

A Reprint from the Real Estate Center *Journal*

Subdivision Drill Sites

By Judon Fambrough

Location is a prime consideration in site selection for proposed subdivisions. Zoning, deed restrictions, municipal ordinances and other legal factors are given considerable attention. A factor receiving much less attention, yet of vital importance in Texas, is the possible interference from mineral exploration and development.

Historically, there was little the developer could do to stop such interference when the developer did not own the minerals. Texas law holds that the mineral estate is dominant over the surface estate. The mineral owner (or lessee) can use as much of the surface as reasonably necessary for exploration and production without:

- obtaining independent permission from the surface owner(s),
- restoring the surface when operations cease and
- paying surface damages.

The mineral owner or lessee may be liable for surface damages only when the:

- mineral lease so provides,
- mineral owner or lessee uses more land than is reasonably necessary,
- mineral owner or lessee negligently injures the surface or
- mineral owner or lessee fails to accommodate the estate.

The Accommodation of Estate Doctrine holds that the mineral lessee must pursue reasonable alternatives that serve the public policy of mineral development and permit surface use for productive agriculture at the same time. The case setting the precedent in Texas focused on installation of a pump jack that interfered with a circular irrigation system. For more information, order "Minerals, Surface Rights and Royalty Payments," publication number 840.

An exception to the rule that mineral rights take precedent over surface rights is made for cities. When the proposed subdivision is located within the municipal boundaries, the mineral operator must comply with valid ordinances regulating exploration, development and production.

Another exception was created by Texas legislators in 1983 when they added Chapter 92 to the Texas Natural Resources Code. The chapter's purpose is to accommodate the demand for affordable housing and suitable job opportunity, yet provide for the full development of all mineral resources in the state.

The 1983 law permits the surface owner(s) of a qualified subdivision to designate operations sites and road and pipeline

easements within a subdivision. The owner of the mineral interest (or lessee) may use only the surface of the designated sites and easements for exploration, development and production of minerals.

A qualified subdivision, according to the law, is one that:

- contains no more than 640 acres;
- is located in a county with more than 400,000 population or in a bordering county with more than 140,000 population, or on a barrier island; and
- has been subdivided in a manner authorized by law for residential, commercial or industrial use.

The law defines *operations site* as "an area of two or more acres located wholly or partly within the subdivision." One operations site must be designated for each 80 acres in the subdivision. *Barrier island* refers to "an island bordering on the Gulf of Mexico and entirely surrounded by water."

The surface owner(s) must submit the plat with the designated sites and easements to the Texas Railroad Commission. The commission will notify the mineral owners and lessees of a hearing to determine if the proposal ensures that the mineral resources can be exploited fully and effectively. The commission may approve, reject or amend the application following the hearing.

When approved, the plat may be recorded in the county or counties where the subdivision is located. Also, the surface owner(s) must proceed with developing the subdivision. The effectiveness of the designations ceases if, within three years after the commission approves the plat:

- no construction of roads or utilities have commenced or
- no lots have been sold to third parties.

The 1983 law stipulates procedures for amending, replatting or abandoning the designations. Likewise, the 1983 law explicitly states that Chapter 92 does not affect the authority of a municipality or home-rule city to regulate exploration and development of mineral interests within its boundaries.

The 1983 law permits the lateral extension of boreholes underneath the subdivision. The extensions may originate from drill sites within or outside the subdivision. However, the lateral drilling cannot unreasonably interfere with the use of the surface within the subdivision.

The article is for information only and is not a substitute for legal counsel. ☐

Fambrough is an attorney, member of the State Bar of Texas and senior lecturer with the Real Estate Center at Texas A&M University.

REAL ESTATE CENTER

©1997, Real Estate Center. All rights reserved.

Director, Dr. R. Malcolm Richards; **Associate Director**, Gary Maler; **Chief Economist**, Dr. Mark G. Dotzour; **Senior Editor**, David S. Jones; **Associate Editor**, Wendell E. Fuqua; **Assistant Editor**, Kammy S. Senter; **Art Director**, Robert P. Beals II; **Circulation Manager**, Gary Earle; **Typography**, Real Estate Center; **Lithography**, Wetmore & Company, Houston.

Advisory Committee: John P. Schneider, Jr., Austin, chairman; Gloria Van Zandt, Arlington, vice chairman; Joseph A. Adame, Corpus Christi; Celia Goode-Haddock, College Station; Carlos Madrid, Jr., San Antonio; Catherine Miller, Fort Worth; Kay Moore, Big Spring; Angela S. Myres, Houston; Jerry L. Schaffner, Lubbock; and Pete Cantu, Sr., San Antonio, ex-officio representing the Texas Real Estate Commission.

Tierra Grande (ISSN 1070-0234), formerly *Real Estate Center Journal*, is published quarterly by the Real Estate Center at Texas A&M University, College Station, Texas 77843-2115.

Subscriptions are free to Texas real estate licensees. Other subscribers, \$30 per year, including 12 issues of *Trends*.

Views expressed are those of the authors and do not imply endorsement by the Real Estate Center, the Lowry Mays College & Graduate School of Business or Texas A&M University.