

Opinion No. 77-24

September 9, 1977

OPINION OF: Toney Anaya, Attorney General

BY: Joseph F. Canepa, Assistant Attorney General

TO: Jose C. Torres, Chairman Colfax County Board of Commissioners P.O. Box 6 Angel Fire, New Mexico 87718 and William C. Carden, Esq., Assistant District Attorney Eighth Judicial District Raton, New Mexico 87740

SUBDIVISIONS-COUNTY COMMISSION-CHANGES IN PLAT MAP-ADVERTISING-UNFAIR PRACTICES ACT-NEW MEXICO SECURITIES ACT.

A change in the name of the subdivider or developer or a change in the obligations and/or representations of the subdivider with respect to the construction, installation or payment of roads and utilities in a subdivision approved under the 1963 Land Subdivision Act does not require the filing of a new subdivision plat and a new approval by the county commission under the New Mexico subdivision laws.

A change in the location of roads or a change in the size, location or number of subdivided lots in a subdivision approved under the 1963 Land Subdivision Act would require the filing of a new subdivision plat and new approval under the New Mexico subdivision laws.

All advertising and disclosure statements used in the sale of land from within a subdivision approved under the 1963 Land Subdivision Act are governed by the advertising standards and requirements of both § 70-3-5 of the 1963 Act and § 70-5-10 of the 1973 Act.

The sale of subdivided land is governed by other New Mexico statutes such as the Unfair Practices Act or the New Mexico Securities Act even though the subdivision has been approved under the New Mexico subdivision laws.

QUESTIONS

1. Would any of the following changes in a subdivision originally approved by the Board of Commissioners for Colfax County under the 1963 Land Subdivision Act, 70-3-1, et seq., N.M.S.A. (1975 Supp.) require a filing of a new subdivision plat and a new approval by the Board of Commissioners under either the 1963 Land Subdivision Act, supra, or the 1973 New Mexico Subdivision Act, 70-5-1, et seq., N.M.S.A. (1975 Supp.) and the Colfax County Subdivision Regulations:

(a) a change in the name of the subdivider or developer on the subdivision plat;

(b) a change in the obligations and/or representations of the subdivider with respect to the construction of roads and installation of utilities;

(c) a change in the location of roads;

(d) a change in the size, location or number of subdivided lots?

2. Do the advertising standards and requirements of the 1963 Act or the 1973 Act, or both, govern the advertising and disclosure statements used in the sale of land from within a subdivision approved under the 1963 Act?

3. Does the proposed offering of Chalets Unit Three violate any other New Mexico statutes, and if so, does such a violation affect the approval of the subdivision granted by the Board of Commissioners for Colfax County?

CONCLUSIONS

1. (a) No.

(b) No.

(c) Yes.

(d) Yes.

2. All advertising and disclosure statements used in the sale of land from within a subdivision approved under the 1963 Act are governed by the advertising standards and requirements of both § 70-3-5 of the 1963 Act and § 70-5-18 of the 1973 Act.

3. The sale of subdivided land is governed by other New Mexico statutes but since the interpretation and enforcement of such statutes is the responsibility of other state agencies, an examination of the proposed offering of Chalets Unit Three in the context of compliance with all applicable state statutes is beyond the scope of this opinion.

ANALYSIS

You have requested an opinion on the application of New Mexico subdivision laws to the current sale of subdivided parcels of land in a subdivision originally approved under the 1963 Land Subdivision Act, 70-3-1, et seq., N.M.S.A. (1975 Supp.) (hereafter referred to as the "1963 Act").

