

STORAGE NAME: h0587b.ca

DATE: March 17, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 587

RELATING TO: Platted Lands

SPONSOR(S): Representative Henriquez

COMPANION BILL(S): SB 2300 (i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS YEAS 9 NAYS 0
 - (2) REAL PROPERTY AND PROBATE
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The bill revises provisions of current law with respect to platted lands and makes the following changes:

- Provides that a replat is required when improvements affecting the boundary of the previously replatted property have been made on the lands to be replatted;
- Deletes the requirement that a review of the plat must be made prior to approval by the appropriate body; and
- Revises language with respect to monuments at lot corners, points of intersection, and changes of direction of lines which do not require permanent control points or permanent reference monuments.

This bill does not appear to have a direct fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 177, Florida Statutes, regulates and controls the minimum standards for the plating of lands.

Section 177.041(1), Florida Statutes: This section establishes the minimum requirements for the submission of a plat or replat of a subdivision. Each plat or replat of a subdivision submitted to a local governing body must be accompanied, by the following:

- A boundary survey of the platted lands.
 - A new boundary survey is required for a replat only when the replat affects any boundary of the previously platted property or when improvements have been made on the lands to be replatted or adjoining lands.
 - The boundary survey must be performed and prepared under the responsible direction and supervision of a professional surveyor and mapper preceding the initial submittal of the plat to the local governing body.
 - The legal entity may employ one professional surveyor and mapper to perform and prepare the boundary survey and another professional surveyor and mapper to prepare the plat if both the boundary survey and the plat are under the same legal entity.

Section 177.081, Florida Statutes: This section establishes the minimum requirements for dedication and approval of plats.

- Before being approved by the appropriate governing body the plat must be reviewed for conformity to this chapter.
 - The review must be conducted by a professional surveyor and mapper either employed by or under contract to the local governing body.
 - The costs of the review must be borne by the legal entity offering the plat for recordation.
 - The evidence that the plat has been reviewed must be placed on the plat.

[Note: In 1998, Section 177.081(1), Florida Statutes, was amended by ch. 98-20, Laws of Florida, to include language that was removed from section 177.071, Florida Statutes, relating to reviewing plats for approval by a governing body. The effect of this amendment was to remove any fiscal impact to local governments, and place the expense on the developer and ultimately the purchaser of the property.]

- Each plat of a subdivision filed for record must contain a dedication by the owner or owners of record.
 - The dedication must be executed by all persons, corporations, or entities having a record interest in the subdivided lands, in the same manner in which deeds are required to be executed.
 - All mortgages having a record interest in the lands subdivided must execute, in the same manner in which deeds are required to be executed, either the dedication contained on the plat or a separate instrument joining in and ratifying the plat and all dedications and reservations thereon.
- When a tract or parcel of land has been subdivided and a plat containing the dedication executed by the owners of record and mortgagees having an interest in the land, and when the approval of the governing body has been secured and recorded, in compliance with this part, then all streets, alleys, easements, rights-of-way, and public areas shown on the plat,

unless otherwise stated, must be deemed to have been dedicated to the public for the uses and purposes stated.

- Nothing in this section must be construed as creating an obligation on any governing body to perform any act of construction or maintenance within such dedicated areas except when the obligation is voluntarily assumed by the governing body.

Section 177.091(9), Florida Statutes: The monument must be set at all lot corners, points of intersection, and changes of direction of lines within the subdivision which do not require a permanent reference monument (P.R.M.) or permanent control monument (P.C.M.). Monuments are not required if a monument already exists at the corner, point, or change of direction. Monuments are not required when a monument cannot be set due to a physical obstruction.

In counties or municipalities that do not require subdivision improvements and do not accept bonds or escrow accounts to construct improvement, monuments may be set before the recording of the plat and must be set before the transfer of any lot.

In counties or municipalities that require subdivision improvements and have the means of ensuring the construction of the improvements (i.e., bonding requirements), monuments must be set prior to the expiration of the bond or other surety.

If the professional surveyor and mapper or legal entity of record is no longer in practice, not available or has been terminated, the subdivider must contract with a professional surveyor and mapper or legal entity who must be allowed to place the monuments within the time allotted.

