

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 89-3

Date issued: March 21, 1989
Requested by: Keith Reisenauer
Cass County Assistant State's Attorney

- QUESTIONS PRESENTED -

I.

Whether a single division of a parcel of land upon which a single family residence will be built falls within the definition of "subdivision" set forth in N. D. C. C. ' 11-33.2-01.

II.

Whether N. D. C. C. ' 40-05.1-01 requires land to be surveyed and platted when there is a single division of a parcel of land upon which a single family residence will be built.

- ATTORNEY GENERAL'S OPINIONS -

I.

It is my opinion that a single division of a parcel of land upon which a single family residence will be built falls within the definition of "subdivision" set forth in N. D. C. C. ' 11-33.2-01.

II.

It is my further opinion N. D. C. C. ' 40-50.1-01 does not require land to be surveyed and platted when there is a single division of a parcel of land upon which a single family residence will be built.

- ANALYSES -

I.

N. D. C. C. ch. 11-33.2 discusses the regulation of subdivisions by counties. When there is a subdivision, a board of county commissioners may require plats to be submitted. N. D. C. C. ' 11-33.2-04. Furthermore, a board of county commissioners may require its approval of a plat prior to the subdivision of land. N. D. C. C. ' 11-33.2.11. Thus, to determine whether a county may require the submittal and approval of plats, it must be determined whether a division

of land is a subdivision within the meaning of N. D. C. C. ch. 11-33.2.

N. D. C. C. ' 11-33.2-01 defines subdivision as follows:

11-33.2-01. "Subdivision" defined. For the purposes of this chapter, unless the context otherwise requires, "subdivision" means the division of a lot, tract, or parcel of land, creating one or more lots, tracts, or parcels for the purpose, whether immediate or future, of sale or of building development, and any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights of way, whether public or private, for access to or from any such lot, tract, or parcel, and the creation of new or enlarged parks, playgrounds, plazas, or open spaces.

A single division of a parcel of land upon which a single family dwelling will be built falls within the definition of "subdivision" set forth in N. D. C. C. ' 11-33.2-01. There is a division of a lot into one or more lots. Also, the division is for the purpose of building development because a dwelling will be built on the lot. Furthermore, under N. D. C. C. ' 11-33.2-01 there would be a "subdivision" if the lot were sold and there were no building development on the lot.

Therefore, counties may regulate a single division of a parcel of land upon which a single family residence will be built if they exercise their authority to do so pursuant to N. D. C. C. ch. 11-33.2.

II.

N. D. C. C. ' 40-50.1-01 requires "[a]ny person desiring to lay out a townsite, an addition to a townsite, or a subdivision of land" to have the land platted and surveyed. Therefore, in order to determine whether a single division of a parcel of land upon which a single family residence will be built requires a survey and a plat under N. D. C. C. ' 40-50.1-01, it must be determined whether there is a "subdivision."

N. D. C. C. ch. 40-50.1 does not define subdivision. Questions regarding the application of N. D. C. C. ' 40-50.1.01, however, have arisen in the past. In prior Attorney General's opinions concerning the definition of the term "subdivision" as used in N. D. C. C. ch. 40-50.1, this office has referred to the definitions of "subdivision" contained in N. D. C. C. ' 11-33.2-01 and N. D. C. C. ' 40-48-01, as well as the commonly understood meaning of that term. See 1988 N. D. Op. Att'y Gen. 9; Letter to State Senator Jim Maxson (July 14, 1987). Those opinions, however, did not discuss or decide the issue presented here.

The definition of "subdivision" provided in section 11-33.2-01 is quoted above. N. D. C. C. ' 40-48-01 defines "subdivision" as follows:

In this chapter, unless the context or subject matter otherwise requires:

. . . .

2. "Subdivision" means the division of a tract or parcel of land into lots for the purpose, whether immediate or future, of sale or of building development, and any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights of way, whether public or private, for access to or from such lots, and the creation of new or enlarged parks, playgrounds, plazas, or open spaces.