OPINION

The factual basis for your request is the following. On August 16, 1973 the Board of Commissioners for Colfax County gave final approval to the subdivision plat for the Baca Grande Angel Fire Corporation subdivision "Chalets Unit Three." Approval was

granted pursuant to the requirements and procedures {^{*152}} of the 1963 Act and § 14-19-6, N.M.S.A. (1976 Supp.) which were the only New Mexico subdivision laws applicable to rural subdivision at that time. The New Mexico Subdivision Act, 70-5-1, et seq., N.M.S.A. (1975 Supp.) (hereafter referred to as the "1973 Act") did not become effective in Colfax County until the adoption of the Colfax County Subdivision Regulations promulgated pursuant to the 1973 Act on September 20, 1973.

At the time of approval Chalets Unit Three complied with all statutory requirements of the 1963 Act and § 14-19-6, supra. Legal access from an existing public way to each lot offered for sale in the subdivision was provided for and had been dedicated to and accepted by the Colfax County Board of Commissioners in compliance with § 70-3-3 of the 1963 Act. All proposed streets conformed to adjoining streets and were defined by permanent monuments as well as the boundary line of the entire subdivision as required by § 14-19-6, supra.

Prior to final approval of the Chalets Unit Three subdivision the Colfax County Board of Commissioners was advised by the subdivider, Baca Grande Angel Fire Corporation, that the subdivider would provide and pay for the construction of roads and the installation of utilities, and that the parcels would be sold at improved property prices. The "General Notes" appearing on the subdivision plat approved by the commissioners recited these obligations of the subdivider.

On December 1, 1976 the Baca Grande Angel Fire Corporation recorded a "Supplemental Declaration of Restrictive Covenants" affecting the subdivided parcels in Chalets Unit Three. These restrictive covenants required all purchasers of Chalets Unit Three parcels to become members of the Angel Fire Property Owners Development Association which was made solely responsible for the construction of roads and installation of utilities in Chalets Unit Three. Payment of the cost of road construction and utility installation was to be made by the Angel Fire Property Owners Development Association through assessments levied against all property owners of Chalets Unit Three parcels except the subdivider. The "Supplemental Covenants" also prohibited the construction of roads and the installation of utilities before December 31, 1991. Thus, by virtue of these "Supplemental Restrictive Covenants" Baca Grande Angel Fire Corporation (now Angel Fire Corporation) no longer has any legal obligation to construct, install or pay for roads and utilities for the subdivided parcels in Chalets Unit Three. This fact is disclosed to prospective purchasers in the HUD Property Report given to purchasers of Chalets Unit Three parcels. Chalets Unit Three parcels are now being offered for sale by the subdivider, Angel Fire Corporation, at unimproved lot prices.

1. Your first question asks whether certain changes in the Chalets Unit Three subdivision are sufficient to require the filing of an amended subdivision plat and a new approval by the Colfax County Board of Commissioners under either the 1963 Act or the 1973 Act and the Colfax County Subdivision Regulations. Six separate changes are enumerated. To properly answer this question, each change must be analyzed in light of the New Mexico Supreme Court's recent interpretation of the New Mexico subdivision

laws {^{*153}} and the Board of Commissioners' authority to approve subdivisions in *El Dorado at Santa Fe, Inc. v. Board of County Commissioners of Santa Fe County*, 89 N.M. 313, 551 P.2d 1360 (1976). In that case the New Mexico Supreme Court considered the question of whether the county commissioners of Santa Fe County could impose requirements other than those statutorily provided for under the 1963 Act and § 14-9-6 (1976 Supp.) in approving rural subdivisions prior to the effective date of the 1973 Act. The Court held that the county commissioners had no discretion in approving subdivisions under the 1963 Act and § 14-19-6, *supra*, and that the commission had to approve such a subdivision if it determined that all of the statutory requirements of those laws had been complied with.

Therefore, in 1972 at the time of the filing the above statutes [the 1963 Act and § 14-19-6] were all that were applicable to rural subdivisions. We conclude that under those statutes nothing remained for the Board to do but the ministerial act of endorsing their approval on the plats which had complied with all statutory requirements.

