

# Planning in the Wake of Florida Land Scams

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It's an American dream—a home in the sun. Large lot-sales companies throughout the country have exploited this dream by selling millions of vacant lots as potential vacation or retirement homesites. Unfortunately, many of the sales occurred in large pre-platted subdivisions, projects that converted raw land into marketable homesites without considering most of the important aspects of land development. This article surveys the literature on pre-platted subdivisions, explores potentially useful planning techniques, analyzes the Florida planning system's response to platted lands, and provides a case study of a novel approach recently used in Lehigh Acres, Florida.

The rush to sell as many lots as possible created many enduring problems, including severe environmental degradation; inadequate public facilities; lot layouts with few if any amenities; and subdivision designs that do not meet current market demands. Despite these and other limitations, the owners of platted lots<sup>1</sup> generally assume they have an irrevocable right to build a home on every parcel. This belief sometimes conflicts with established public policy, complicating the already vexing dilemma of how to deal with pre-platted subdivisions.

Pre-platted subdivisions (also referred to as *platted lands*, *obsolete subdivisions*, or *antiquated subdivisions*) create a complex set of problems that vary depending on the location and size of the development, the nature of the land that has been platted, the character of the lots, and the availability of basic services. Some pre-platted lots are too small to meet minimum lot size requirements for on-site wastewater treatment facilities (septic tanks, for example). Others are poorly drained, some to the point of being underwater for much of the year. No physical improvements were made by the promoters of some lands, which are subdivisions in name only—*paper subdivisions*. Others have become modern-day boom-towns and are facing expensive retrofits to provide even the most basic urban infrastructure. The platted lands quandary looms in some locations as the most significant stumbling block to orderly growth.

It is difficult to determine the actual number of pre-platted lots in the U.S. The federal Office of Interstate Land Sales Registration, Department of Housing and Urban Development, monitors interstate land sales activity. It records subdivisions of 100 lots or more and compiles a voluminous catalogue of subdivision filings. Previous tabulations indicate a total of 22,000 subdivisions with more than 8.9 million lots on 8.1 million acres of land (Stroud 1995, 4).

These subdivisions are strongly concentrated: 57 percent of those larger than 1,000 acres are found in five states, 73 percent in only 10 states. Major clusters occur in Florida, in the desert Southwest, in the Pocono Mountains of northeastern Pennsylvania, and in several counties near Austin and Houston, Texas (see Figure 1). Florida alone has 150, mainly in the central and southern regions (Stroud 1995, 5-6).

## ABSTRACT

A huge surplus of poorly planned vacant lots presents a vexing land-use problem throughout much of the U.S. The most significant problems occur within large pre-platted subdivisions where, decades ago, distant buyers purchased potential homesites in ill-conceived land developments. The magnitude of the problems and the potential for rapid population growth combine to make platted lands the sleeping giant of growth management problems in Florida, Texas, and parts of the Southwest. The options explored in this research may alleviate some of the problems that large preplatted subdivisions have created.

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The actual impact of these communities as they progress through various stages of occupation can be positive as well as negative. Positive features include providing recreational opportunities, stimulating the building industry, and putting to use land that might otherwise be only marginally productive, thereby boosting rural economies with new tax revenues and consumer sales. These benefits must be weighed against the serious problems that amenity-seeking populations bring as they move into undeveloped areas, including the reduction of land resources, environmental damage to ecologically fragile land, and the overtaxing of local public services.

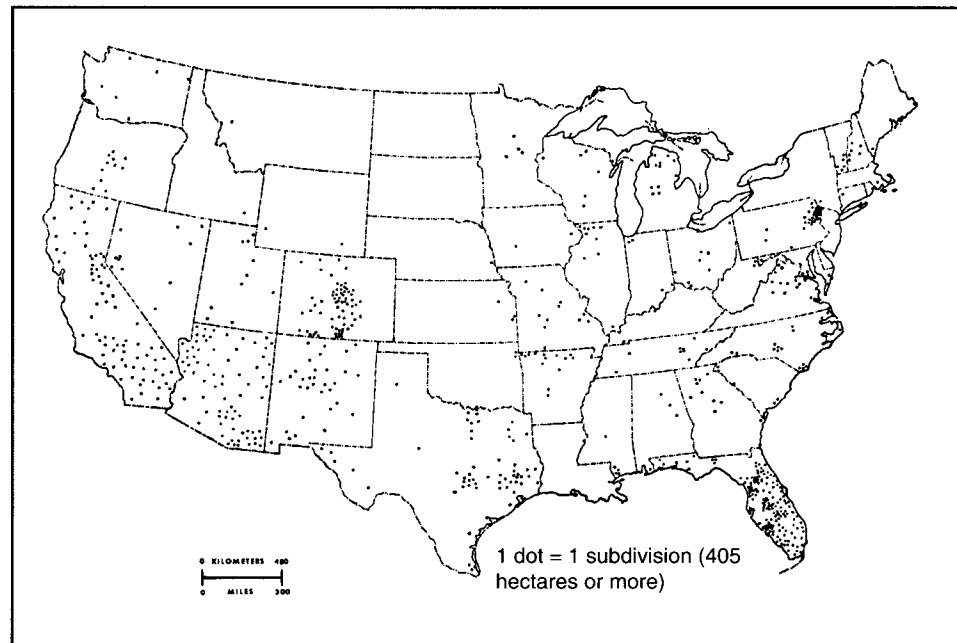
Most of these pre-platted subdivisions were approved decades ago when few regulations existed, allowing some extremely ill-conceived land developments. The magnitude of the problems and the potential for rapid population growth combine to make platted lands a sleeping giant of growth management, especially in Florida and other states with large concentrations of platted lands.

#### ■ LITERATURE REVIEW

Although the interstate land sales industry did not begin to take its present form until the 1950s, land fever struck shortly after the federal government was established, and speculative land schemes became an American tradition. The subdivision of land for a quick profit was instrumental in opening the West, and continues to be important in contemporary land use (Cornick 1938; Stroud 1984, 1-3; Reps 1965, 349-381; Yearwood 1971, 113).

As early as the 1820s, both the federal government and individual speculators had amassed vast profits by selling parcels to a public hungry for private land. The speculative fever waned by the end of the 1830s, and many newly acquired paper fortunes disappeared during a general economic depression. Such boom-and-bust cycles occurred time and again, determined largely by broad swings in the nation's economy. When the general economy improves, lot-sales companies emerge from their periodic hibernation to take advantage of people's dreams of owning real estate (Stroud 1995, 2).

