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Notes

CITY PLANNING—SUBDIVISION CONTROL— WHAT IS A SUBDIVISION

Under their power to protect the health, safety, and welfare of their citizens, the states have enacted enabling acts providing for the establishment of local commissions to plan, and administer control over, the use of land in and near metropolitan areas. The purpose of such legislation is to provide a legal framework within which a city may plan its future growth. More specifically, planning deals with the zoning of areas for specified restricted uses; the providing of open spaces and play areas; the controlling of residential development through subdivision control; and other related functions.¹

Subdivision control is one of the important facets of the planning process. All but one of the states have enacted legislation regulating subdivision development.² This phase of city planning is closely related to zoning in that it helps accomplish the ends intended to be achieved by zoning. An area may be zoned residential, but only through control of the subdividing of land for the building of residences can the details of planning be properly imposed. A city grows primarily in its fringe areas. A private developer buys raw farm land, subdivides it into lots, installs streets, sidewalks and sewers, provides for the services of the necessary utilities, builds houses on the lots, or sells the improved lots to other builders for this purpose, and the houses and lots are sold to individual homeowners. A portion of the city is formed and here the city has its best, and perhaps only, opportunity to control the city's growth in a manner which will enure to the benefit of the community as a whole.³

Perhaps the most effective tool for controlling the subdivision of land is the requirement of approval by the planning authorities of a surveyed plat of the area to be subdivided. Such a plat, showing street layout, block and lot arrangement, building lines, easements, etc. may be required to meet standards set by planning agencies before the subdivider will be granted the privilege of recording it in the county

¹ See Webster, *Urban Planning and Municipal Public Policy*, ch. 9 (1958) International City Manager Asso., *Local Planning Administration*, ch. 2 (1948).

² Vermont. See Haar, *Land-Use Planning* 347 (1959).

³ Webster, *Urban Planning and Municipal Public Policy* 436 (1958).

clerk's office. Or perhaps, as we shall later see, other means of enforcement against subdividers may be available to insure platting of subdivided land.⁴

As an alternative, the city could plat the countryside around it, much as it does streets and highways now, and tell the landowner what his development must be. Is the present prevailing system of allowing the individual developer to plan a subdivision within the limits of the planning agency's regulations wiser in that it provides variety and individual freedom within a framework designed to safeguard the interests of the city as a whole as to traffic, utilities, density, amenities, etc.?

The purpose of this paper is to consider this requirement of a plat for subdivided land with a particular reference to the Kentucky law on the subject. The objectives of such requirements will first be explored, and then a summary of the Kentucky statutes in point will follow. An evaluation of these statutes in relation to the desired objectives will then be presented.

Objectives of Requiring an Approval Plat of Subdivided Land

As pointed out above, the requirement that a plat of the subdivided land be approved by the planning agency is the most effective means of carrying out the purposes of subdivision control. In order to be effective, and perhaps legal,⁵ there must have been formulated by the planners a master plan, or at least the major street plan thereof, and such a plan adopted as an ordinance through the legislative process of the city. In furtherance of this master plan the specific regulations to which subdividers are to be subjected should be formulated as an ordinance and published. Here the minimum standards with which subdividers must comply are readily available, avoiding confusion and providing equality of treatment as between subdividers, as well as providing a ready guide to the planning agency.⁶

More specifically, these subdivision regulations should deal with the dedication of land for streets, alleys, playgrounds, parks, public buildings, and planting strips. Also they should be concerned with setting the standards for public improvements, including sewage disposal, water supply, and the providing of sufficient easements for the installation of the essential utilities; as well as establishing building set-back and side yard requirements and providing adequate protec-

⁴ *Ibid.*

⁵ See, e.g., Ky. Rev. Stat. §§ 100.044 and 100.730 (1) (1959) [hereinafter referred to as KRS].

⁶ Webster, *op. cit. supra* note 3 at 436.

tion in the matter of block design, lot sizes, and minimum street widths, layout, grading and surfacing.⁷

There are other objectives which may not be set out in the subdivision regulations but which may be controlled, to a degree, through the platting requirement. A certain amount of coordination between subdivisions in the same area and with the rest of the city may be accomplished. This is especially important in achieving the pattern of street layouts necessary to conform to the major street plan. Uniformity of street widths and avoidance of offsets and deadends may be accomplished.