El Dorado, supra, at p. 318. The Court also voided all other requirements imposed by the commission not found in the applicable subdivision statutes and held that the county subdivision regulations passed pursuant to the 1973 Act did not apply retroactively to subdivisions approved under the 1963 Act. The Court reasoned that:

[u]pon compliance with the statutory prerequisites to subdivision and sale by a subdivider, followed by a determination of the board of county commissioners that such compliance had in fact occurred, rights vest in the subdivider which cannot thereafter be withheld, extinguished or modified except upon due process of law.

El Dorado, supra, at p. 319.

Based upon the New Mexico Supreme Court's holding in the *El Dorado* case, it is our opinion that as long as a subdivision originally approved under the 1963 Act and § 14-19-6, *supra*, continues to comply with all of the statutory requirements of those laws, the approval of the subdivision cannot be revoked or suspended, or additional requirements imposed by the county for maintaining such approval. Therefore, each change in the Chalets Unit Three subdivision must be examined in the context of whether it affects the subdivision's continued compliance with the statutory requirements for approval set forth in § 70-3-3 of the 1963 Act and § 14-19-6, *supra*, which provide as follows:

70-3-3. Approval of plat by county commission prior to sale. -- It shall be unlawful to sell, offer to sell, lease or offer to lease to the public subdivided land as defined hereinabove until a plat of such subdivided land being sold has been approved by the county commission wherein such land is situate; and

Until legal access from an existing public way and to each lot offered for sale or lease has been dedicated and accepted by the appropriate county commission.

{*154} 14-19-6. Subdivision in unincorporated area -- Approval of county commission. -- Before a plat of any subdivision within the jurisdiction of a county is filed in the office of the county clerk, the plat shall be approved by the board of county commissioners of the county wherein the proposed subdivision lies. The board of county commissioners shall not approve and sign a plat unless the:

A. Proposed streets conform to adjoining streets;

B. Streets are defined by permanent monuments to the satisfaction of the board of county commissioners; and

C. Boundary of the subdivision is defined by permanent monuments.

(a) It is clear from a reading of the above statutory requirements that a change in the name of the developer or subdivider from that appearing on the original subdivision plat in no way affects the continued compliance of the subdivision with any of the requirements contained in § 70-3-3, supra, or § 14-19-6, supra. Such a change, therefore, does not necessitate the filing of an amended subdivision plat approved by the county commission under either the 1963 Act or the 1973 Act.

(b) Likewise, a change in the obligations and/or representations of the subdivider with respect to the construction of roads or the installation of utilities does not alter the Chalets Unit Three subdivision's continued compliance with the statutory requirements for approval under the 1963 Act and § 14-19-6, supra. None of the provisions of the 1963 Act or § 14-19-6, supra, impose an obligation on the subdivider to construct roads or install utilities. Who between the subdivider and the purchaser ultimately bears the responsibility for such amenities is irrelevant to the requirements of § 70-3-3, supra, and § 14-19-6, supra, for approval. We must assume from the facts submitted to us that the Chalets Unit Three subdivision plat was in compliance with all applicable statutory requirements at the time the subdivision was originally approved by the county. Consequently, the subdivision would have been entitled to approval at that time regardless of who had the obligation of constructing, installing or paying for roads and utilities. Therefore, it is our opinion that a transfer of such obligations from the subdivider to the purchaser in future sales of Chalets Unit Three does not require the filing of an amended subdivision plat or further approval by the county commissioners under either the 1963 Act or the 1973 Act.

(c) A change in the location of roads in the Chalets Unit Three subdivision would affect the continued compliance of the subdivision with the statutory requirements for approval under the 1963 Act and § 14-19-6, supra. New roads would have to be dedicated by the subdivider and accepted by the county pursuant to § 70-3-3 of the 1963 Act and all proposed streets would have to conform to adjoining streets and be defined by permanent monuments to the satisfaction of the board of county commissioners pursuant to § 14-19-6, supra. As a result, a change in the location of roads would require an amended subdivision plat to be filed by the subdivider for Chalets Unit Three

and approval obtained from the county commission under the 1963 Act and § 14-19-6, supra.