Throughout American history, development companies have transferred land long before any development could be



Source: Data compiled and mapped from U.S. Dept. of Housing and Urban Development data, 1993. Adapted from Stroud, 1995, 6.

*Figure 1. Location of large pre-platted subdivisions in the United States.*

absorbed by the local economy. A good example occurred in Florida from 1916 through 1925, when speculative activity created enough subdivided lots within a 10-mile radius of Miami to accommodate 2 million people (Vanderblue 1927, 114-116). Such speculative subdivision, while most significant in Florida, happened throughout the U.S. (Sussna and Kirchoff 1971, 595). In 1825, for instance, when the first boats traveled the Erie Canal between Buffalo and Albany, incentives grew to subdivide land prematurely, and the supply of urban lots began to exceed demand (Cornick 1938, 5). In addition to the 1920s boom, notable booms occurred much earlier in New York in 1835 and 1865. Each boom was followed, of course, by a bust.

Planning historian John Reps has chronicled many of these speculative cycles and noted the damage they have caused:

And so it went across the continent—cities for sale through boom and bust. Although land speculation continues to this day [1965], we are not likely to see again such an era of wholesale humbuggery and land butchery. The stamp of the early speculator remains, however, upon most of our cities. At a pace a hundred times slower than the original development, and at enormous expense, modern city planners now are attempting to erase the worst blotches spilled across the country by the boomers, the townsite promoters, and the speculative builders of yesterday. It is an aspect of our urban history in which Americans can take little pride (Reps 1965, 380).

Alas, Reps was wrong to assume that the era of speculation had ended. In fact, a new wave had begun, with physical results more devastating than anything yet seen.

### 1950 to 1980

Beginning primarily in the 1950s, lots were mass-marketed by a few firms, principally in Florida and in California's remote desert regions. These companies created a nationwide market for property sold on the installment plan by mail, often sight unseen (Allan, Kuder, and Oakes 1976, 3-4).<sup>2</sup> This type of land development soon became a national phenomenon; raw or partially developed acreage was subdivided into small parcels and offered for sale on liberal terms. Land hustling became as much a part of contemporary America as superhighways and rock concerts (Paulson 1972). Such developments appeal to a broad segment of the population (Martin 1971, 3). From this boom was born the present-day amenity-oriented land development industry, which was represented in the beginning by several large pre-platted communities like Florida's Cape Coral, Lehigh Acres, Port Charlotte, Golden Gate Estates, and Port St. Lucie (Mosena 1972, 297; Stroud 1995, 3). Advertisements touted such property as having tremendous investment potential, citing authorities with quotes such as: "Ninety percent of all millionaires became so through owning real estate."

The success of this industry can be attributed to several factors: the desire of millions of Americans to own land; strong promotional efforts by land developers; the ability to buy a lot without even visiting the site; low down-payments and easy payment plans; the amenity value of an unspoiled environment; the desire to escape an urban environment; the availability of large tracts of relatively inexpensive land located near major highways; and the absence of meaningful government regulations.

Land sales expanded throughout the 1950s. By the late 1960s, developers were subdividing rural land at unprecedented rates. Widespread growth continued until 1973, when the industry encountered several problems: an economic recession, increased development costs, more rigorous consumer and environmental regulations, an oversaturated market, negative publicity, and an energy crisis. Demand waned quickly. Recovery was slow, especially until 1977. The slump eliminated many marginal developers. It is unlikely that the industry will ever again reach the peak it attained during the years from 1969 through 1973 (ASPO 1976).

In response to those setbacks, developers changed their operating techniques (Lachman 1990). Greater buyer sophistication, coupled with more stringent regulations, has prompted them to, for example, subdivide smaller tracts, provide basic services to lot owners, and implement such plans as time-sharing and undivided interest plans (Chant 1986). Several land development companies expanded into the creation of resort communities, constructing elaborate

infrastructure and building and selling vacation homes. Home sales have since become an important source of revenue for many land developers (Stroud 1995, 2-4).

### 1980 to Present

Research on problems with platted lands increased during the 1980s. Major contributions included the work of Frank Schnidman, Michael Shultz, R. Lisle Baker, Madelyn Glickfeld, the Lincoln Institute of Land Policy (LILP 1984), and the Florida Department of Community Affairs. Schnidman's contributions included research publications (see, for example, Schnidman 1984, 1987; Schnidman and Baker 1982, 1983; Shultz and Schnidman 1990); several conferences on land assembly and land readjustment; and a simulated redesign of a platted but not-yet-sold subdivision known as Ocala Springs in Marion County, Florida. Legal solutions to problems caused by obsolete subdivisions in the western United States were examined separately (Shultz and Groy 1988).

Glickfeld worked with Senator Marian Bergeson of California to prepare legislation to address the "hidden problem" of antiquated subdivisions. A package of bills was introduced to the California Senate (Glickfeld 1984; Bergeson and Glickfeld 1987), but most of this legislation was never adopted. The only exception was a bill defining *blight* under the California Redevelopment Act to include antiquated subdivisions. California's failure to address the platted lands issue has allowed the gradual urbanization of particularly troublesome subdivisions, resulting in water pollution, dangerous road conditions, landslides, and loss of important agricultural land (Glickfeld 1997).

In the mid-1980s, platted lands problems in the Florida Keys were examined by the Joint Center for Environmental and Urban Problems (Florida Atlantic University/Florida International University) with funding by the Florida Department of Community Affairs (see, for example, deHaven-Smith 1986, 6-8). Objectives were to: (1) delineate the scope and nature of Monroe County's platted lands problem; (2) identify the motives of lot owners and the relevant attitudes of the public; (3) evaluate alternative programs for dealing with the platted lands problem; and (4) develop a proposed strategy for implementing appropriate programs (Joint Center 1986). The Department of Community Affairs also funded a more comprehensive analysis of the problem for the entire state. In-house reports explored several options for dealing with platted lands (Florida Department of Community Affairs 1986; Parker 1986). Unfortunately, few have been implemented by state or local governments.