The Subdivided Lands Disposition Act, N.D.C.C. ch. 43-23.1, also defines "subdivision." That chapter defines the term as follows:

When used in this chapter, unless the context otherwise requires:

. . . .

7. "Subdivision" . . . means any land situated outside the state of North Dakota which is divided or is proposed to be divided for the purpose of disposition into five or more lots, parcels, units, or interests and also includes any land, whether contiguous or not, if five or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale.

N. D. C. C. ' 43-23.1-02.

Therefore, in various chapters, the North Dakota Century Code defines "subdivision" as involving dividing a portion of land into "one or more lots, tracts, or parcels for the purpose . . . of sale or . . . building development," N. D. C. C. ' 11-33.2-01, into "lots for the purpose . . . of sale or of building development," N. D. C. C. ' 40-48-01, and into "five or more lots" "for the purpose of disposition," N. D. C. C. ' 43-23-02. The definitions of "subdivision" used in other portions of the North Dakota Century Code, therefore, are not useful in determining whether "subdivision" in N. D. C. C. ch. 40-50.1 includes a single division of a parcel of land upon which a single family residence will be built.

Although the definitions of "subdivision" used in the North Dakota Century Code are not useful in defining "subdivision" under N. D. C. C. ' 40-50.1-01, the commonly understood meaning of the term is useful. N. D. C. C. ' 1-02-02 provides "[w]ords used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears." The purpose of giving statutory words their ordinary meaning is to allow persons reading the statute to understand its meaning. Wills v. Schroeder Aviation, Inc., 390 N. W. 2d 544, 545-46 (N. D. 1986).

In a 1988 Attorney General's opinion, I stated the term "subdivision" in N. D. C. C. ' 40-50.1-01 only referred to the development of a tract into smaller

parcels, and that merely transferring part of a larger tract of land was not a subdivision. 1988 N.D. Op. Att'y Gen. 9. In defining subdivision under N. D. C. C. ' 40-50.1-01, I stated:

Statutory words are to be understood in their ordinary sense. N. D. C. C. ' 1-02-02. The common meaning of "subdivision" is a division of land into small parcels for sale. Webster's New World Dictionary 1417 (2nd col. ed. 1986). The general legal definition of "subdivision" is similar. Black's Law Dictionary 1593 (4th ed rev. 1968). Numerous judicial decisions have stated that the generally accepted meaning of "subdivision" is the division of a tract of land into smaller lots or parcels. State ex rel. Anaya v. Select Western Lands, Inc., 613 P.2d 425, 429 (N.M. Ct. App. 1979); McKain v. Toledo City Plan Commission, 270 N.E.2d 370, 373, (Ohio Ct. App. 1971); County of Yuma v. Leidendeker, 303 P.2d 531, 535 (Ariz. 1956); People v. Embassy Realty Associates, 167 P.2d 797, 800 (Cal. Dist. Ct. App. 1946).

Thus, merely dividing a larger tract of land into two parcels is not a subdivision. Some kind of development of the parcel into smaller parcels must be planned. A federal court has explained the general difference between a division and a subdivision: "Division is the act of dividing into parts or portions. Subdivide is to further divide (what has already been divided): to divide the parts into more parts." In re Estate of Symonds, 424 F.2d 928, 930 (D.C. Cir. 1970).

1988 N.D. Op. Att'y Gen. 9.

The 1988 Attorney General's opinion concluded that the conveyance of one part of a larger tract of land is not a subdivision. Consequently, N. D. C. C. ' 40-50.1-01 does not require a survey and plat when there is a single division of a parcel of land and a one family residential dwelling will be built on the divided property. As discussed in Part I above, however, the county may require a survey and plat under those circumstances even though N. D. C. C. ch. 40-50.1 does not mandate that the land be surveyed and platted.

- EFFECT -

This opinion is issued pursuant to N. D. C. C. ' 54-12-01. It governs the actions of public officials until such time as the questions presented are decided by the courts.

Nicholas J. Spaeth

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Attorney General

Assisted by : Patrick K. Stevens
Assistant Attorney General

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