

Opinion No. 82-11

August 25, 1982

OPINION OF: Jeff Bingaman, Attorney General

BY: Frank D. Katz, Assistant Attorney General

TO: Hon. Sammy L. Pacheco, District Attorney, Eighth Judicial District, P.O. Box E, Taos, New Mexico

PROPERTY LAW; COUNTIES

Amendments to a subdivision plat approved under the 1963 Land Subdivision Act which alter parcel boundaries of non-contiguous parcels and results in major revisions of the subdivision require County Commission review and approval under the standards of the 1973 New Mexico Subdivision Act.

QUESTIONS

You have asked assistance from this office on behalf of the Colfax County Board of County Commissioners in determining the application of the 1963 Land Subdivision Act and the 1973 New Mexico Subdivision Act to the proposed re-subdivision plans of the Angel Fire Corporation. Specifically, you have asked whether the current plans of Angel Fire Corporation to amend their old subdivision plats approved under the 1963 Act, Section 47-51-1 **et seq.** NMSA 1978, trigger the application of the 1973 Act, Section 47-6-1 **et seq.**, NMSA 1978, and, therefore, require the platting approval of the Colfax County Commission pursuant to the current procedures and standards of the 1973 Act.

An earlier Attorney General's Opinion No. 77-24, which was also written to the Colfax County Commission, addressed this question to some extent, but the particular amendments proposed by Angel Fire Corporation at that time were much less extensive than those now proposed. Therefore, that earlier opinion must be expanded upon in light of the more extensive plat amendments presently proposed by the Angel Fire Corporation.

FACTS

From our review of the materials supplied to us and from conversations with the representatives of the Angel Fire Corporation, it is our understanding that Angel Fire Corporation's proposed plat amendments fall into three distinct categories. The factual peculiarities involved in each of these different types of proposed plat amendments have important legal significance insofar as the application of the 1973 Act is concerned. At the outset, it should be noted that all of the amendments now proposed are for subdivision plats approved under the old 1963 Act. The Angel Fire properties are comprised of some fifteen separate subdivision plats, all within a contiguous area of

land. Each of the plats were separately approved as a separate subdivision by the Colfax County Commission under the 1963 Act; several were approved within a six month period in a short time prior to the effective date of the 1973 Act. In December, 1972, the Colfax County Commission approved in concept a master plan of the entire development.

Angel Fire Corporation now proposes to amend several of those earlier plats in the following three ways:

- 1) Alterations of existing boundary lines of contiguous lots within a separately platted subdivision;
- 2) Alterations of existing boundary lines of non-contiguous lots among separately platted subdivisions by vacating lots from one previously platted subdivision and transferring them to another subdivision; and,
- 3) Alterations of existing boundary lines of non-contiguous lots among separately platted subdivisions by vacating lots from previously platted subdivisions and transferring them to previously unplatted areas.

All of the proposed amendments, taken as a whole, do not result in an increase in the total number of lots within the entire platted area of the Angel Fire properties.

CONCLUSIONS

See Analysis.

ANALYSIS

Attorney General's Opinion No. 77-24

Our earlier opinion concluded that a subdivision approved under the 1963 Act continued in its status as a 1963 subdivision and its approval could not be revoked or suspended, or additional requirements imposed, by the County as long as the subdivision continued to comply with that law. This Opinion was based upon the New Mexico Supreme Court's holding 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). This holding was qualified by the language in Section 47-6-2(l)(7) of the 1973 Act which defined the creation of a new subdivision governed by that Act to **include** alterations in boundary lines within a previously approved subdivision whenever the number of lots were increased or the "type" of subdivision changed.

The plat amendments then proposed by Angel Fire Corporation, when Attorney General Opinion No. 77-24 was written, were more limited than the ones now proposed. The alterations in boundary lines involved only **contiguous** lots, all within a single subdivision, Chalet Unit Three. The alterations now proposed by Angel Fire involve

noncontiguous lots both within and between the various separately platted subdivisions, as well as in previously **un-platted** areas. A closer examination of the relationship between the 1963 Act and the 1973 Act, as well as the statutory definition of the term "subdivision" under the 1973 Act, is required to properly ascertain the application of the 1973 Act to the more extensive plat amendments currently proposed by Angel Fire Corporation.

