

Eagles Flock Condominium Regime vs Platted Subdivision Research Notes

Notes on Condominium Regime vs. Platted Subdivision under Hattiesburg Ordinance #3294 and the Mississippi Condominium Act

From: Michael Hoffman, North Star Group, Inc. **To:** Nathan Satcher, AICP, CFM — Senior Planner, City of Hattiesburg **For:** Review by City Legal Counsel **Date:** April 18, 2026 **Re:** Eagles Flock / Leaf River — PPIN 26786 and PPIN 26700

A note up front

I've been digging into the Hattiesburg Land Development Code and the Mississippi Condominium Act since the April 16 pre-application meeting. I'm no lawyer, so treat this as notes your attorneys can use, verify, or set me straight on.

The thing that jumped out at me is how the definitions sit in the LDC. Section 13 defines "Dwelling, Condominium" as one kind of thing — a building form, with units individually owned and common areas owned in common — and "Subdivision" as a different thing — division of land into lots, plats, sites, with "Subdivision, Major" parenthetically described as a "lot split." Both definitions live in the same section. The drafters clearly knew what a condominium was — they took the time to define it — and put it in a different conceptual bucket than subdivision.

I went and looked up whether that kind of drafting choice has a name, and apparently there's a long-standing legal rule that covers it. It's called *expressio unius est exclusio alterius* — "the expression of one is the exclusion of another." The gist: when drafters specify one category with particular language and separately define a different category, courts generally treat the two as meant to be distinct. If the framers of the LDC had wanted condominium declarations to count as subdivisions, they had the tool sitting right there — they defined both terms on the same page — and they didn't combine them. That seems to me (at my amateur level) to speak for itself.

That canon pairs with Miss. Code § 89-9-33, which tells cities to treat condominium-owned structures the same as leased structures on the same parcel *unless* the local code "clearly expresses" a contrary intent. Defining condominium and subdivision as separate concepts, in the same section, seems like the opposite of a clearly expressed intent to treat them as the same thing — but that's exactly the kind of read your attorneys will be better at calling than I will.

Of course I could be wrong about any of this. If I've misread the structure of the code, or if there's an amendment or cross-reference I missed, I'd genuinely welcome the correction.

The rest of this document walks through the statutes and ordinance language section by section, with citations and source URLs so your team can go straight to the authority.

1. The narrow question

Ordinance #3294, Article 5, Section E restricts platted subdivisions in the special flood hazard area.¹ Section E.11 requires deed restrictions and a plat statement prohibiting construction within the SFHA. Section E.8 requires the buildable area of each platted lot to sit outside the natural 1% chance floodplain. Article 6, Section B.2 precludes variances for multiple lots, phases of subdivisions, or entire subdivisions.

Article 5, Section C.8 — floodway standards, including no-rise certification per structure — applies independently to any building proposed in the floodway, regardless of ownership structure.²

The question is whether a condominium regime recorded on the single existing parcel brings the project within the Article 5, Section E platted-subdivision provisions, or whether those provisions reach only subdivisions in the platted sense and leave the condominium pathway subject only to Article 5, Section C.8 and other generally applicable development standards.

2. Mississippi Condominium Act — statutory language

The Mississippi Condominium Act is codified at Miss. Code Ann. §§ 89-9-1 through 89-9-37.³

Three sections bear directly on the question.

§ 89-9-5(5) — definition of “to divide.”

“To divide” real property means to divide the ownership thereof by conveying one or more condominiums therein but less than the whole thereof.⁴

The statute defines division in the condominium context as division of ownership, not division of land.

§ 89-9-9 — recordation of plan.

A condominium is created by recording in the office of the chancery clerk a plan consisting of: (a) a description or survey map of the surface of the land included within the project, (b) diagrammatic floor plans of the building or buildings built or to be built thereon, and (c) a certificate consenting to recordation signed by the record owner.⁵

The plan describes the surface of the land as a single project. No new lots are created and no subdivision plat is filed.

§ 89-9-31 — tax treatment confirms single-parcel status.

Each unit and common areas shall be separately assessed for ad valorem taxes and special assessments as a single parcel.⁶

The state’s own tax treatment confirms the land remains one parcel of record.

3. Hattiesburg Land Development Code — how the LDC itself defines these terms

The Hattiesburg Land Development Code (Ordinance #3209, current through

2020 updates) defines the operative terms at Section 13 (Definitions). Three definitions sit next to each other in that section and, read together, appear to draw the line in a way that mirrors the Mississippi statute:

Dwelling, Condominium:

A building or group of buildings in which dwelling units are owned individually and the exterior structure, common areas and facilities are owned in common.⁷

The LDC treats condominium as a **form of dwelling** — a building type defined by its ownership structure. Not a land category. The definition sits in Section 13 alongside other dwelling types (single-family, two-family, multi-family).