B. EFFECT OF PROPOSED CHANGES:

The bill revises the provisions of the law with respect to platted lands by:

- **Adding a requirement** a replat is required when improvements affecting the boundary of the previously platted property have been made on the lands to be replatted;
- **Deleting the requirement** requiring a new boundary survey when improvements have been made on adjoining lands;
- **Deleting a requirement** that when the boundary survey and the plat are prepared by different professional surveyors and mappers that both must be under the same legal entity;
- **Deleting the requirement** that prior to the approval by the appropriate governing body, the plat must be reviewed for conformity to chapter 177, Florida Statutes, by a professional surveyor and mapper who is either employed by or under contract to the local governing body and that the costs of the plat review must be borne by the legal entity offering the plat for recordation and that the evidence of the review must be placed on the plat.

[Note: In 1998, Section 177.081(1), Florida Statutes, was amended by ch. 98-20, Laws of Florida, to include language that was removed from section 177.071, Florida Statutes, relating to reviewing plats for approval by a governing body. The effect of the 1998 amendment to this section was to require review for conformity by a professional surveyor and mapper prior to submission to the appropriate governing body. This requirement removed any fiscal impact to local governments, and placed the expense on the developer and ultimately the purchaser of the property.]

- **Revising language** regarding the placement of monuments in counties or municipalities that do not require subdivision improvements and do not accept bonds or escrow accounts to construct improvements by requiring the monument(s) be set at the lot corners before the transfer of the lot.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 177.041, 177.081, 177.091, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 177.041(1), Florida Statutes, 1998 Supplement, making the following changes:

- Adding the requirement for a new boundary survey for a replat when improvement affecting the boundary of the previously platted property have been made on the lands to be replatted;
- Deleting the requirement for a new boundary survey for a replat when improvements have been made on adjoining lands; and
- Deleting the requirement that the professional surveyor and mapper who performs and prepare the boundary survey and the professional surveyor and mapper who prepared the plat be under the same legal entity.

Section 2: Amends s. 177.081, Florida Statutes, 1998 Supplement, **deleting the dedication and approval requirements contained in s. 177.081(1), Florida Statutes**, as follows:

- Requiring prior approval by the appropriate governing body;
- Requiring the plat must be reviewed for conformity to this chapter by a professional surveyor and mapper who is either employed or under contract to the local governing body;
- Requiring the costs of the review to be borne by the legal entity offering the plat for recordation;
- Requiring evidence of the review to be placed on the plat.

[Note: In 1998, Section 177.081(1), Florida Statutes, was amended by ch. 98-20, Laws of Florida, to include language that was removed from section 177.071, Florida Statutes, relating to reviewing plats for approval by a governing body. The effect of this amendment was to require review for conformity by a professional surveyor and mapper prior to submission to the appropriate governing body. This requirement removed any fiscal impact to local governments, and places the expense on the developer and ultimately the purchaser of the property.]

Section 3: Amends subsection 177.091(9), Florida Statutes, 1998 Supplement, adding a requirement that monuments must be set at the corners before the transfer of the lot in counties or municipalities that do not require subdivision improvements and do not accept bonds or escrow accounts to construct improvements.

Section 4: Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require municipalities or counties to spend money or to take action that requires a significant expenditure of money.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill is not anticipated to reduce the authority of municipalities or counties to raise total aggregate revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the total aggregate municipality/county percentage share of a state tax.

V. COMMENTS:

The Florida Surveying and Mapping Society: The Florida Surveying and Mapping Society **opposes this bill, as filed**, and raises the following concerns:

Section 1: The boundary survey is the basis for the recorded plat, which is the permanent record of the subdivision of the land. The Surveyor and Mapper completing the plat should be held responsible for the accuracy and correctness of the entire plat not just one part of it.

Section 2: The record plat is the one document that is recorded with the Clerk of the Court. The purpose of a review by a Professional Surveyor and Mapper is to make sure qualified professionals are reviewing plats on behalf of the government entity and the public. In the past some government employees, not qualified in matters of surveying, were using the power of their agencies to force unnecessary or improper changes to plats. This brings platting into line with the rest of the review process (i.e., Engineers reviewing engineering and construction plans, and Attorneys reviewing title issues.)

