

Converting a Public Street Subdivision to a Private Gated Community

The concept of creating a private gated residential community must be forethought and not an afterthought. The initial land plan for a private system usually accounts for the necessary public collector streets accessing residential cells that may be platted as private streets (aka permanent access easements) and ultimately gated. Generally these private cells have either definite geographical and/or physical impediments that prohibit the development of a public “through” circulation system or are very small in size. Not every tract of land is conducive to development as a private system.

Public street subdivisions are platted with interconnecting streets, numerous access points and generally tie into stub streets that are created in adjacent residential developments, forming the secondary circulation system for the area without relying totally on major thoroughfares or collectors. These connections and tie-ins are required in the Houston Planning Commission’s Development Ordinance which governs in the city’s extraterritorial jurisdiction (ETJ) in unincorporated Harris County.

For those public subdivisions that wish to explore the process of converting to gated communities, there is a statutory albeit ominous process. Public streets cannot be barricaded or gated; therefore they must be converted to private. This process ultimately requires the approval of the Houston Planning Commission. Unfortunately, one cannot predict the outcome prior to going through the process. A replat of each section of a development proposed to be gated would have to be submitted for approval to the Houston Planning Commission. Generically speaking, individual sections might be able to be replatted depending on the layout of the specific development. Regardless, a replat of a section requires the joinder of 100% of the property owners and their lien holders (mortgage companies). In addition, the applicant is required to submit title reports for each lot and tax certificates from each taxing authority indicating that all taxes due are paid and current. One holdout property owner or delinquent tax account

will stop the process. Aside from replat preparation fees, there are submittal fees charged by the Houston Department of Planning & Development, as well as a \$600 administrative fee charged by Harris County. It is not an impossible process; however, success is usually achieved in a development of few lots situated on a tract without streets connected to adjacent developments.

The overriding issue that must be accepted is that if an application for a replat to convert to private streets is successful, the homeowner's within that section become responsible for the maintenance and upkeep of the street paving and the appurtenant storm sewer system. Harris County is precluded by law from expenditures on private streets.