Publications on platted lands continue into the 1990s. *Selling the Dream* examines the rise and fall of the Rosen Brothers' empire at Cape Coral and provides a detailed explanation of the financial aspects of the decline (Dodrill 1993). *Rotonda: The Vision and the Reality* provides an interesting account of the history and development cycle of one

of Florida's most unusual pre-platted communities—the circular Rotonda on the Cape Haze peninsula in Charlotte County (Alexander 1995). *The Promise of Paradise: Recreational and Retirement Communities in the United States Since 1950* assesses several pre-platted communities as they progress through various stages of actual occupation and examines both positive and negative aspects of this type of land development (Stroud 1995). The *Lehigh Acres Commercial Land Use Study* provides detailed information about Lehigh Acres and proposes strategies for resolving land use imbalances in a fast-growing preplatted community, particularly inadequate commercial land (Spikowski 1996). *Obsolete Subdivisions and What To Do About Them* discusses potential planning techniques and their legal implications for communities wishing to remove lots, lower density, or improve the quality of preplatted subdivisions (Elliott 1997). The widespread problem of platted lands occasionally provokes articles in magazines and newspapers (see, for example, Salvesen and Porter 1996; Goodkin 1996; Handley 1996; Hull 1996).

#### ■ PLANNING TECHNIQUES FOR PLATTED LANDS

Many technical options have been suggested for dealing with platted lands. These include lot consolidation/lot merger, plat vacation, subdivision redesign, downzoning/transfer of development rights (TDRs), and public acquisition (through purchases and donations). Each option is summarized below. Unfortunately, most of these techniques are used only rarely. In many cases, local officials fear their effects on property rights, or are reluctant to implement techniques that may be perceived as hampering economic growth (Elliott 1997).

##### Lot Consolidation (Lot Merger)

One technique for eliminating some of the problems associated with premature subdivision is lot consolidation or lot merger. This refers to a process of aggregating lots by prohibiting the use of a single lot. If lots are smaller than today's standards, a conceptually simple option is to require that pre-existing lots be consolidated to meet current minimum lot sizes to qualify for a building permit (Elliott 1997). In Cape Coral, two lots have always been required for a home, but in that case it was actually a sales gimmick, with "half-lots" sold as if they were buildable lots to imply greater value.

Limitations on this approach include situations where landowners are unable to acquire an additional lot to meet the minimum lot size (such as a lot that is surrounded on three sides by existing houses). This fact alone does not necessarily mean that the regulation would deprive a landowner of all beneficial use, however. The lot may have substantial value as additional yard for adjacent property owners, or some common amenity use such as a pocket park, pool, or tennis court (Siemon and Larson 1986).

Requiring the consolidation of two or more lots has been used in a few places across the United States where lots were platted in extremely sensitive environments. The City of Sanibel (Florida) requires lot consolidation in several subdivisions that were platted in wetlands. To avoid constitutional challenges, Sanibel has an active acquisition program for such lots, plus a variance procedure when a lot owner cannot acquire adjoining lots (Rogers 1997).

Lot consolidation has not been widely used even though it can be formulated to withstand legal challenges. A variance procedure can be easily provided, but acquisition funds are more difficult to arrange, especially when lots have no particular environmental value.

This technique is probably best used on a limited basis where the land's environmental values are high. Consolidation has also been suggested in the following situations: (1) where lots are extremely small (those less than 5,000 square feet, for example); (2) when lots are not in compliance with applicable laws and ordinances; (3) where lots do not meet environmental standards; and (4) where lots are inconsistent with the community's general land use plan (Shultz and Groy 1988, 633-638).

There are other limitations to the use of lot consolidation. This technique reduces the density of development but does little or nothing to correct poor lot design. Legal problems may arise in association with vested rights that may have been established by the platting process; lot owners may object to the merger on the grounds that it would represent an unconstitutional taking of their land (Shultz and Groy 1988, 636-637). While local governments may possess the authority to consolidate lots, many states only explicitly authorize or mandate that local governments enact regulations concerning the subdivision of land.

##### Plat Vacation

Another option is plat *vacation*, which voids the original subdivision plat. Several states have statutes that permit local governments to vacate all or part of the plat of a subdivision (usually upon request of the landowner). Tracts were often subdivided before the adoption of substantive land development regulations. Local governments may be able to eliminate the warehousing of lots previously allowed by vacating substandard lots as well as roads and alleys. Plat-vacation statutes generally require that local governments consider whether any person will suffer material injury as a result of the vacation (Shultz and Groy 1988, 648-655).

For vacant lots that have never been used, a fixed-time window of opportunity could be provided. If no development has occurred in this specified period of time, previous approvals and obligations could be removed. While such an option would help alleviate the problem of too many platted lots, lot vacation is not likely to be used in fast-growing communities because of commitments made by local officials not to infringe upon the vested rights of individual lot

owners (Freilich and Shultz 1995; Parker 1994).

Plat vacation is a technique that is particularly useful for subdivisions that remain in single ownership (perhaps the original developer, or a foreclosing lending agency). Its feasibility for subdivisions that have progressed to the multiple-ownership stage is very questionable. Plat-vacation statutes usually indicate that the government may not eliminate property lines and assemble individually owned parcels without the consent of the owners of those parcels. Consequently, it is doubtful that the local government may vacate a plat when lots are in individual ownership, unless lot owners agree to the vacation and reassembly of their lots.

The most significant benefit of plat vacation may well be the elimination of lots or the portions of the subdivision that are still owned by the developer. The greatest potential for improvement would occur if local government could entice the developer or subsequent owner to vacate and redesign the plat to meet some combination of public and private goals. A local government may be able to require mitigation of adverse impacts of development in that particular location.

The greatest stumbling blocks to this procedure are associated with vested rights and just compensation. Property platted prior to the adoption of subdivision controls often is grandfathered in, making it extremely difficult to apply recent regulations retroactively. Local governments are also concerned about land owners who may seek (demand) compensation for real or imagined losses. Where hundreds or even thousands of lot owners are involved, local governments seldom have the resources to cover court settlements if plat vacations were to be declared *takings*.

### Subdivision Redesign

Under the right conditions, an excellent solution to platted land problems is subdivision redesign. Ideally, vacant platted lots would be reassembled into a single parcel that could be redesigned to meet current standards and market demands (Schwab 1997, 1997a). This approach is especially practical for subdivisions whose lots have never been sold off into separate ownership. A good example was a 1984 simulated redesign of the Ocala Springs subdivision in Marion County, Florida (Schnidman 1987).

While practical for single-ownership subdivisions, the obvious difficulty of negotiating with widely scattered property owners in multiple-owner subdivisions keep this option from being feasible for most local governments (except where the power of eminent domain is available for reassembly, for instance by a community redevelopment agency). Such problems have been significant at Rio Rancho, New Mexico, where redesign options have been aggressively explored for a 1,000-acre parcel. The city of Rio Rancho has contracted with a private developer to implement the redesign plan. Unfortunately, the case is now in court, with the city and the developer charging each other with breach of contract (Tollefson 1998).