Section 3: The setting of lot corners prior to recording of the plat in the public records or expiration of the improvement bond is intended to protect the buyer of a lot within a subdivision. Lot corners are a vital part of the monumentation of the plat and should be set as intended by the platting surveyor. This eliminates the legal uncertainty and conflict of property corners set by other than the original Surveyor of the subdivision.

The purposes of the changes to Chapter 177 were to address long standing problems in the platting process. All of the changes were made with the public's well being in mind. All of these issues were discussed and agreed upon with the Florida Home Builders Association, The Board of Surveyors and Mappers and other interested parties. The changes brought state law into conformity with the requirements that my County Governments already enforce.

The Florida Association of Property Assessors: At the time of the publication of the original analysis, the Florida Association of Property Assessors had not provided a statement regarding this bill.

The Florida Homebuilders Association: The Florida Homebuilders Association **supports the bill as introduced** and makes the following points:

Section 1: It does not make sense to require a property to pay for a new survey where a neighbor chooses to make an improvement, or where the owner's own improvements have no impact on the boundaries of the platted land.

So long as the public is protected by the plat and boundary survey each being sealed by a licensed surveyor and mapper, this is a business decision and one in which government should not intervene.

Section 2: This section creates particular hardship in small counties, where all local surveying and mapping firms may be unable to perform this function due to conflict of interest.

Section 3: Developing land for homebuilding requires a great deal of capitalization before the first lot can be sold. The existing subsection only adds to that cost by requiring monumentation of the lot corners of all lots in a development prior to the transfer of any lot. The statute, as amended,

would continue to protect the buyer of a lot, as the permanent monuments would be in place before the transfer of the lot.

As the plat law requires (and will continue to require if either bill filed becomes law) that the lot corner monuments, as well as the P.C.P.s and P.C.M.s throughout the platted lands to be in place prior to the transfer of the lot to a buyer, the risk of loss remains wholly with the developer, and the ultimate buyer of the lot remains protected. FHBA feels very strongly that where adequate protections for the public are in place, government should not excessively regulate business options for the purpose of saving business people from themselves.

[Note: A P.C.P. is a permanent control point and a P.R.M. is a permanent reference monument.]

The Florida League of Cities: The Florida League of Cities has no comment regarding the bill.

The Florida Association of Counties: At the time of the publication of the original analysis, the Florida Association of Counties had not provided a statement regarding this bill.

Hillsborough County, Florida: Hillsborough County **does not support this bill, as introduced**, and in a memo dated February 17, 1999, stated:

“The removal of language in section 177.041, 177.081, and 177.091 are not in the best interest of the County and the public. Chapter 177.081 especially needs to remain the way it is, because it provides for review of plats submitted for recordation to be reviewed by a professional Surveyor and Mapper. This is very important to assure that the County and the public are best represented prior to any of such recordings.”

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 17, 1997, the Committee on Community Affairs adopted a “strike everything” amendment. The amendment is traveling with the bill and differs from the bill as introduced in the following manner:

Section 1: Amends subsection 177.041(1), Florida Statutes, 1998 Supplement, requiring a new boundary survey for a replat not only when the replat affects any boundary of the previously platted property but also when improvements *which may affect the boundary of the previously platted property* have been made on the lands to be replatted. Deleting the requirement of a new boundary survey when improvements have been made on adjoining lands. Deleting the requirement that the professional surveyor and mapper that performs and prepares the boundary survey and the professional surveyor and mapper that prepares the plat, must be under the same legal entity.

Section 2: Amending subsection 177.091(9), Florida Statutes, 1998 Supplement, amending the requirement that in those counties or municipalities that do not require subdivision improvements and do not accept bonds or escrow accounts to construct improvements, monuments may be set prior to the recording of the land and must be set *at the corners* before the transfer of *the* lot, instead of *any* lot.

Section 3: Providing an effective date of July 1, 1999.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:
Prepared by:

Staff Director:

Tonya Sue Chavis, Esq.

Joan Highsmith-Smith