OPINION

Applicability of 1973 Act to Angel Fire Corporation's Current Re-Subdivision Proposal

The purpose of subdivision laws in general, and the 1973 Act in particular, is to guide land development through the power to withhold the privilege of filing subdivision plats and amendments thereto that do not conform to the established and current minimum requirements and standards. Section 7-6-8 NMSA 1978; 7 Rohan, **Zoning and Land Use Controls**, Sec. 45.01. The beneficiaries of such enforced compliance with sound practices in land-use development are both the community at large and the consumer who ultimately purchases the land. In 1973 the New Mexico Legislature adopted a more comprehensive land subdivision statute with the enactment of the 1973 New Mexico Subdivision Act which established more stringent land-use standards to ensure more sound and orderly future growth in New Mexico. The new Act was in marked contrast with the earlier 1963 Act which was essentially a "land platting act" that merely facilitated the conveyance of subdivided lots. The new 1973 Act directed the counties to examine and regulate proposed new subdivision plats in the following important areas: (1) sufficiency of waters; (2) quality of water; (3) liquid waste disposal; (4) solid waste disposal; (5) adequacy of roads; (6) terrain management; (7) consumer protection disclosure statements; and (8) land-use planning relating to population density. Section 47-6-9.

While the older 1963 Act is still operative with regard to subdivisions which were platted and approved under the Act, the 1963 statute does not now operate to grant immunity to the subdivider for subsequent **re-subdivision** activity within such older subdivisions from the application of the new subdivision regulations and standards ^{*291} currently in effect under the 1973 Act. The 1973 Act and the regulations and standards established by the counties thereunder were intended by the Legislature to apply **prospectively** to all subsequent subdivision activity. **El Dorado, supra; Huber v. Village of Richmond Heights**, 121 N.E.2d 457 (Ohio 1954). Thus, the later re-subdivision or alteration of or amendment to older 1963 subdivisions must comply with the new, current subdivision standards if such re-subdivision activity substantially affects these new regulated areas of concern which are addressed by the new 1973 Act (i.e., sufficiency of water, quality of water, roads, etc.). Approval of the subdivision under the 1963 Act is subject to the subsequent, valid exercise of police power of the state and county in the area of land-use control, particularly where, as here, new major re-subdivision efforts are proposed. **See, Loechner v. Campoli**, 49 N.J. 504, 231 A.2d 553 (1967); **Ryan v. Bd. of Adj. of Twn. of Woodbridge**, 49 N.J. 520, 231 A.2d 562 (1967).

This prospective application of the 1973 Act to re-subdivision conduct occurring subsequent to the enactment of the new statute is expressly recognized in the carefully limited exemption to the definition of "subdivision" in Section 47-6-2(I)(7) dealing with the alteration of parcel boundaries within a "previously approved subdivision." Such alterations are exempted from the 1973 Act if they only affect contiguous parcels and do not increase the number of parcels in the subdivision or change the "type" of the subdivision. The exemption thus contemplates only **minor** boundary alterations that would not substantially affect the land-use planning areas of concern addressed by the 1973 Act and the County's Subdivision Regulations. Such a conclusion flows from the statutory scheme of the 1973 Act which is based upon increasing concern being shown, and more stringent standards being ascribed, based upon the number of parcels and the greater density in parcels. Five different "types" of subdivisions are defined in Section 47-6-2(K) thru (O) based upon the number of lots and the size of the lots. More demanding requirements are imposed depending upon the different "type" of subdivision. Sections 47-6-8, 47-6-11, 47-6-12, 47-6-13.

Given the intended purposes of the 1973 Act, a determination as to whether a subsequent re-subdivision effort is exempt from the standards of the 1973 Act under Section 42-6-2(I)(7) should not be based solely upon a mere numerical accounting of the lots or a strict contiguous touching of amended lots, for these factors can be artificially adjusted and the subdivider can still achieve a major alteration that would constitute a whole new **de facto** subdivision. Rather, the County Commission should make the more common-sense determination as to whether the proposed alterations in the old plat are more **minor adjustments** in boundary lines of contiguous lots or whether, in fact, they are **major revisions** that constitute a wholesale re-subdivision, substantially affecting the significant areas of land-use concern addressed by the 1973 Act.

