

Opinion No. 82-04

May 17, 1982

OPINION OF: Jeff Bingaman, Attorney General

BY: Frank D. Katz, Assistant Attorney General

TO: Board of Commissioners of, Lea County, P.O. Box 1715, Lea County Courthouse, Lovington, New Mexico 88260

PROPERTY LAW; COUNTIES

The division of a lot into four parcels by a purchaser is not a subdivision under county jurisdiction, it is a subdivision under city jurisdiction, pursuant to the definition in Section 30-20-1(A) NMSA 1978.

FACTS

Lea County has approved a subdivision, Woodville Acres, which consists of 16 lots, each containing approximately five acres. One of the purchasers of a lot within that subdivision is now dividing his five-acre lot into four lots of approximately 1.25 acres. The subdivision is located four and one half miles from the city limits of Hobbs.

QUESTIONS

1. Does the division of a lot in an approved subdivision into four or fewer lots by a purchaser constitute a "subdivision" under the New Mexico Subdivision Act, Section 47-6-1, **et seq.**, NMSA 1978?
2. Does the division constitute a "subdivision" under any other provision of law?

CONCLUSIONS

1. No.
2. Yes.

ANALYSIS

To answer the first question, one must distinguish between the division of a lot in a subdivision into four parcels by a purchaser of that lot and that same division by the original subdivider, or someone acting in concert with him.

OPINION

According to the New Mexico Subdivision Act, a subdivision means "an area of land within New Mexico, the surface of which has been divided by a subdivider into five or more parcels within three years for the purpose of sale or lease." Section 47-6-2(l) NMSA 1978. A division of land into only four parcels would not come within the definition.

The subdivider of Woodville Acres divided land into more than five parcels and properly got approval from the county. Any further division of land within that subdivision by the subdivider would constitute a "subdivision" and require county approval because he has already done more than four divisions.

A subsequent purchaser of a lot in the subdivision, however, has not divided any land at all. Section 47-6-2(l) permits him to make up to four divisions within any three year period without coming under the provisions of the Subdivision Act.

Note that even the original subdivider, **after three years has passed**, is entitled under the law to make up to four further divisions of land within that subdivision before coming under the purview of the Subdivision Act. And he could continue to make four further divisions during each succeeding three year period.

With reference to the second question, Woodville Acres Subdivision is {*275} located not only within county jurisdiction and therefore subject to the provisions of the New Mexico Subdivision Act where applicable, but it is located also within the five-mile extraterritorial subdivision and platting jurisdiction of the City of Hobbs. See, Section 3-20-5(A)(2) NMSA 1978. Both city and county exercise concurrent jurisdiction over Woodville Acres under Section 3-20-5(C) NMSA 1978.

Although the division of a lot into four parcels by a purchaser is not a subdivision under county jurisdiction it **is** a subdivision under city jurisdiction, pursuant to the definition in Section 3-20-1(A).

'Subdivide' or 'subdivision' for the purpose of approval by a municipal planning authority means:

"(1) * * *

"(2) for the area of land within the municipal extraterritorial subdivision and platting jurisdiction, the division of land into two or more parts by platting or metes and bounds description into tracts of less than five acres in any one calendar year for the purposes set forth in Subsection B of this section."

Thus approval for any division, by anyone, of a lot in Woodville Acres must be obtained from the City of Hobbs.

ATTORNEY GENERAL

Jeff Bingaman, Attorney General