Dividing Property – a Divisive Issue

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Credit: Edd Prince

In 2007, a couple in Gulfport, Charles and Denise Hubbards, wanted to split (or "subdivide") a lot they owned into two smaller lots. In coastal communities or other areas with high rates of development, such an action is not unique. But when this Gulfport couple attempted to split their parcel of land in two, they met with complications.

After three years of litigation, the Hubbards were told by the Mississippi Court of Appeals in *City of Gulfport v. McHugh*[1] that because they did not have the required approval of their plan in writing from their neighbors and/or other interested parties, the attempt to subdivide their lot was not legal. Specifically, the Court told them that the lack of written consent from "adversely affected" and "directly interested"[2] persons made their efforts to divide their land void. But who are these "adversely affected" and "directly interested" persons, and why do they matter?

Mississippi state law provides two avenues for a landowner to vacate, further subdivide, or otherwise alter "any land which shall have been laid off, mapped or platted as a city, town or village, or addition thereto, or subdivision thereof, or other platted area, whether inside or outside a municipality."[3] One is to file a petition in the local chancery court, naming any "adversely affected" or "directly interested" parties as defendants.[4] The other is outlined in Miss. Code Ann. § 17-1-23(4), which allows a county board of supervisors or local governing authority of a municipality to grant the same relief, provided that the landowner follows these specific steps:

1. Contact "persons to be adversely affected or directly interested in the subdivision of land" to let them know of the intention to divide the lot."[5] These parties must agree in writing to the alteration of the land; otherwise, no further action can be taken.
2. Once notice has been given to the appropriate parties and written approval has been received, the landowner must then send a petition to the Board of Supervisors of the county or the governing authorities of the municipality.
3. The petition must contain the written authorizations from the impacted parties as well as a description of the property, including the map or plat which is to be altered.
4. The petition should then be submitted to the designated local authority reviewing the request for a hearing to take place.
5. If the local authority approves the request, it "must be recorded in the appropriate location."[6] The original map or plat must be included in the record.

These steps primarily protect the interests of the very same "adversely affected" or "directly interested" parties that would otherwise be named as defendants in a chancery court action. Unfortunately, however, the terms "adversely affected" and "directly interested" are not defined in Miss. Code Ann. § 17-1-23(4). According to *Gulfport v. McHugh*, determining who falls into these categories is "a factual issue that should have been determined by the [Gulfport Planning] Commission," which in that case was the applicable local authority.[7] However, the court was also careful to point out the failure of the Hubbards to notify and obtain the consent of their neighbors to the requested subdivision, suggesting that the landowner seeking the subdivision similarly has a responsibility for identifying whose consent may be required (and actually acquiring that consent) before approaching the local authority with their petition to subdivide land.

The Mississippi Court of Appeals affirmed that interpretation more recently in *Desoto County v. Vinson*.[8] In this case, a landowner petitioned the Desoto County Board of Supervisors to allow for his lot to be divided into two parcels, but failed to identify any "adversely affected" or "directly interested" parties in his application or provide anyone with notice of the filing of his petition. At the public meeting, the Board learned that the landowner had not discussed the proposal with any of his neighbors, but still approved the requested division after determining that the only directly interested or adversely affected parties were the landowner himself and the owner of one immediately adjacent lot. Days later, owners of two other lots in the same subdivision appealed that decision to the local circuit court, alleging "that the board failed to 'appropriately determine the names of persons directly interested or adversely affected by the decision of the board' to approve the division . . ., and failed to 'make appropriate parties aware of the proceeding and require that they agree in writing, as required by Miss. Code Ann. § 17-1-23(4)."[9]

