a subdivision of land within the region, other than that located within city boundaries, may be filed or recorded until the regional planning commission has approved it. Tenn. Code Ann. § 13-3-402(a)(1). The approval must be endorsed in writing on the plat by the secretary of the commission or by another commission designee. *Id.* The county register of deeds may not file or record a subdivision plat or related document without the regional planning commission’s approval. Tenn. Code Ann. § 13-3-402(b). Tenn. Code Ann. § 13-3-410 provides:

(a) Whoever, being the owner or agent of the owner of any land, transfers or sells or agrees to sell or negotiates to sell such land by reference to or exhibition of or by other use of a plat of subdivision of such land without having submitted a plat of such subdivision to the regional planning commission and obtained its approval as required by this part and before such plat is recorded in the office of the appropriate county register, or who falsely represents to a prospective purchaser of real estate that roads or streets will be built or constructed by a county or other political subdivision, commits a Class C misdemeanor. The description by metes and bounds in the instrument or transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties. The owner or agent of any land may sell, transfer or agree to sell any lot or lots shown on a plan having been given tentative approval by the regional planning commission. The owner or agent shall post bond in form and amount and with conditions and surety satisfactory to the regional planning commission, providing for and securing to the public the actual construction and installation of such improvements and utilities within a period specified by the regional planning commission and expressed in the bond. ***The county, through its county attorney or other official designated by the county legislative body, may enjoin such transfer or sale or agreement by action or injunction.***

(b) The remedies and penalties provided by this chapter are to be applied ***exclusively to the owner or agent of the owner. Title to any tract conveyed without compliance with this chapter is not affected by this chapter unless the sale or transfer has been enjoined by a court of competent jurisdiction prior to the conveyance being recorded in the office of the appropriate county register.*** While the title to any such tract is not affected by this chapter, the tract remains otherwise subject to all provisions of this chapter.

(Emphasis added).

The submitted opinion request poses several questions about the effect of filing with a register of deeds subdivision plats or related records which were or might have been improperly approved by a regional planning commission. If no court has found the filing of the plat to be invalid, the commission's approval must be presumed to be valid. Public officers are presumed to do their duty. *City of Knoxville v. State ex rel. Graves*, 341 S.W.2d 718, 720 (Tenn. 1960) (city council); *Ledbetter v. Duncan*, 676 S.W.2d 91, 93 (Tenn. Ct. App. 1984) (county commissioners). In the absence of proof to the contrary, municipal officers are presumed to have acted in the exercise of their powers in the interest of the public and within the authority granted them. *Blackburn v. Dillon*, 225 S.W.2d 46, 47-48 (Tenn. 1949); *City of Knoxville v. Peters*, 191 S.W.2d 164, 166 (Tenn. 1945). Further, if the planning commission's approval was properly reflected on the plat, the county register was required to record it. *See* Tenn. Code Ann. § 13-3-402(b).

1. The initial question concerns what action, if any, a county must take once the county becomes aware that a subdivision plat or related record filed with the register of deeds either was or may have been improperly approved by the regional planning commission. As noted above, absent a legal determination to the contrary, the planning commission's approval and the register's recording of the document should be presumed to be valid. Tenn. Code Ann. § 13-3-410(a) does not address what actions any official, including a county official, should take if evidence that the approval may be invalid comes to light. Under that statute, the *county*, through its county attorney or other official designated by the county commission, "may" enjoin the sale or transfer of property of land being sold by reference to a subdivision that the planning commission has not approved. Tenn. Code Ann. § 13-3-410(a). Thus, the county commission may authorize the county attorney to bring a lawsuit to prevent the sale by the original owner of land in a subdivision that the county planning commission has not approved. *Id.* However, no statute authorizes the county to remove a subdivision plat from the county register's office because the county knows or suspects the county planning commission's approval is invalid. Nor is the county register authorized, on his or her initiative, to remove the plat from county records. *See* Tenn. Att'y Gen. Op. 03-057 (May 1, 2003). In that opinion, this Office concluded that while the register could not unilaterally remove a plat from the record, the register could record a document reflecting the determination that the instrument is not entitled to registration and include a reference to that later document on the face of the instrument in question. *Id.* at 1-2. The opinion states the register should also notify the person who recorded the deed of the action taken by the register. *Id.*

2. No Tennessee statute explicitly addresses how subdivision plats or related documents may be corrected when the planning commission erroneously approved these plats or related documents and they have been filed with the county register of deeds. If it is undisputed that the subdivision plat was filed in error and the commission has the responsibility to correct this error, then an interested party may be able to file a writ of mandamus to compel the regional planning commission to perform its nondiscretionary duty to correct the plat and related documents filed with the county register. *See State ex rel. Witcher v Bilbrey*, 878 S.W.2d 567, 570-71 (Tenn. Ct. App. 1994); *Hackett v Smith County*, 807 S.W.2d 695, 698-99 (Tenn. Ct. App. 1990). *See also* Tenn. Code Ann. § 29-25-101 (granting circuit and chancery courts jurisdiction to consider writs of mandamus).

