

RUSSELL WILSON
WILSON COUNTY ATTORNEY

GRACE C. BARRERA, ASSISTANT COUNTY ATTORNEY
1103 FOURTH STREET
FLORESVILLE, TEXAS 78114-2014

TELEPHONE (830) 393-7305
TELECOPIER (830) 393-7358

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OPINION COMMITTEE

The Honorable Greg Abbott
Office of the Attorney General
Attn. Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

RQ-1103-GA

Re: Request for Opinion

Dear General Abbott:

ISSUE

May a county regulate the partition of a tract of land, in the unincorporated portion of the County, into individual tracts with stand alone residences, as a subdivision under Chapter 232 TEX. LOC. GOV'T CODE, or under Chapter 121 TEX. HEALTH AND SAFETY CODE?

FACTS

Wilson County is involved in the Eagle Ford Shale boom, and has seen the construction of a number of new residential housing developments. These developments feature individual housing units, which are small cabin type residences, either site built, or portable. Each individual residence is placed on its own tract of land, and common areas, such as parking lots, and the functional equivalent of streets, are laid out by the developer. Six photographs of existing developments are attached for demonstrative purposes. While title to the individual cabins and tracts does not pass, all of the public health, safety and quality of life issues associated with

traditional subdivisions exist in this type development: the need for adequate roads for emergency vehicles, potable water, on-site sewer, electricity, fire setbacks, and trash pick-up. Arguably, because title to the individual lots does not pass, these issues are even more important in this type of development than with traditional subdivisions, because setback rules, and density rules for on site sewer (septic tanks), do not apply to the dividing lines between these individual lots.

LEGAL AUTHORITY

Section 232.001 TEX. LOC. GOV'T CODE states:

- (a) The owner of a tract of land located outside the limits of a municipality must have a plat of the subdivision prepared if the owner divides the tract into two or more parts to lay out:
 - (1) a subdivision of the tract, including an addition;
 - (2) lots; or
 - (3) streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts.

Additionally, section 232.001 (a-1) states that the division of the land does not have to be made using a metes and bounds description. *Id.* Furthermore, section 232.0015 TEX. LOC. GOV'T CODE, allows a county to define and classify subdivisions, as well as providing ten exceptions to the platting requirement

Section 232.101 TEX. LOC. GOV'T CODE authorizes the commissioners court to adopt rules governing plats and subdivisions of land in the unincorporated areas to “promote the health, safety, morals, or general welfare of the county and the safe, orderly, and healthful development” of the area. Furthermore, Section 121.003 TEX. HEALTH AND SAFETY CODE, gives authority to the governing body of a municipality or the commissioners court of a county “to enforce any law that is reasonably necessary to protect the public health.”

The term “subdivision,” in section 232.001, has been construed broadly by both the courts, and your office. Tex. Att’y Gen. Op. No. GA-0223 (2004) examines the use of the word “subdivision” in court cases that found a subdivision, for the purpose of regulation by a County, can result from partition of a parent tract into a smaller tract, even when title to those smaller tracts does not pass. (Citing *Cowboy Country Estates v. Ellis County*, 692 S.W.2d 882, 886–87 (Tex. App.—Waco 1985, no writ); and *City of Weslaco v. Carpenter*, 694 S.W.2d 601, 603 (Tex. App.—Corpus Christi 1985, writ ref’d n.r.e.).

In *Cowboy Country Estates*, the court considered whether lots, which were subdivided for a mobile home park, must be sold to be considered a subdivision according to the statutes. *Cowboy Country Estates* at 885. The statutes in question, former Revised Civil Statutes articles 6626a and 6702-1, were predecessors to section 232.001. *Id.* at 885–86. The court concluded that a sale was not required to constitute subdivision, but that the “manifest overall purpose of the statutes concerned is to give counties the power to control subdivisions to protect citizens.” *Id.* at 886. The public problems and concerns—public health and sanitation, drainage, and maintenance of public roads—“are just as great in the case of mobile home parks where spaces are leased as in the case where lots are subdivided for purpose of sale.” *Id.* at 886. The cabin-like rentals on the land in Wilson County are similar to both mobile home parks, and traditional residential subdivisions, regarding public health and safety concerns.

City of Weslaco, offers further support for the application of the term “subdivision” to the tract of land supporting cabin-type rentals in Wilson County. The court considered the definition of the term “subdivision,” finding that the term refers to “the act of partition itself,” regardless of whether an actual transfer occurs, or is even intended. *City of Weslaco* at 603.

Furthermore, the court found that the purpose behind the rules governing subdivisions, the need for services and attention to sort of problems discussed above, justifies the authority given to regulate them. *Id.* at 604.

At the time of the ruling in *Elgin Bank of Texas*, the section 232.001(a) used the conjunction “and” where section 212.004(a) used the conjunction “or” in authorizing regulation of subdivisions. *Elgin Bank of Texas v. Travis County*, 906 S.W.2d 120, 122 (Tex. App.—Austin 1995, writ denied). The court distinguished these two code sections finding that the use of “or” in the code allowed for a broader construction of the term “subdivision,” while the use of “and” was more restrictive. *Id.* The legislature has since amended the code, using the conjunction “or” in section 232.001(a), thus allowing for the broader reading of the term subdivision. As a result, the “plain language” of section 232.001(a) now benefits from the analysis of section 212.004(a), which authorizes a broader power of regulation of subdivisions in the county. *Elgin Bank* at 123. The governing body may adopt rules “to promote the health, safety, morals, or general welfare” and the “safe, orderly, and healthful development” of the area governed. *Id.*

Attorney General Opinion No. GA-0223, concludes that “land may be subdivided for purposes of section 232.001 even though the land is owned by a single owner or commonly owned by multiple owners.” Op. Tex. Att’y Gen. No. GA-0223 (2004). This opinion considered whether a condominium development is subject to subdivision regulations. *Id.* The opinion finds that both mobile home spaces and condominiums “divid[e] property into separate parcels” and, accordingly, that “section 232.001 authorizes a commissioners court to determine that such a condominium development constitutes a subdivision” that is subject to Local

Government Code chapter 232. *Id.*

The cabin-type residential developments in Wilson County have similarities to other types of developments, mobile home parks, and condominium developments, which have been found to be subject to subdivision regulation: all are on a divided tract of land, are separate residential units, and create a need for waste removal, potable water, electricity and emergency services. I therefore believe that the Commissioners Court may deem such developments “subdivisions” for the purpose of Chapter 232 TEX. LOC. GOV’T CODE, and/or for similar regulations made under Chapter 121 TEX. HEALTH AND SAFETY CODE.

Sincerely,

A handwritten signature in black ink that reads "Russell Wilson". The signature is written in a cursive style with a large initial "R".

Russell Wilson

RW/hs

Attachment: Images 1-6