On appeal, the Mississippi Court of Appeals upheld the lower court's decision to overturn the Board of Supervisors, noting at the outset that for a court to reverse this type of decision from a local authority in the first place, it must find that the action of the local authority is "arbitrary or capricious, beyond the board's scope or powers, or in violation of a party's constitutional or statutory rights."[10] In reaching the same conclusion as the lower court, the appellate court reasoned that the Board's approval of the requested subdivision was beyond its scope or powers as set forth in Miss. Code Ann. § 17-1-23(4). That statute grants boards limited powers to approve these requests, and those powers can only be exercised when the requirements of the statute are fully met. In this case, the landowner seeking the subdivision did not include the names of any directly interested or adversely affected parties in his petition to the board of supervisors, nor did he notify or obtain written approvals from any neighbors, including the one neighbor that the board actually did identify as a directly interested or adversely affected party. For any of these reasons, according to the appellate court, the lower court did not err when overturning the board of supervisor's approval of the requested division.

So what lessons can be taken from the *Vinson* and *McHugh* cases? Both courts concluded that persons filing a petition to alter a plat must identify, approach, and receive written consent of their petition from "those potential 'adversely affected' or 'directly interested' parties in his or her application, as required by section 17-1-23," and that the board of supervisors (or other local governing authority) has the ultimate authority *and responsibility* to decide who fits into the category of necessary parties.[11] That determination is usually a question of fact that can be resolved while a local governing authority reviews the submitted petition.


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But how can a landowner know who the necessary parties are when submitting a petition when it is the local governing authority's job to determine this as a factual issue? And similarly, what criteria must a governing authority consider when evaluating which parties are "directly interested" or "adversely affected" under the statute? Unfortunately, the statute itself provides no clear guidance on how to apply those terms. In the absence of a legislative solution (i.e., amending Miss. Code Ann. § 17-1-23(4) to provide clearer and more uniform guidance), it seems as though boards, planners, and municipal governing authorities must develop their own frameworks for how to decide which parties are "directly interested" or "adversely affected."

Fortunately, counties and municipalities should expect a healthy amount of discretion in how they develop their own guidelines for complying with the terms of this statute. Recall from the *Vinson* case that courts usually do not overturn the decisions of local authorities unless those decisions are "arbitrary or capricious, beyond the board's scope or powers, or in violation of a party's constitutional or statutory rights."[12] Many counties and municipalities already have planning and zoning ordinances containing procedures for public notice, and have developed written criteria to follow when evaluating certain kinds of requests (e.g., land use changes, variances, special use permits, etc.). Planners, boards, and other governing authorities likely have some existing local examples to look to for inspiration. Depending on the location, planners might decide there is a place for some bright line rules (e.g., requiring written consent of all immediately adjacent neighbors, or consent of landowners within a given radius of the tract at issue). Other planners might prefer instead to focus on a public notice framework that casts a much wider net to ensure that all potential adversely affected or directly interested parties are given a reasonable opportunity to come forward with concerns. There could also be a case for combining the two approaches. Whatever path is taken, the focus should be on creating a process with clear, fair, and repeatable steps for planners, local governments, and landowners to follow, and then to consistently adhere to that process. Doing so won't eliminate all disagreements over proposed divisions (an impossible task), but having an inclusive, fair, and consistently applied set of rules and criteria should go a long way towards ensuring compliance with state law as it relates to approving modifications of existing plats.

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Endnotes

1. *City of Gulfport v. McHugh*, No. 2009-CA0002440COA (Miss. Ct. App. 2010).
2. Miss. Code Ann. § 17-1-23(4).
3. Miss. Code Ann. § 17-1-23(4); Miss. Code Ann. § 19-27-31.
4. Miss. Code Ann. § 19-27-31.
5. Miss. Code Ann. § 17-1-23(4).
6. *Id.*
7. *City of Gulfport v. McHugh* at 8.
8. *Desoto Cnty. V. Vinson,* NO. 2021-CC-00864-COA (Miss. Ct. App. 2022).
9. *Id.*
10. *Billy E. Burnett Inc. v. Pontotoc Cnty. Bd. Of Sup'rs,* 940 So.2d 241, 242-43 (Miss Ct. App. 2006).
11. *Id.* at 11.
12. *Id.*