Subdivision:

The division of a lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale, lease or building development by means of an appropriately recorded legal document.⁸

The operator is “division of... land.” The recorded document subdivides land into lots, plats, sites, or other divisions of land.

Subdivision, Major:

Any subdivision of land (lot split) that does not conform to the definition of a minor subdivision.⁹

The parenthetical “lot split” confirms the plain-language reading: major subdivision means splitting land into lots. It describes a physical division of the parcel, not a division of ownership within a structure on an undivided parcel.

Read together, these three LDC definitions treat condominium creation and subdivision as distinct categories. A condominium is a dwelling-and-ownership form; a subdivision is a land division.

The drafters of the LDC defined condominium in the same Section 13 where they defined subdivision. If the intent had been to treat recorded condominium declarations as subdivisions, the definition of “Subdivision” could have said so — for example, “division of land or division by condominium declaration.” It does not. The ordinance appears to address condominiums through the dwelling definition and use regulations, and to address subdivisions through the platting regulations, as two separate tracks.

Related treatment in use regulations: the LDC permits condominiums as an allowed *use* in the Planned Residential Development District, listed alongside single-family detached and two-family dwellings.¹⁰ This is further confirmation that the City treats condominiums as a form of development on a parcel, not as a form of parcel division triggering platting.

(The Flood Damage Prevention Ordinance #3294 does not reference condominiums or Miss. Code § 89-9 at all; its subdivision provisions use “subdivision” and “manufactured home park or subdivision” in the platted/platted-land-division sense throughout.)

4. Miss. Code Ann. § 89-9-33 — rule of construction for local zoning

Section 89-9-33 is a state-level rule of construction directing how local zoning ordinances are read against condominium projects:

Unless a contrary intent is clearly expressed, local zoning ordinances shall be construed to treat like structures, lots, or parcels in like manner regardless of whether the ownership thereof is divided by sale of condominiums or into community apartments rather than by lease of apartments, offices, or stores.¹¹

Applied here: the statute directs that the same structures on the same parcel receive the same regulatory treatment whether the ownership is divided by condominium sale or retained by one owner and leased as apartments. The test is what the physical development would be treated as if the units were leased rental apartments on a single parcel of record. A multi-unit rental development on a single parcel held by one owner is not a subdivision under the LDC Section 13 “Subdivision” definition — no “division of... land” occurs. Section 89-9-33 directs that the condominium version receive the same treatment unless the LDC clearly expresses a contrary intent.

The LDC’s subdivision definition does not reference condominiums on its face, and the LDC contains a separate “Dwelling, Condominium” definition in the same Section 13 that treats condominiums as a dwelling form. Whether the broader phrase “other divisions of land” in the Subdivision definition was intended to reach the condominium form of ownership — in spite of the LDC’s separate condominium definition — is the interpretive question that falls to City counsel.

5. Treatment of condominium definitions in other Mississippi zoning codes

Several Mississippi zoning ordinances adopt the Mississippi Condominium Act definition of condominium by direct reference, treating condominium ownership as a form of ownership rather than a form of land division:

- **Clinton, MS Zoning Ordinance:** “Condominium: Real property consisting of an undivided interest in common of a portion of a parcel of real property, plus a separate interest in space in a residential, office, commercial or other land use. (From: Mississippi Code of 1972, Annotated, Section 89-9-7.)”¹²
- **Hinds County, MS Zoning Ordinance:** identical definition, same statutory reference.¹³
- **City of Ridgeland, MS Zoning Ordinance:** identical definition, same statutory reference.¹⁴

The common thread across these codes is treatment of condominium as a form of ownership overlaid on a single parcel. None of the three cited codes classifies condominium creation as a subdivision triggering platted-subdivision review.

6. NFIP / CRS compliance

The City’s Community Rating System classification depends on floodplain management activities that regulate construction in the SFHA. A condominium-structured development on the Eagles Flock parcels does not weaken that

regulatory reach because:

- Article 5, Section C.8 floodway standards (including no-rise certification per structure) apply to every building regardless of ownership structure.
- Substantial improvement, elevation, and freeboard requirements apply per structure.
- Any building permit remains subject to Floodplain Administrator review.

The distinction between the platted-subdivision pathway (Article 5, Section E) and the condominium pathway (subject to Article 5, Section C.8 and generally applicable standards) does not change the NFIP-relevant regulatory posture toward individual structures. The floodway remains regulated at the structure level in both paths.