There also can be some control over the scattering of developments; these place a greater burden on utility and transportation services by stringing them out, as well as on the city which is obligated to furnish fire and police protection to these relatively isolated areas. Also, the subdividing of land unsuitable for habitation may be discouraged, as well as premature or excessive subdividing, all of which may prove expensive to the developer and a future burden to the city. If the development of the subdivision fails to fully materialize the city may find it necessary to come in and provide the necessary utilities and to surface streets for health and safety reasons. Also, the city stands to lose potential tax income on such improperly planned developments. Poorly planned subdivisions may well sink into the status of slums.⁸ "The amount of money which many cities must spend annually for street widening, redesign, relocation of utility lines, slum clearance, and redevelopment is grim evidence of the cost of failure to develop vacant property in a proper manner."⁹

The information which is necessary for a determination by the planning authorities as to whether a proposed subdivision complies with the requirements of the subdivision regulations ordinance is contained in the plat. The plat is essentially a map of the parcel of land to be subdivided which shows its location, boundaries, proposed streets, utilities, public areas, and all other data necessary to determine whether or not there has been a compliance with these regulations.¹⁰

Kentucky Law on the Subject

Now let us examine, in a summary fashion, the provisions of the Kentucky statutes in regard to the requirement of a plat of all sub-

⁷ Webster, *op. cit. supra* note 3 at 436. International City Managers Asso., *op. cit. supra* note 1 at 25 (1948); American Society of Planning Officials, Planning Advisory Service Information Reports, Report No. 116, p. 4 (1958).

⁸ Webster, *op. cit. supra* note 3 at 436; International City Managers Asso., *op. cit. supra* note 1 at 248; Haar, *op. cit. supra* note 2 at 347.

⁹ Webster, *op. cit. supra* note 3 at 436.

¹⁰ *Id.* at 445.

divided land and other closely related matters. The chapter of the Kentucky Revised Statutes devoted to "Zoning and Planning" is separated into three divisions: one division dealing with first class cities, one second class cities, and the last with third through sixth class cities. Therefore, there are separate subsections on the subject of subdivision control within each division.¹¹

Under the heading of "definitions" at the beginning of the chapter, "subdivision" is defined as "the division of a tract of land into two or more divisions for the purpose, whether immediate or future, of sale or of building development and includes resubdivision."¹² This definition is stated as applicable to second class cities and below "unless the context requires otherwise."¹³ Since "subdivision" is not defined elsewhere in the zoning and planning chapter one would assume that the "context requires" that the "division into two or more divisions" applies to first class cities as well, although it would have been more desirable to have made this clear in the definition itself.

For all classes of cities there are requirements calling for the formulation and adoption by the planning commission of subdivision regulations and restrictions as part of the city's comprehensive plan.¹⁴ The matters to be governed by such regulations are set out in the statutes.¹⁵ The subject matter of such regulations are more fully set out for first class cities than for those of the second class and below although essentially the same areas are covered by the different subsections. The requirement that such regulations be adopted for first and second class cities is predicated on the existence of a comprehensive plan for the city of which the subdivision regulations become

¹¹ KRS, ch. 100.

¹² KRS § 100.010 (4), added to definitions by amendment in 1956.

¹³ KRS § 100.010.

¹⁴ KRS § 100.087 (first class cities); KRS § 100.360 (3) (second class cities); and KRS § 100.074 (1) (third class cities and below).

¹⁵ KRS § 100.087 provides: The original subdivision control regulations . . . shall provide for: (a) The manner in which subdivision plats shall be submitted to the commission for approval and how same shall be approved and recorded; (b) the proper arrangement of streets, roads and highways in relation to other existing or planned streets or highways; (c) adequate and convenient open spaces for traffic, utilities, recreation, light and air, and access for fire-fighting apparatus; (d) the avoidance of congestion of population by specifying minimum widths and areas of lots; (e) the extent to which streets and other ways shall be graded and improved, and the extent to which water, sewer, and other utility mains, piping or other facilities shall be installed. . . .