### Downzoning/Transfer of Development Rights

When lot consolidation, plat vacation, and subdivision redesign are not feasible, downzoning may be able to lower the density of development. Downzoning differs from merger in that it does not reduce the number of lots; it has the same effect, however, by creating substandard lots that cannot be developed individually. As with lot consolidation, downzoning only affects the density of development and does not directly affect the location or layout of the subdivision.

In some instances, local government may combine downzoning with a program of transferable development rights (TDRs). The downzoned property owner may transfer development rights to property in another area within the local jurisdiction or may sell the lot to a neighbor. TDRs can alleviate the economic hardship to the owner of the substandard lot while permitting local government to redirect the location of development within its jurisdiction (Shultz and Groy 1988, 643-644). For example, TDRs were used at Oxnard Shores in California where the City of Oxnard made significant concessions for the development of inland areas in exchange for the abandonment of coastal shore lots. Enacting the TDR program protected coastal beach access and inhibited beach erosion (Glickfeld 1984). TDRs are rarely effective, though, unless there are physical or regulatory constraints on future development elsewhere that can be alleviated by purchasing TDRs.

### Incorporation

Municipal incorporation is occasionally suggested as a solution to pre-platted community problems. Cape Coral, for example, incorporated in 1970, has established a network of city officials who have become keenly aware of platted lands issues. The population of Cape Coral now exceeds 90,000, and it has had to develop complex solutions to scattered development and to infrastructure shortcomings such as wholly inadequate drainage, water supply, and wastewater disposal.

But there is often little support by residents of pre-platted subdivisions for municipal incorporation, due to expected higher levels of taxation. This fear is often legitimate, since residents are often older and of modest means, and the communities often do not have commercial or industrial tax bases, or affluent neighborhoods, that would generate strong property tax revenues.

### Public Acquisition of Lots

Where assembly of all platted lots for a complete redesign is not feasible, partial reassembly could be accomplished through the purchase of individual lots, perhaps beginning with tax delinquent lots. These lots could be held permanently, or local government could gradually reassemble contiguous lots into large parcels that could be used to meet various needs including land for schools, fire stations, or parks (if necessary by trading lots in other areas to build up

contiguous tracts). Lot owners along the periphery of the subdivision could also be given an opportunity to trade their lot for one located near the center of the community, closer to basic services, helping reduce the total size of the subdivision and the cost of providing services to outlying lots. Public acquisition programs could be implemented without infringing upon individual property rights. Limitations of the plan include finding the necessary funding to purchase the lots and the administrative efforts in acquiring and assembling lots (Daltry 1994).

To supplement government funds for direct purchases, some lots might be donated, with their owners receiving a federal income tax deduction. Donations are more likely when property taxes are high and the marketability of lots is low. Often, though, owners have paid far more than the lots are worth today, making donations (or even fair-market sales) unlikely. Some landowners are convinced that they would be relinquishing valuable land rather than escaping from a flawed subdivision where development is unlikely (Schnidman and Baker 1985). It is possible to expedite the process, however, through communication between the property owner and the regulatory agency (Schnidman 1987).

In the Lake Tahoe Basin, the state of California has spent \$80 million to eliminate problem subdivisions. Offsetting such costs are the reduced long-term costs of later trying to provide basic services to ill-planned subdivisions. The state of Florida has been acquiring subdivision lots in environmentally sensitive areas such as the Fakahatchee Strand near the Everglades. Some of the acquisitions are within the southern portion of Golden Gate Estates, a massive subdivision occupying highly sensitive land east of Naples in Collier County. The federal government has allocated \$25 million to aid this effort, which will allow the restoration of natural water flows across this land.

There are many options available in addressing platted land situations, but the key as always is finding solutions that are appropriate for a given situation and that are feasible under existing monetary and legal constraints. Unfortunately, many of the options mentioned above are of little value in resolving platted lands problems at many pre-platted subdivisions in Florida, where high growth pressures have caused even poorly designed subdivisions to attract many new residents each year.

## ■ THE FLORIDA PERSPECTIVE

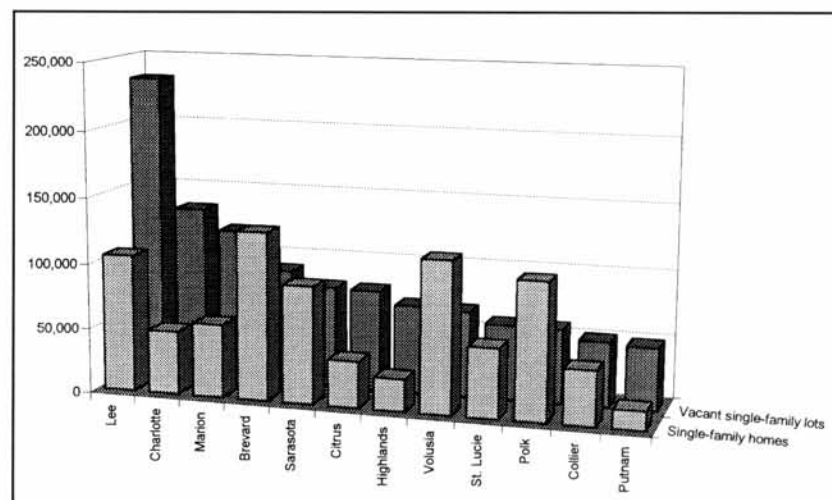
Florida alone has over 2.1 million subdivision lots extending across 1.6 million acres of land (Stroud 1995, 5). While subdivision activity is strongly concentrated in

central and southern portions of the state, almost all of Florida's 67 counties have experienced some activity. Florida's southern Gulf coast is an area of major subdivision activity, especially Charlotte and Lee Counties (see Figure 2). Both counties have more than two vacant lots for every lot that is occupied. Charlotte County is dominated by Port Charlotte, with 118,250 platted lots, 88,500 of which remain vacant. Lee County has over 337,000 platted lots, 232,000 of which remain vacant; most of the vacant lots are clustered within two mammoth pre-platted subdivisions. One is Cape Coral, whose thoroughly documented development history (Dodrill 1993) has been popularized in the book *Lies That Came True: Tall Tales and Hard Sales in Cape Coral, Florida* (Bernard 1983). The other is Lehigh Acres, the subject of the case study below. A home on each of these lots would create a build-out population that would far exceed the ability of local governments to provide even the most basic services (DeGrove and Stroud 1987, 3-8).

