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File No. S-520

COUNTIES:

Subdivision Plats

Lots of 5 acres or more

Honorable John H. Maville
State's Attorney
Boone County
First National Bank Building
130 South State Street
Belvidere, Illinois 61008

Dear Mr. Maville:

I have your recent letter wherein you state:

"Our County Board has requested that I obtain an opinion from you on the following:

A developer recently submitted a plat of a proposed subdivision to be located in this county to the County Board for its approval pursuant to Section 2, Chapter 109, Ill. Rev. Stat. (1971). The County Board refused to approve the subdivision for a number of reasons which are not germane to this question. It now appears that the developer intends to proceed to develop the subdivision utilizing five acre lots instead of the smaller ones proposed in the earlier plat.

This situation raises a question concerning interpretation of two provisions of the Plat Act. The Act commences:

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Except as otherwise provided in subparagraph (b) of this section, whenever the owner of land subdivides it into two or more parts, any of which is less than five acres, he must have it surveyed . . .

This provision standing alone leads the Board to believe it has no power to require a plat so long as the lots are at least five acres in size. However, paragraph (b) states:

The provisions of this Act do not apply and no plat is required in any of the following instances: 1. The division or subdivision of land into parcels or tracts of five acres or more in size which does not involve any new streets or easements of access.

It is the last phrase which causes the confusion. The developer's plan does include new streets, and therefore, it would appear that the Plat Act requires a plat.

Your views on this apparent inconsistency would be greatly appreciated."

Section 1 of "An Act to revise the law in relation to plats" provides in part:

"(a) Except as otherwise provided in subparagraph (b) of this Section, whenever the owner of land subdivides it into 2 or more parts, any of which is less than 5 acres, he must have it surveyed and a plat thereof made by a Registered Land Surveyor, which plat must particularly describe and set forth all public streets, alleys, ways for public service facilities, parks, playgrounds, school grounds or other public grounds,

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and all the tracts, parcels, lots or blocks, and numbering all such lots, blocks or parcels by progressing numbers, giving their precise dimensions. * * *

"(b) The provisions of this Act do not apply and no plat is required in any of the following instances:

1. The division or subdivision of land into parcels or tracts of 5 acres or more in size which does not involve any new streets or easements of access; * * *". Ill. Rev. Stats., 1971, ch. 109, par. 1."

Subparagraph (a) requires a plat when land is subdivided into two or more parts, any of which is less than five acres. Subparagraph (b) states that a plat is not required where land is subdivided into parcels or tracts of five acres or more in size which does not involve any new streets or easements of access. It would thus appear that subparagraph (b) is inconsistent with the platting requirements set forth in subparagraph (a).

In order to determine legislative intent in the case of ambiguity, resort may be had to the history of legislation on the subject and the course it has taken. (Acme Fireworks vs. Bibb, 6 Ill. 2d 112.) Recourse to the history of this act reveals that in 1953, section 1 of An Act to revise the law in relation to plats (Ill. Rev. Stat., 1953, ch. 109, par. 1) provided for

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the survey and platting of land whenever the owner wished to divide it into two or more parts.

In 1955, House Bill No. 783 amended section 1. The provisions of the amendatory act are substantially the same provisions that are presently contained in section 1. The 1955 amendment provided for the platting and survey of land when the owner subdivided it into two or more parts, any of which were less than five acres. However, where land was subdivided into parcels or tracts of five acres or more in size that would not involve any new streets or easements of access, such land was exempted from the provisions of the act. Ill. Rev. Stat., 1955, ch. 109, par. 1.

The 1955 amendment imposed new requirements for platting of subdivided land. Prior to this amendment, the requirement existed for platting land when it was subdivided into two or more parts without regard to the size of the subdivided tracts or parcels. By virtue of this amendment, platting was required where the subdivided land was less than five acres. It is apparent from reading of the 1955 amendatory act that the same inconsistencies that exist now were then in existence.

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Presumption is that the lawmaker has a definite purpose in every enactment and has adopted and formulated the subsidiary provisions in harmony with that purpose (2d Sutherland, Statutory Construction §4704.) These apparently inconsistent provisions were added by the 1955 amendatory act. Thus, they must be construed as consistent with one another to effectuate the purpose of the legislature.

Rules of statutory construction are resorted to for the purpose of resolving ambiguities in a statutory enactment. The sections of an act must be read together and so construed to make it harmonious and consistent in all its parts. (People ex rel, Roan vs. Wilson, 405 Ill. 122.) Accordingly, section 1 of An Act to revise the law in relation to plats (Ill. Rev. Stat., 1971, ch. 109, par. 1) must be construed as a whole and each provision contained therein construed in connection with every other part or provision. By construing section 1 in the aforementioned manner, I am of the opinion that the legislature intended land that is subdivided into tracts or parcels of five or more acres which involve new streets or easement of access be platted. By this construction, all subsidiary provisions

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contained therein are rendered consistent and harmonious.

In Bluett vs. County of Cook, 19 Ill. App. 2d 172 at page 175, the court stated: "The purpose served in requiring a housing developer to submit a plat of his proposed subdivision is to insure adequate provision for streets, areas, placement of utilities, parks, play grounds and other public necessities indispensable in the modern residential community. That this is the purpose of the statute is evident from the provisions which exempt from requirements of the act subdivisions which do not involve new streets or easement of access." Further indication of the legislative intent can be found in section 9 of "An Act to revise the law in relation to plats." (Ill. Rev. Stat., 1971, ch. 109, par. 9). Section 9 provides in pertinent part: "Whenever any * * * street * * * is laid out, located, opened, widened or extended or its location altered, it is the duty of * * * persons or corporations, public or private, locating, opening, widening, extending or altering the same to make a plat, showing its width, course and extent and making references to known and established corners and monuments.

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* * * Thus, it is clear that whenever a new street is laid out, etc., it is the intention of the legislature to require the person locating the street to make a plat of the same.

Therefore, in my opinion, under the circumstances you relate, the subdivider must file a plat not only showing the streets as required by section 9, but also showing the lots as required under said section 1.

Very truly yours,

A T T O R N E Y G E N E R A L