Opinion No. 88-08

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OPINION OF: HAL STRATTON, Attorney General

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TO: Honorable Toots Green, New Mexico House of Representatives, 1019 Canyon Road, Alamogordo, New Mexico 88310

QUESTIONS

Can a developer resubdivide tracts previously platted within a municipality in order to increase the total number of tracts in the subdivision without obtaining approval by the municipality of a plat for the resubdivision?

CONCLUSIONS

No.

ANALYSIS

Section 3-20-1 of the Municipal Subdivision Act, Sections 3-20-1 to 3-20-16 NMSA 1978, defines a subdivision within the corporate boundaries of a municipality as [t]he division of land into two or more parts by platting or by metes and bounds description ... for the purpose of: (1) sale for building purposes; (2) laying out a municipality or any part thereof; (3) adding to a municipality; (4) laying out suburban lots; or (5) resubdivision." Any division of land into two or more parts for the purpose of resubdivision, among other purposes, therefore is considered to be a new subdivision. Section 3-20-2, however, sets forth an exception to this definition:

Every person who desires to subdivide land shall furnish a plat of the proposed subdivision, prepared by a registered, licensed surveyor of New Mexico; except that the resubdivision of platted tracts, which are less than one acre and which are contiguous with each other, for the purpose of increasing or reducing the size of such contiguous tracts, but not less than the minimum standard size required by the political subdivision, shall not require the furnishing of a plat of the proposed resubdivision, provided that a certificate of survey setting forth the legal description of tracts resulting from such resubdivision shall be filed with the municipal planning commission, the county clerk and the county assessor of that county in which the resubdivision is situated, and such filing should be considered as a rededication of said described lots in all respects.

Read literally, section 3-20-2 would allow a developer to increase the number of lots in a subdivision without obtaining municipal approval, so long as he does not reduce the

size of any tract below the minimum that the municipality establishes. Such a construction, however, conflicts with several rules of statutory construction.

A statute must be read together with other provisions of the same act. Allen v. McClellan, 75 N.M. 400, 402, 405 P.2d 405, 406-407 (1965). The courts also favor a statutory construction that avoids absurd results, Sandoval v. Rodriguez, 77 N.M. 160, 163, 420 P.2d 308, 310 (1966), and does not render parts of a statute useless, State v. Tabaha, 103 N.M. 789, 791, 714 P.2d 1010, 1012 (Ct.App. 1986). See also Mutz v. Municipal Boundary Comm'n, 101 N.M. 694, 698, 688 P.2d 12, 16 (1984) (statutes should be interpreted to facilitate their operation and achieve their goals). Section 3-20-8B(1)(b) of the Municipal Subdivision Act provides in relevant part: "[T]he planning authority shall establish a summary procedure for approving ... resubdivisions, where the combination or recombination of portions of previously platted lots does not increase the total number of lots ...." A summary procedure provides for a more expeditious review than the comprehensive plat approval process described in Section 3-20-7, NMSA 1978. When the legislature provided that summary procedure is appropriate for resubdivisions which do not increase the total number of lots, two points were implicit: (i) Resubdivisions as a general rule are subject to review for plat approval; and (ii) Resubdivisions that increase the total number of lots must go through a comprehensive review.

We find a further indication of the legislature's intent in section 3-20-2 itself. The exemption requires the developer to file, in lieu of a plat, "a certificate of survey setting forth the legal description of tracts resulting from such resubdivision." The statute states that "such filing shall be considered as a rededication of said described lots in all respects." (emphasis supplied). If the resubdivision results in an increase in the number of lots, the certificate of survey would in effect rededicate lots that did not exist previously in any form. That would be an absurd result.

If section 3-20-2 is interpreted literally, a developer could file and obtain approval for a plat containing 100 one-acre lots and then resubdivide those lots into 400 quarter-acre lots without obtaining approval for the resubdivision. This result would be inconsistent with the rest of the Act, which gives municipalities broad authority to regulate development. See, e.g., Section 3-20-7A (municipality must approve any plat before it is filed). Construing section 3-20-2 to permit radical increases in the number of lots without requiring approval also would reduce the initial filing and approval requirement to a much less important exercise. It would create a loophole in the Act large enough to render it largely ineffective. Without a clearer indication from the legislature, we will not infer that the legislature meant, through this one exception, to change the Act so significatively that it leads, given the Act's structure, to absurd results.

We therefore are of the opinion that section 3-20-2 does not authorize a resubdivision, without municipal approval, that results in an increased number of lots within the subdivision. section 3-20-2's scope is limited to resubdivisions that only adjust lot lines within the subdivision without increasing the number of lots.

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