Even though Florida has now enacted extensive legislation to better manage land development and to cope with rapid population growth, the legislation does not address the problem of millions of platted lots that already exist. This legislation may be better understood by viewing Florida's historical perspective.

## History

Florida has been a poor, sparsely populated state throughout most of its history. Growth and economic development were minimal until the mid-20th century. Weak, fragmented local governments were ill-prepared for the rapid growth and development of recent decades. Unfortunately for the environment, much of the development and change has been concentrated in the state's most sensitive natural



Source: Data from Florida Property Valuations & Tax Data, Florida Department of Revenue, December 1996.

Figure 2. Existing single-family homes and vacant lots, in the 10 counties with most vacant lots in Florida, 1996.

environments. Significant platting of lots began in Florida around the turn of the century by entrepreneurs like Henry Flagler, who recognized the state's potential for tourism. Subdividing and selling small lots opened the state to hundreds of thousands of visitors. Interest in land was strong enough to create the first boom in speculative real estate, a lot-selling frenzy that was all but over before the 1929 stock market crash.

Lot sales were impressive in the 1920s era, but the rebirth of lot-sale programs during the 1950s and 1960s, often referred to as "Florida's golden age of land scams," created vacant subdivisions that still stagger the imagination. Even today, airplane passengers sometimes gasp when they first see treeless lots and streets as far as the eye can reach (see Figure 3). Although comparatively few people actually live on most of these lots, some of these communities (such as Cape Coral) have become the growth centers of their region.

Many of the early speculative subdivisions were paper subdivisions that did not physically change the land. By the 1960s, however, in part because of federal and state regulations, it became common for subdividers to build the local roads that would serve their lots, rather than hoping local governments would install streets and utilities. In theory, this would avoid the huge Depression-era surplus of prematurely subdivided lots, 15 million of which became tax-delinquent by one estimate (Tunnard and Pushkarev 1963, 86). Many of the new subdivisions provided at least minimal roads and drainage long before a resident population could become established. However, such premature urbanization became a major source of environmental destruction, making the problem of paper subdivisions seem minor by comparison.

The subdivision of wetlands often caused the greatest conflict between private rights and public needs. The carving out of these lots caused irreparable damage. The continued subdivision of fragile ecosystems, the scale of development in other areas of Florida, and the inability or unwillingness



Source: Photograph by author.

Figure 3. Airline passengers' view of Lehigh Acres.

ingness of local governments to control large developments resulted in state action to protect Florida's land and water (Allan, Kuder, and Oakes 1977; Jackson 1981, 35-41).

### Florida's Growth Management Era

Florida has adopted some of the most stringent statewide planning programs in the country. In the 1970s, local comprehensive plans became mandatory. The state directed local governments to protect statewide interests in designated "areas of critical state concern" (DeGrove 1991; Outland 1988). State oversight began for large land developments known as "developments of regional impact" (DRIs), including residential developments of the type examined here, through a complex process involving local government, regional planning agencies, and the state (DeGrove and Metzger 1995).

The resulting growth management efforts were only partially successful. Local comprehensive plans were adopted, but often went unenforced. No massive new preplatted subdivisions were submitted under the DRI system, but a generous vesting procedure allowed existing subdivisions to proceed virtually unimpeded (*Florida Statutes* 380.06(20) and 163.3167(8)). Overall, the DRI system did not address any projects that were smaller than its thresholds or that were determined to be vested.

In 1985, the system was overhauled. Believing that many growth issues are too complex to be managed at the local level, the legislature created a top-down system of growth management. It added the concept that became known as *concurrency*, a requirement that infrastructure such as roads, sewer, and water must be available before developers can obtain the necessary permits to continue development.

This act also had several weaknesses. Local governments were required to enforce the constitutionally suspect concurrency requirement even while the state was refusing to fund backlogged improvements to the state road system. The administration of the act was so tightly controlled from above that local and state planners became adversaries rather than partners. Voluminous standards for measuring local government comprehensive plans were placed in an administrative rule that was so important that the legislature retained final approval over it. Yet it was only *after* the first new local plans were adopted that anyone could know which standards would be important enough to result in litigation between the state planning agency and local governments.

Despite its many achievements, the system has proven cumbersome and costly (Claremont Institute 1991). Some of the basic concepts such as concurrency, originally seen as the heart of the act (Ciccarone 1991; Daltry 1991), became battlegrounds in a conflict that ultimately had only minor positive effects on growth management.

Florida has belatedly taken steps to minimize the effects of the pervasive urban sprawl seen across the state. In the late 1980s and early 1990s, the Florida Department of Commu-

nity Affairs (DCA) routinely objected to local government comprehensive plans over the degree of sprawl they were allowing; litigation frequently followed. DCA ultimately defined its interpretation of "urban sprawl" in a 1994 administrative rule that it uses to evaluate local government comprehensive plans (Florida Administrative Code, Chapter 9J-5.006(5)). This rule attempts to limit further expansion of urban sprawl, but does not directly address the problems of existing pre-platted communities.

The Florida urban sprawl rule does not inhibit sensible planning for a pre-platted community that later becomes its own city, but in actual practice it penalizes *counties* that have inherited vast preplatted subdivisions. It does so by stigmatizing that acreage as urban sprawl, yet counting all of it as developable, regardless of actual growth trends. When enough developable land is available to house the forecasted population, development approvals on additional land are considered evidence of further sprawl, however well designed or located that additional land may be. The Florida urban sprawl policy misses an opportunity to encourage viable solutions to one of the most important planning problems in the state.

An additional obstacle to resolving platted lands problems was erected by the legislature in 1995. Florida became one of the several dozen states to adopt legislation that would compensate property owners if the value of their land is "inordinately burdened" by governmental actions that fall short of a constitutional "taking" of private property (Avery 1996). Local government officials are frightened of the possibility of being required to compensate hundreds or thousands of lot owners for having diminished the value of their vacant (and seemingly harmless) lots.

## ■ THE CASE OF LEHIGH ACRES

### When Land Scams Become Boom Towns

While broad-level consideration of platted lands problems is useful, there is tremendous variety among these communities. Considerable attention is apparent in the literature on consumer fraud, environmental destruction, and specific techniques for retrofitting individual lots. Little scholarly work has been done on the enormous problems in retrofitting entire pre-platted communities for infrastructure when strong population growth actually materializes from a lot-sales scheme.

