



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

May 10, 1996

Jim Ryan
ATTORNEY GENERAL

FILE No. 96-024

REAL ESTATE:
Effect of Sale of Land for Public
Purpose on Applicability of Plat Act

The Honorable William R. Haine
State's Attorney, Madison County
157 North Main Street, Suite 402
Edwardsville, Illinois 62025-1969

Dear Mr. Haine:

I have your letter wherein you inquire whether, under the provisions of the Plat Act (765 ILCS 205/0.01 et seq. (West 1994)), the filing of a subdivision plat is required for the division of a tract of land into two parcels, one of which will necessarily be less than two acres in area due solely to the fact that a small part of the tract was previously transferred to the county for highway purposes. For the reasons hereinafter stated, it is my opinion that, unless one of the statutory exceptions applies, the filing of a subdivision plat is required in the circumstances you have described.

Section 1 of the Plat Act (765 ILCS 205/1 (West 1994)) 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 subdivision plat thereof made by an Illinois Registered Land Surveyor, which plat must particularly describe and set forth all public streets, alleys, ways for public service facilities, ways for utility services and community antenna television systems, parks, playgrounds, school grounds or other public grounds, and all the tracts, parcels, lots or blocks, and numbering all such lots, blocks or parcels by progressive numbers, giving their precise dimensions. * * *

(b) Except as provided in subsection (c) of this Section, the provisions of this Act do not apply and no subdivision 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;

* * *

6. The conveyance of land for highway or other public purposes or grants or conveyances relating to the dedication of land for public use or instruments relating to the vacation of land impressed with a public use;

* * *

Nothing contained within the provisions of this Act shall prevent or preclude individual counties from establishing standards, ordinances, or specifications which reduce the acreage minimum to less than 5 acres, but not less than 2 acres, or supplementing the requirements contained herein when a survey is made by an Illinois Registered Land Surveyor and a plat thereof is recorded, under powers granted to them.

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You have stated that, pursuant to the authority granted in the last paragraph quoted above, Madison County has reduced the minimum acreage for applicability of the Act to not less than two acres.

Your question is illustrated by a hypothetical situation. Assume that the area of the original tract of land in Madison County is 4.25 acres. The county, by eminent domain or forced sale, acquires .3 acre for highway purposes. The owner wishes to divide the remaining tract of 3.95 acres into two lots, at least one of which must necessarily be less than two acres. Since you have not referred to subsections 1(b)(8) and (9) of the Act, which permit the division of lots existing prior to certain dates into no more than two parts, I shall assume the tract does not meet the requirements of those provisions.

The purpose of the Plat Act is to require submission of plats to governmental approval to insure that adequate provision has been made for streets, alleys, parks and other public facilities indispensable to the particular community. (Gricius v. Lambert (1972), 7 Ill. App. 3d 716, 720.) Thus, the conveyance of a parcel for a public purpose, regardless of size, does not require a subdivision plat. The conveyance of smaller parcels, which may require streets and alleys for access, and the use of which may require other public services, do require plats which plan for such needs.

Whenever a statutory limit is set, it must inevitably include or exclude cases falling just within or just outside the limit. The difference between lots of 1.95 acres and two acres in the hypothetical example is not great, but if the statutorily authorized limit of two acres is to be enforced fairly and consistently, then exceptions, if any, cannot be expanded beyond those which have been expressly included.

Following the transfer, whether by sale or condemnation, of a portion of a tract for highway purposes, that portion is no longer a part of the tract. An artificial inclusion of that portion for purposes of determining application of the Plat Act is not supported by the plain language of the Act, nor would it serve the purposes of the Act. While the hypothetical case offered involves a small public taking and a remaining tract which is nearly large enough to qualify for an exemption from the applicability of the Act, the facts of another case might vary significantly. There would be no standard for determining when an inclusion of property devoted to a public use should be made.

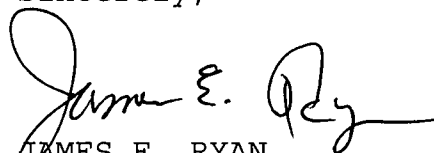
Generally, the enumeration of exclusions in a statute is an indication that the statute should apply to all cases which are not specifically excluded. (Matter of Cash Currency Exchange, Inc. (7th Cir., 1985), 762 F.2d 542, cert. denied, Fryzel v. Cash Currency Exchange, Inc. (1985), 474 U.S. 904, 106 S. Ct. 233, 88 L. Ed.2d 232.) There are nine enumerated exclusions from the operation of the Act. Subdivision plats are required whenever

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er a division of a tract which is subject to the Act results in a parcel of less than two acres in size, in the case of Madison County, unless one of the enumerated exceptions applies.

None of the exceptions either expressly or impliedly extends to the circumstances you have discussed. Therefore, it is my opinion that a subdivision plat must be filed upon the division of a tract of less than four acres into two parcels, even though the tract was reduced to less than four acres only by reason of a public taking of a part of the tract.

Sincerely,

A handwritten signature in cursive script, appearing to read "James E. Ryan". The signature is written in black ink and is positioned above the typed name and title.

JAMES E. RYAN
ATTORNEY GENERAL