7. U.S. Army Corps of Engineers — separate question

Nathan’s April 17 reply noted the likely need for Corps review and a wetlands delineation.¹⁵ That is a federal question separate from the subdivision / condominium analysis and is handled through the Section 404 process and the Corps’ jurisdictional determination. A condominium structure does not alter Corps jurisdiction. A wetlands delineation is the starting point for that determination under either structure. Chris Johnson’s firm (Environmental Management Group) performs delineations and has been engaged on the site.

8. Summary of the statutory basis

The authorities cited above support the following reading:

- The Mississippi Condominium Act treats condominium creation as a division of ownership over a single parcel of record (§§ 89-9-5(5), 89-9-9, 89-9-31).
- Hattiesburg LDC Section 13 defines “Subdivision” as a division of land (with “Subdivision, Major” parenthetically described as a “lot split”), and separately defines “Dwelling, Condominium” as a building ownership form.
- Miss. Code Ann. § 89-9-33 directs local zoning ordinances to treat a condominium project the same as the equivalent leased development on the same parcel, unless a contrary intent is clearly expressed.
- Hattiesburg Ordinance #3294, Article 5, Section C.8 floodway standards apply to each structure independent of ownership structure, preserving the City’s floodplain management posture and CRS-relevant regulatory reach.

Whether a contrary intent is clearly expressed in the LDC, and whether the City’s attorneys read the “Subdivision” definition to reach condominium ownership structures despite the separate “Dwelling, Condominium” definition in the same section, are questions of local interpretation on which this document takes no position. The statutes and authorities are provided for their reference.

Available for follow-up if any of the above would benefit from additional documentation.

Michael Hoffman North Star Group, Inc. 701-770-9118 mhoffman@nsgia.com

Footnotes

¹ City of Hattiesburg Ordinance #3294, *Flood Damage Prevention Ordinance*, adopted September 7, 2021, Article 5, Section E.11. Full text:

<https://www.hattiesburgms.com/wp-content/uploads/Ordinance-3294-flood-damage-prevention-2021-EXECUTED-ORDINANCE.pdf>

² Ordinance #3294, Article 5, Section C.8 (floodway standards).

³ Mississippi Code Annotated, Title 89, Chapter 9 (Condominiums), §§ 89-9-1 through 89-9-37. Full chapter: <https://law.justia.com/codes/mississippi/title-89/chapter-9/>

⁴ Miss. Code Ann. § 89-9-5(5). <https://law.justia.com/codes/mississippi/title-89/chapter-9/section-89-9-5/>

⁵ Miss. Code Ann. § 89-9-9. <https://law.justia.com/codes/mississippi/2013/title-89/chapter-9/section-89-9-9/>

⁶ Miss. Code Ann. § 89-9-31(1). <https://law.justia.com/codes/mississippi/2010/title-89/9/89-9-31/>

⁷ City of Hattiesburg Land Development Code (Ordinance #3209), Section 13 — Definitions, “Dwelling, Condominium.” Source: <https://www.hattiesburgms.com/wp-content/uploads/Land-Development-Code-Ord-3209-Interactive-Revised-09.27.18.pdf>

⁸ Hattiesburg LDC (Ord. #3209), Section 13 — Definitions, “Subdivision.” Same source as footnote 7.

⁹ Hattiesburg LDC (Ord. #3209), Section 13 — Definitions, “Subdivision, Major.” Same source as footnote 7.

¹⁰ Hattiesburg LDC (Ord. #3209), Planned Residential Development District, use regulations listing condominiums among permitted uses alongside single-family detached and two-family dwellings. Same source as footnote 7.

¹¹ Miss. Code Ann. § 89-9-33. <https://law.justia.com/codes/mississippi/title-89/chapter-9/section-89-9-33/>

¹² City of Clinton, Mississippi, Zoning Ordinance, Definitions (Condominium). <https://clintonms.org/wp-content/uploads/2023/06/ordinance-zoning-working-copy.pdf>

¹³ Hinds County, Mississippi, Zoning Ordinance, Definitions (Condominium). https://www.hindscountymms.com/sites/default/files/hinds_zoning_ordinance.pdf

¹⁴ City of Ridgeland, Mississippi, Official Zoning Ordinance, adopted February 4, 2014, Definitions (Condominium). <https://www.ridgelandms.org/wp-content/uploads/Official-Ridgeland-Zoning-Ordinance-02-04-14.pdf>

¹⁵ Satcher to Hoffman, April 17, 2026, email titled “RE: Eagles Flock / Leaf River — Condominium Structure vs. Platted Subdivision.”