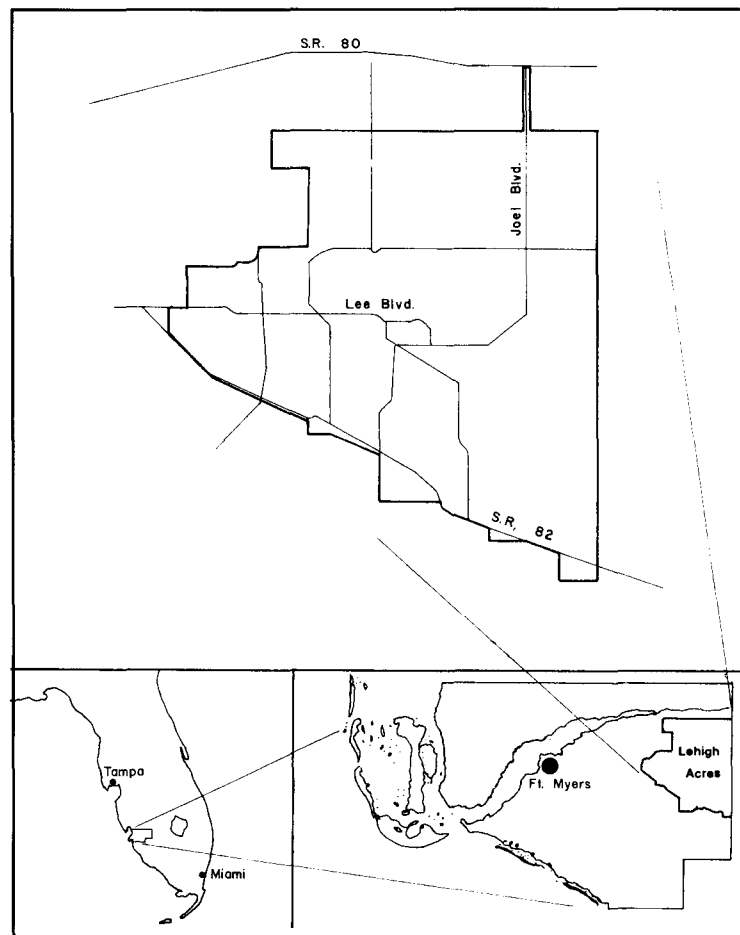
Local officials are reluctant to infringe on property rights that might be even marginally vested. In the case of fast-growing Lehigh Acres, Lee County officials vested every existing lot for one home when they were sued by the original developer after the county had adopted a new comprehensive plan

in 1984. Thus a potentially valuable planning initiative, one that could have resulted in various redesign efforts, resulted in permanent vesting of the status quo. County officials have never earmarked financial resources to purchase or reassemble lots.

The Lehigh Acres case study will provide a brief history of the quite different approach to planning that became necessary due to the vesting decision and the advanced state of development that Lehigh Acres had achieved by the 1990s. This approach to platted lands uses a Community Redevelopment Agency (CRA) to correct inherent shortcomings of a large pre-platted community.

### History of Lehigh Acres

One of the largest pre-platted subdivisions in the U.S., Lehigh Acres began in the mid-1950s as a prototypical lot-sales subdivision. Its 60,000 acres are located about 12 miles east of Fort Myers and 20 miles east of Cape Coral (see map in Figure 4). It was subdivided into about 135,000 lots, over 121,500 of which remain vacant (see typical example in Fig-



Source: Adapted from maps provided by Lehigh Corporation, 1994.

Figure 4. Map depicting location of Lehigh Acres, Florida.



ure 5). By 1997, Lehigh Acres emerged as an unincorporated community of 30,000 people. This case study illustrates some of the problems that exist when large pre-platted subdivisions become modern-day boom towns, where planning techniques that aim to *minimize* development are no longer appropriate.

The original developer, the Lehigh Acres Development Corporation, was skilled at marketing but had never before developed land (Faulkner 1994). It emphasized the volume sales of unimproved homesites to out-of-town buyers, virtually ignoring community planning and even the basics of drainage. Yet the demand for installment purchases of the early Lehigh Acres lots was phenomenal. Even though typically 40 percent of the purchasers defaulted on their payments, the lots were simply sold again, since no complicated foreclosure proceedings were required (Gould 1995). The development expanded in every direction. The result today is an unending landscape of quarter-acre and half-acre residential lots with a confusing grid system of more than 1,000 miles of discontinuous local roads.

This development approach created numerous problems, including a rigid pattern of nearly identical lots and streets superimposed over the entire site (see Figure 6); a failure to provide even the most basic services such as water and sewer systems to most lots; an inadequately designed road network with few continuous arterial streets (despite the apparent grid); no reservation of land for schools, fire stations, and parks; an absence of employment opportunities, since sales techniques emphasized retirement living; little vacant commercial land remaining to serve future residents; and the destruction of most of the original wetlands by an elaborate network of drainage canals. As Lehigh Acres has grown, the population mix has become younger, and more residents must traverse narrow and poorly constructed roads in their commute to jobs in the Fort Myers area.



Source: Photograph by author.

*Figure 5. Home and vacant lots along a poorly maintained road in a remote section of Lehigh Acres.*

When a population boom materialized in Lehigh Acres in the late 1980s, the need to mitigate these serious planning deficiencies became apparent. The most immediate solution seemed to be more a retrofit of essential services than a redesign of individual plats.

### Planning by a Community Redevelopment Agency

The original Lehigh Acres development company ran a modern-day company town and kept very close control over most facets of daily life, from the home-building corporation and the local newspaper to the bowling alley. An adversarial relationship developed between it and Lee County. This relationship changed dramatically in 1992, however, after the company was purchased by Minnesota Power, which seemed eager to address fundamental land-use planning problems and to develop Lehigh Acres as a balanced community rather than an insular retirement haven (Prather 1995). Newly installed corporate officials met with influential citizens and politicians representing eastern Lee County and proposed establishing a Community Redevelopment Agency (CRA), a technique commonly used for removing blighted buildings in older neighborhoods.

CRA status is contingent upon the presence of one or more conditions of blight as defined in Florida's Community Redevelopment Act. *Blight* is defined broadly in the act, and a formal blight study of Lehigh Acres had no trouble identifying a predominance of defective and inadequate street design, faulty lot layout, and unsanitary or unsafe conditions, including poor street lighting, dangerous road design, and lack of pedestrian crosswalks and road shoulders (Simpfer 1994). In response, the county added Lehigh Acres to its existing CRA program.

The new CRA formulated strategies to attack many obvious community problems. These included the provision of a community bike path and sidewalk system, greater police protection, bus shelters, the widening of roads, and improved street lighting (Lee County Community Redevelopment Agency 1994). Some of the new CRA's objectives, however, addressed underlying root problems that could preclude Lehigh Acres from continuing to grow into a healthy community. The CRA immediately began a commercial land use study, anticipated as the first part of a comprehensive sector plan to correct problems in the original platting of Lehigh Acres.