If the County Commission determines that the plat amendments are merely minor adjustments of boundaries, the amendments fall within the scope of the Section 47-6-2(I)(7) exemption from the 1973 Act definition of subdivision and no re-evaluation under the 1973 Act is triggered. Only an amended 1963 plat need be filed. If the Commission concludes, on the other hand, that the plat amendments constitute a major revision of the original subdivision, the standards of the 1973 Act apply as indicated below. In either event, the County Commission must examine the proposed amendments to the old plats to make such a determination.

Just because a re-subdivision is extensive does not mean, however, that the County Commission and the subdivider are starting from point zero or that an entirely **new** subdivision is being proposed that must once again go through the entire approval procedure for new subdivisions under the 1973 Act. The Commission should properly measure the proposed plat amendments against the statutory land-use concerns of Section 47-6-9 of the 1973 Act. If the Commission {292} concludes that the amendments do not substantially affect **any** of the land-use concerns, approval of the amendments without referral to the various State agencies under the 1973 Act is appropriate. If the Commission finds that one or more of the 1973 Act land-use

concerns **may** be substantially affected by the proposed plat amendments, referral to the appropriate State agencies for an opinion under Section 47-6-11(E) through (I) as well as full consideration under Section 47-6-11 through 47-6-14 of the proposed amendments in light of the standards of the 1973 Act are appropriate. In each case, the Commission may require compliance in a **selective basis** with only those current subdivision regulations and minimum standards that are, or may be, **actually affected** by the re-subdivision proposed.

Finally, it is clear that if the proposed alterations involve a wholesale vacating of an entire platted area and subsequent transfer of those vacated lots into a previously **un-platted area**, such re-subdivision efforts rise to the level of an entirely new subdivision which would require the subdivider to apply for subdivision approval under the 1973 Act as a "new" subdivision. Thus, where previously "virgin," **un-platted** lands are the subject of re-subdivision, the proposed plat must be processed and approved as a "new" subdivision pursuant to the full regulatory procedures and standards of the 1973 Act. **See, Lake Intervale Homes, Inc. v. Parsippany Troy Hills**, 28 N.J. 423, 147 A.2d 28 at 38 (1958). In this instance, the subdivider is simply vacating his old subdivision plat and filing a new subdivision plat for a previously undeveloped and un-platted area of land.

Conclusions:

1. Alterations of existing boundary lines for contiguous lots within separately platted subdivisions

As to Angel Fire's proposed alterations and amendments to the boundary lines within separately platted subdivisions approved under the 1963 Act, which involve only minor alterations of the boundary lines on contiguous lots and do not increase the number of parcels in that particular subdivision, the County Commission should recognize such alterations as exempt from the 1973 Act under Section 47-6-2(I)(7) and authorize the filing of amended plat maps.

2. Alterations of existing boundary lines for non-contiguous lots among the separately platted areas by vacating lots and transferring them into previously un-platted areas

As to Angel Fire's proposed vacating and transferring lots platted under the 1963 Act into previously un-platted and undeveloped areas of their properties, the County Commission should require Angel Fire to submit a new plat for approval as a new subdivision under the 1973 Act in accordance with the full subdivision approval procedures and standards promulgated under the current Colfax County Subdivision Regulations.

3. Alterations of existing boundary lines of non-contiguous lots among the separately platted areas by vacating lots and transferring them to previously platted areas

As to Angel Fire's proposed amendments to the boundary lines of lots among different, non-contiguous areas of their separately platted subdivisions within land areas which had been previously platted and were the overall number of lots in Angel Fire's entire subdivided area is not increased, the Colfax County Commission should take the following actions:

A. The County Commission should require that these proposed amendments to the Angel Fire's 1963 Act plat maps be submitted to the County Commission for approval under the Commission's 1973 Act authority;

B. The County Commission should fully examine the proposed resubdivision plat amendments in light of the land-use concerns expressed in Section 47-6-9 and the minimum standards established by the current Colfax County Subdivision Regulations for {*293} such concerns (i.e., water, waste, roads, terrain management, density, disclosure statements, and the effect on owners who have already purchased adjoining lots); and,

C. The County Commission should selectively apply, and secure compliance with, those standards of the 1973 Act and county regulations which are actually being adversely affected by the proposed plat amendments before approving the filing of the amended plats. In this regard, the Commission need not necessarily require a complete refiling of a new plat map under the 1973 Act and compliance with the full subdivision approval process.

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