{*155} (d) Similarly, if a change in the size, location or number of subdivided parcels in the Chalets Unit Three subdivision affects the continued compliance of the subdivision with the statutory requirements of the 1963 Act and § 14-19-6, supra, an amended plat would have to be filed and approved by the county commissioners in accordance with the 1963 Act and § 14-19-6, supra. Furthermore, if the alteration of parcel boundaries in the Chalets Unit Three subdivision increases the number of parcels within the subdivision an entirely new subdivision is deemed to have been created by § 70-5-21(7) of the 1973 Act. Thus, if the number of lots within the Chalets Unit Three subdivision has been increased by changes made by the subdivider in the size or location of the subdivided parcels, it is our opinion that a new subdivision plat must be filed and approved by the county commissioners in accordance with the 1973 Act, § 14-19-6, supra, and the county subdivision regulations promulgated pursuant to the 1973 Act before any further sales of such parcels can be made by the subdivider.

2. Your second question asks what legal requirements govern current disclosure statements and advertising used by a subdivider in the sale of subdivided parcels from within a subdivision approved under the 1963 Act. Both the 1963 Act in § 70-3-5 and the 1973 Act in § 70-5-1 set out advertising standards and requirements. New Mexico Laws 1973, Ch. 348, § 29B specifically provides that the advertising standards of § 70-5-18 of the 1973 Act do apply to "sales or leases of subdivided land irrespective of when the subdivision plat was approved." The advertising standards and requirements of § 70-5-18 of the 1973 Act supplement the existing standards contained in the 1963 Act and represent additional requirements to be met in the sale or offering for sale of land from within a subdivision approved under the 1963 Act. Although some of the advertising standards and requirements of the 1973 Act are identical to those contained in the 1963 Act there exists no irreconcilable conflict or inconsistency between the two statutes that would indicate the legislature's intent to repeal by implication the advertising standards and requirements of § 70-3-5 of the 1963 Act. *Galvan v. City of Albuquerque*, 87 N.M. 235, 237, 531 P.2d 1208, 1210 (1975); *Stokes v. New Mexico Board of Education*, 55 N.M. 213, 217, 230 P.2d 243, 245 (1951).

Therefore, it is our opinion that all advertising and disclosure statements used in the sale of land from within a subdivision approved under the 1963 Act are governed by the advertising standards and requirements of both § 70-3-5 of the 1963 Act and § 70-3-18 of the 1973 Act.

3. Your final question asks whether the proposed offering of Chalets Unit Three violates any other state law and whether a violation of such a law would affect the approval granted to the subdivision by the county commission. The sale of subdivided land in New Mexico is subject to other state laws and regulations besides those contained in the New Mexico Subdivision acts. Laws such as the New Mexico Unfair Practices Act, § 49-15-1, et seq., N.M.S.A. (1975 Supp.), as amended, and the New Mexico Securities Act, § 48-18-1, et seq., N.M.S.A., 1953 Comp., as well as other statutes of general

applicability to real estate have full force and effect even though approval has been secured from the county commission under the New Mexico subdivision laws. Section 70-5-9(B) of the 1973 Act explicitly provides that the regulatory {**156*} powers granted the county commissioners under the 1973 Act do "not pre-empt the authority of any state agency to regulate or perform any activity which it is required to perform."

A violation of other state laws could, depending upon the nature of the violation, affect the continued compliance of a subdivision with the statutory requirements for approval under either the 1963 Act or the 1973 Act. However, since the specific authority for the interpretation and enforcement of such state statutes resides in other state agencies and not in the Colfax County Board of Commissioners, an examination of the proposed offering of Chalets Unit Three in the context of compliance with all applicable state statutes is beyond the scope of this opinion and has not been included.

ATTORNEY GENERAL

Toney Anaya, Attorney General