Most of the commercial land provided by the original developer was platted into small lots in shallow strips along a few major roads. Unfortunately, Lehigh Acres has a very poor network of major roads, making it difficult to place a conventional commercial node that can be accessed by two arterials or collectors. A shortage of commercial land is an unusual planning problem, since land speculators are generally quick to remedy such a situation. But in Lehigh Acres, the massive scale of subdividing residential lots used up prime commercial locations before actual commercial de-

mand had time to develop. Once a large number of people had moved to Lehigh Acres, the few designated commercial sites were quickly absorbed by businesses, leaving only the most marginal sites for future use.

Several of the commercial areas indicated on the earliest plats were replatted as early as 1956 for more homesites. Little employment was expected, even if a real community came into being, since the land was marketed as a retirement haven. As long as the sale of future homesites was profitable, there was no motivation for the developer to reserve land for future needs for more than token commercial activity—or for schools, parks, or open space (Gould 1995). The resulting imbalance of land uses was caused by the inexperience and the short-term profit motives of the original development company, but was certainly aided by the acquiescence of local officials operating without meaningful planning standards.

Much of the commercial land that had been designated has many shortcomings. First, it was highly fragmented, platted into small lots, and sold to individuals, instead of being held intact or sold in blocks. This resulted in the premature commitment of commercial land into parcels that are as fragmented as the residential neighborhoods. These fragmented parcels are not suitable for large shopping centers or other commercial uses that require acres, or tens of acres, of land, without large-scale lot assembly.

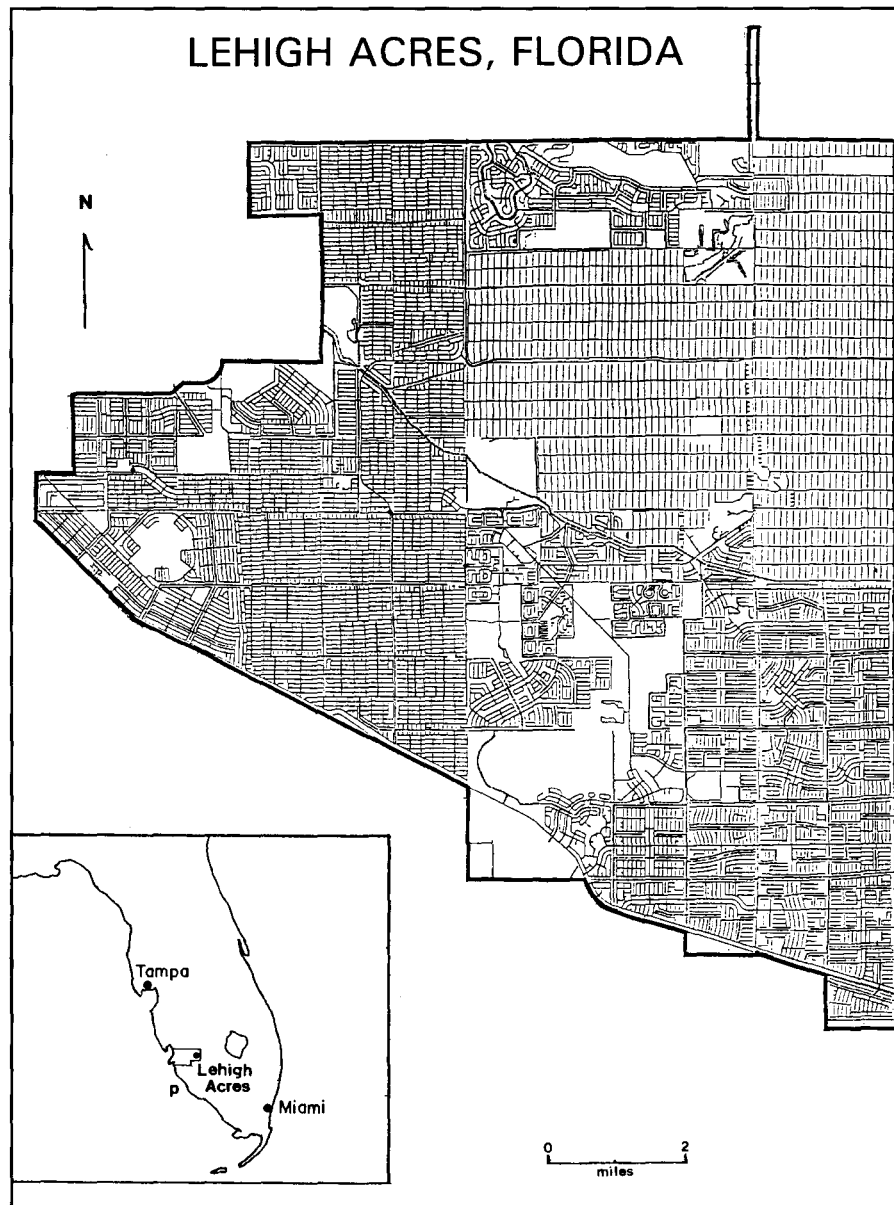
Most of the vacant commercial land is located along major roads in shallow strips or ribbons. Individual commercial lots are typically 50 feet wide and 175 to 185 feet deep. These small and relatively narrow strips have many undesirable characteristics (see, for example, So et al. 1979; Bair 1979; Smith 1983; Tunnard and Pushkarev 1963). However, since there is already a serious shortage of commercial land in Lehigh Acres, the wholesale abandonment of the existing commercial strips is not desirable. Some existing strips can be improved, and new areas with more suitable configurations acquired.

The CRA's study developed the following five priorities for improv-

ing existing or providing additional land for commercial uses:

1. Modify unneeded regulatory constraints,
2. Give priority to suitable parcels under unified ownership,
3. Reconfigure existing commercial strips,
4. Enable neighborhood-scale commercial uses,
5. Fill remaining gaps through a lot assembly program (Spikowski 1996, 11-1).

Since areas where the land remains in single ownership are very limited at Lehigh Acres, it was important that any unplatted tracts or platted tracts with lots that have never been sold be recognized and seriously considered as possi-



Source: Adapted from maps provided by the Lee County Community Redevelopment Agency.

Figure 6. Map depicting extensive grid-iron road network in Lehigh Acres.

bilities for commercial land (or as suitable places for schools, parks, multifamily housing or other community needs).