KRS § 100.360 (3) provides: [R]egulations shall be made . . . to promote the public health, safety, morals or general welfare, by lessening congestion in the streets or by securing safety from fire, panic or other dangers, or by providing adequate light and air, or by preventing over-crowding of land, or by avoiding the undue concentration of population, or by facilitating the adequate provision of transportation, water, sewerage, schools, parks, playgrounds or other public requirements. . . .

a part.¹⁶ In cities of the third class and below the adoption of subdivision regulations and their enforcement, through the supervision of platting, is predicated on there having been at least a major street plan for the planning area adopted and recorded.¹⁷

The statutes applicable to all classes of cities require that a plat of all or any subdivided land within the planning area be submitted to the planning commission for its approval and in all classes of cities the county clerk is prohibited from accepting a plat or an instrument referring to a plat for recording until it has been approved in writing by the planning commission.¹⁸ Both the subdivider and the county clerk may be fined for violation of these provisions.¹⁹ The sections applicable to first and second class cities go on to provide that a subdivider of land, or his agent, may not transfer or sell, or agree to sell, any lot or parcel of land located within a subdivision of which there is no approved plat, by reference to or exhibition of such a plat. Further, any instrument of conveyance of a parcel of land subdivided, where such subdivision has not been recorded as an approved plat, is void. This is true whether reference is made within the instrument of conveyance to the plat from which it is sold or whether the parcel is described within this instrument only by metes and bounds.²⁰ The section applicable to third class cities and below seems to be substantially to the same effect, although it is not as elaborately worded.²¹

Another matter of some importance is the required time within which the planning commission must take action on a subdivision plat. In first class cities, within thirty days after submission of a plat the commission shall provide for a public hearing on it. Within thirty days after such hearing the commission shall either approve or disapprove the plat, unless additional time is necessary to enable a more thorough investigation. In such an event, the commission may extend the period up to sixty additional days. Therefore it may take one hundred and twenty days from submission until final approval or disapproval is given the plat.²² The sections applicable to second class cities make no reference to a time limitation within which the planning commissions must act on a proposed plat. In third class cities and below the planning commission must take action on, and either

¹⁶ KRS § 100.044 (2) (first class cities); KRS § 100.360 (3) (second class cities).

¹⁷ KRS § 100.730 (1).

¹⁸ KRS §§ 100.088, .092 (first class cities); KRS §§ 100.360, .364 (second class cities); KRS § 100.730 (third through sixth class cities).

¹⁹ KRS § 100.990.

²⁰ KRS § 100.093 (first class cities); KRS § 100.364 (second class cities).

²¹ KRS § 100.730.

²² KRS § 100.088.

approve or disapprove, a proposed plat within thirty days of its submission, or the plat will be deemed to have been approved. The subdivider may waive this requirement and consent to an extension of time.²³

This, then, essentially covers the substance of the platting requirements. There are other matters dealt with in this subsection, but they are primarily procedural in nature.

Comparative Analysis of Kentucky Statutes

Is the definition of "subdivisions" in the Kentucky act,²⁴ as any division of land into two or more parts, a desirable definition? The term "subdivision" is perhaps the most important word to be defined in planning and zoning enabling acts. There are numerous variations in the statutes of the different states as to what constitutes a "subdivision" which is to be subjected to the subdivision control regulations. In many states, for instance, only if three, five, or ten lots are created is there a subdivision that can be regulated under the acts.²⁵ But the current thinking on the subject is that any division of land in which two or more lots are created is a "subdivision" and is to be regulated as such.²⁶

Such a definition obviously affords the planning commission a greater degree of control over land development within the planning area. This control is further increased by extension of the planning commission's jurisdiction beyond the limits of the city into rural areas²⁷ and by the rather rigid enforcement of the platting requirements.²⁸ These things, working together, better enable the planners to supervise the community's growth and effectuate the purposes of planning stated earlier. But an arbitrary or hasty use of such power may lead to inequities in given cases. Also, there will be more plats where only

²³ KRS § 100.750.

²⁴ KRS § 100.010 (4).

²⁵ American Society of Planning Officials, *op. cit. supra* note 7 at 4; Wis. Stat. § 236.02 (7) (1957) (five or more parcels); Cal. Bus. and Prof. Code § 11535 (Supp. 1957) (five or more parcels).

²⁶ Harvard City Planning Studies IV, Model Planning Laws 108 (1935); American Society of Planning Officials, *op. cit. supra* note 7 at 4; so defined in U.S. Dep't of Commerce, A Standard City Planning Enabling Act (1928).