3 & 4. The next questions posed concern the applicability of *Lake County v. Truett*, 758 S.W.2d 529 (Tenn. Ct. App. 1988) to the facts presented in this opinion request. In that case, three plats had never been submitted for approval to the regional planning commission and had been inappropriately filed with the register of deeds. *Id.* at 533. The county later sued to prevent the developer from selling land within the plats because they had not been approved by the entire commission as required by law. *Id.* at 534. Among other rulings, the Court stated that the county "...should take whatever steps are necessary to cause the illegally recorded plats to be expunged from the records of the county." *Id.* at 537.

*Lake County* is not applicable to the facts presented by this opinion request, given that in *Lake County* the county was bringing an action expressly authorized by Tenn. Code Ann. 13-3-410 to prevent the sale of lots when the subdivision plats had not been approved by the regional planning commission. *Id.* at 533-34. In the facts assumed for this opinion, the subdivision plat in question has been filed with the register of deeds and approved by the regional planning commission. Given the plat had been approved by the county planning commission, the county register was authorized by Tennessee law to record the plat. Tenn. Code Ann. § 13-3-402(b). This Office is unaware of any authority for a county official—whether it be the register, the county commission, or the planning commission—to remove a document duly filed without explicit authority from a court to do so.

*Lake County* thus does not authorize a county to make necessary corrections to records properly filed with the register as legal problems subsequently become evident. In *Lake County*, the trial court concluded that the records in question had not been properly approved by the commission and, therefore, were illegally filed with the register. *Lake County v Truett*, 750 S.W.2d at 534-35. The Court of Appeals upheld this ruling and recommended that the county take steps to expunge these documents. *Id.* at 537. Where, however, the plat has been approved by the regional planning commission, that approval is presumed valid absent a court ruling to the contrary. *See City of Knoxville v State ex rel. Graves*, 341 S.W.2d at 720; *Ledbetter v Duncan*, 676 S.W.2d at 93.

5. Under the facts presented, the possibility that the subdivision plat or related documents were erroneously filed should not adversely impact the title of deeds obtained by individual property owners in the subdivision. Again, the plats are presumed to be valid. The owner may not sell lots within the plat until the planning commission has given its "tentative approval." Tenn. Code Ann. § 13-3-410(a). Further, the county commission may sue the owner

to require him to complete required improvements on the property. *Id.* But the statute clearly provides that the county may pursue these remedies only against the owner or his agent. The statute further explicitly states that “[t]itle to any tract conveyed without compliance with this chapter is not affected by this chapter unless the sale or transfer has been enjoined by a court of competent jurisdiction *prior to the conveyance being recorded in the office of the appropriate county register.*” Tenn. Code Ann. § 13-3-410(b) (emphasis added). This provision became effective in 1993. 1993 Tenn. Pub. Acts ch. 203. Because the plat has been recorded, all the owners and the public generally have notice of any restrictions it might contain. Tenn. Code Ann. § 66-26-102 (stating that duly recorded instruments provide “notice to all the world from the time they are noted for registration”). Further, assuming the public has relied on the subdivision plat for several years, a court could reject challenges to the conveyance of the property based on the planning commission’s failure to follow all procedural requirements in approving the plat. *Hutcherson v. Criner*, 11 S.W.3d 126, 134-35 (Tenn. Ct. App. 1999) (ten-year-old zoning ordinance was immune from attack based on procedural defects in its passage because of extensive public reliance on it). *See also Pearson v City of Guttenberg*, 245 N.W.2d 519, 525 (Iowa 1976); *Matney v Cedar Land Farms, Inc.*, 224 S.E.2d, 165 (Va. 1976) (both stating that the invalidity of a plat should not affect the validity of a deed which describes property conveyed by reference to the plat).

6. Finally, this Office is unaware of any Tennessee law that requires a county to commence litigation to address possible errors in the approval of a subdivision plat or related documents. Nonetheless the county in its discretion and upon consulting its own attorney may take steps necessary to resolve any issues arising from the possibility that the plat or related documents were erroneously filed, including asking the planning commission to review the matter to determine if the documents in question need to be reapproved and refiled.

ROBERT E. COOPER, JR.  
Attorney General and Reporter

WILLIAM E. YOUNG  
Solicitor General

ANN LOUISE VIX  
Senior Counsel

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Requested by:

The Honorable David Hawk  
State Representative  
201 War Memorial Building  
Nashville, Tennessee 37243