After the higher commercial priorities in Lehigh Acres have been fully explored, additional commercial land might be obtained through the difficult task of lot assembly. A lot acquisition/lot assembly effort would likely require the use of the Community Redevelopment Agency's powers of eminent domain and ultimate transfer back to the private sector. Alternative cooperative arrangements should be considered prior to the use of eminent domain, such as voluntary purchases, lot swaps, or development agreements with existing owners or participating developers (Spikowski 1996, 11-2).

### Planning Outlook for Lehigh Acres

Future phases of sector planning for Lehigh Acres may address downtown redevelopment and replatting of residential lots. The current commercial district is nearly built out, but it is really just a series of shopping centers, with poor internal connections and no real center. Potentially valuable land is used inefficiently; the buildings are so spread out that people drive from store to store. Older people find it impossible to cross the bisecting arterial road, with its five wide lanes and no raised medians where pedestrians might wait for a break in traffic. A redevelopment plan could keep this area as the commercial center of Lehigh Acres by reducing parking requirements to get buildings closer together; allowing buildings to be placed up to the sidewalk, creating (over time) a true downtown; and creating a more attractive streetscape, with sidewalks on both sides, street trees, and improved pedestrian circulation throughout.

As to residential redevelopment, there are few remaining opportunities for creating new neighborhoods in Lehigh Acres. Most unfragmented parcels are either already developed or now in the planning stages. Once these are completed, there will be no neighborhoods where a developer would control enough lots to spread out the cost of installing water and sewer lines, sidewalks, and other public amenities to create distinctive neighborhoods. Future development would need to be limited to building homes on scattered lots, with no neighborhood amenities. A residential redevelopment plan would seek ways to assemble blocks of lots for coordinated development by private sector builders. The CRA's power of eminent domain would probably be needed (if only to supplement private-sector reassembly efforts). Water/sewer/sidewalk extensions would be a critical element, possibly requiring special assessments since the utility company is privately owned. Land banking of vacant lots could play an important role in a lot-trading program to assist in assembly.

Many problems associated with Lehigh Acres remain unaddressed. Subdivision redesign, possibly the most ideal approach, has not been seriously considered to date because of complicated ownership patterns. Lot consolidation also has not been considered, since county officials are reluctant to

infringe upon any individual rights or allocate funds for acquisition. The TDR approach could be modified for use with a lot consolidation program; TDRs have been used in Lee County to transfer density from wetlands, but with very limited success because there is so little demand for density above what is granted by right. Finally, the purchase of tax delinquent lots has considerable promise in Lehigh Acres; it does not infringe on individual property rights and is not nearly as costly as many other options.

At present, the CRA approach is the only option being pursued. Unfortunately, the county has decided to eliminate its entire CRA program by the year 2000 for unrelated fiscal reasons. This elimination will apparently end the sector planning effort begun with high hopes in 1992. While this unconventional use of a CRA has aided in the provision of services, and CRA-initiated studies have developed solutions for some major shortcomings, the CRA's demise illustrates one of the weaknesses of this approach, and suggests the need for municipal incorporation or some other effective method of city management.

### ■ CONCLUSION

Platted lands have been neglected as a topic of scholarly research and avoided by many of those charged with resolving growth-management problems. And, since these lots were usually purchased by non-voting out-of-state owners for investment purposes, local officials have tended to assume that their real local impact will be minimal. While this has been the case with some pre-platted subdivisions, many have grown substantially and now represent the largest and/or fastest growing communities in their region, despite a lack of services. While the specific problems may vary, these subdivisions have many similar characteristics. Recent experience in Florida can be helpful in learning how best to deal with growing platted subdivisions with flawed layouts that had been sold *en masse* to a widely scattered clientele.

Local officials need to identify which potential techniques might be useful in their particular situation. Significant dilemmas include the reluctance of county and city officials to question the presumed vested status of platted lots, and the substantial investments that could yield important long-term results but whose positive benefits are not immediately evident to the voting population.

The case study of Lehigh Acres has described some major concerns over land developments that were allowed to proceed with little or no planning and with few regulatory controls. Because of the complexity of the problems and the limited value of most typical solutions, Lee County established a Community Redevelopment Agency for the entirety of Lehigh Acres. Traditionally, CRAs have been used to redevelop decaying inner-city neighborhoods or small run-down portions of a city. CRAs have condemnation powers that can be used to allow private sector developers to redevelop entire blocks. This is a novel approach for addressing

the needs of a 96-square-mile community that is still being occupied for the first time.

The emphasis at Lehigh Acres has been on redevelopment planning in support of urban growth, rather than land acquisition or other techniques to reduce or eliminate growth. The redevelopment approach is reasonable where growth pressures are high and the environmental suitability of the original site is acceptable. Techniques to reduce or even eliminate growth are most appropriate where an original site should never have been developed, or where market demands are inadequate to justify the costs of retrofitting an obsolete platting scheme. Both techniques might be used in some massive subdivisions such as Golden Gate Estates, where the northern section has good potential for urban growth but the southern section should be acquired and restored entirely to its natural state.

Ill-conceived land developments have created very troublesome land use problems. While local officials may be aware of these problems, they rarely are willing to divest property rights and are not likely to commit to acquiring property in pre-platted subdivisions (Parker 1994). Unfortunately the problems rarely go away and often become progressively worse. Those trying to resolve the problem must work with complex ownership patterns and use piecemeal approaches to a problem that deserves a major commitment of resources. For these and other reasons, local governments are likely to continue struggling with problems created by very costly mistakes of the past. Resolving these mistakes will require strong leadership and a commitment of resources to implement techniques that will, through time, solve or help reduce the severity of platted lands problems.

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## ■ NOTES

1. The "platting" of land is the formal procedure taken by landowners to officially record maps of land subdivision. Recording of plats consists of filing the appropriate survey maps with the municipality or county involved and showing that all existing requirements (if any) have been fulfilled. Performance bonds are often accepted at this stage in lieu of full completion of all subdivision improvements. The filing of a plat is usually necessary today before lots can be legally and effectively marketed. After the plat is accepted, land development can begin.
2. While research into pre-platted subdivision problems has been limited, a few important works were published shortly after the peak in interstate land sales activity during the early 1970s. Two of the most significant are *Subdividing Rural America* by the American Society of Planning Officials and others (ASPO 1976) and *Promised Lands* (Allan, Kuder, and Oakes 1976, 1977). While the information in these publications is dated, they are important sources on the subject with extensive coverage of environmental, economic, and consumer impacts.

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