²⁷ For first class cities KRS § 100.031 provides for agreement between city and county for a joint planning commission with countywide jurisdiction. If no such agreement is made, the city may plan five miles beyond city limits under KRS § 100.097.

For second class cities KRS § 100.320 provides for joint county and city planning commissions. The commission will have the same powers in the county as in the city under KRS § 100.351.

In third through sixth class cities the commission has jurisdiction over all land within five miles of the corporate limits of the city under KRS § 100.720.

²⁸ KRS §§ 100.093, .364, .730.

two parcels form a "subdivision" and therefore more of the planners' time will be consumed in supervising these plats. This, in turn, decreases the time and attention which the planning staff will be able to give to other facets of planning.²⁹

Although the Kentucky definition of "subdivision" conforms to the definition, as to the number of parcels, recommended by some authorities, the exemption from regulation of some types of land divisions into two parts would seem desirable.³⁰ It may prove unnecessarily burdensome to require a farmer within the planning commission's jurisdiction who wishes to sell a tract of his land to a neighbor, or to sell several acres to a tenant, or to give his son a plot of land, to bear the expense of having a plat prepared and waiting for it to go through the administrative process for approval.³¹ Where it will not be necessary to create any new streets or widen existing ones, or to create any additional access easements or install additional utilities, there seems to be little to be gained on the city's behalf in requiring an approved plat of the property division. The policy underlying the regulation of land subdivision should be not only to protect the community, as a whole, from financial loss or the presence of unsightly residential areas, but also to protect the individuals who purchase in a subdivision from loss of property value due to improper development. Therefore, it seems that the regulation of subdividing should be aimed at those divisions of land made with a view toward residential development rather than divisions of land for agricultural or other non-development purposes.

Some of the instances of land division which it might be advisable to exempt from subdivision control provisions are suggested by some of the definitions in the statutes of other states. Massachusetts defines a "subdivision" as a division into two lots or more, but provides that such a partitioning shall not be regulated as a "subdivision" if

every lot within the tract so divided has frontage on (a) a public way, or (b) a way shown on a plan theretofore approved in accordance with the subdivision control law. . . . Such frontage shall be of at least such distance as is then required by zoning or other ordinance or by law, if any, of said city or town for erection of a building on such lot, and if no distance is required, such frontage shall be of at least twenty feet.³²

In Ohio, the division of land into two or more lots any one of which is less than five acres, is a "subdivision", but the

²⁹ Planning commissions are devoting almost all their time now to controlling subdivision development.

³⁰ American Society of Planning Officials, *op. cit. supra* note 7 at 4.

³¹ The farmer may also find himself required to widen a road bordering his farm, or to build an access road on the farm, at his own expense.

³² Mass. Ann. Laws, ch. 41, § 81L (Supp. 1958).

division or partition of land into parcels of more than five acres not involving any new streets or easements of access, and the sale or exchange of parcels between adjoining lot owners, where such sale or exchange does not create additional building sites, shall be exempted.³³

It has also been suggested that where the partitioning of land results in lots of more than ten acres in which no new streets are created there should be no "subdivision".³⁴

These examples are presented to suggest the type of exceptions that might be added to the definition of "subdivision" as it now exists in the Kentucky statutes to make the definition more equitable. Actually it might be more desirable to increase the number of parcels necessary to form a "subdivision" to at least three. This, it seems, would alleviate a good deal of the problems of the rural land owner mentioned above, because he will ordinarily engage in a two-party transaction in which there is a division into two parcels. On the other hand, those who wish to partition land into more than two parts are usually dividing to form a residential subdivision and these are the persons who should be regulated. The danger of piecemeal subdividing to avoid the platting requirement would be minimal if a time limitation were included within the definition; e.g., any division into three or more parcels within a five-year period would constitute a subdivision.

Further, it should be mentioned that the constitutionality of the definition of "subdivision" as a division into two parts might be questioned as an unreasonable extension of the police power. A Florida court invalidated a similar provision on the constitutional ground that the statute violated equal protection clauses of both state and federal constitutions "without reasonable classification which would justify the discriminatory aspects of the statute."³⁵

The provisions of the Kentucky statutes³⁶ which provide for the formulation and adoption of minimum standards that a subdivision must meet appear to be adequate and are a recommended feature of the subdivision control law. Of course, these subsections only state ends to be achieved. The subdivision regulations adopted pursuant to these subsections are more elaborate, but many details are left to be worked out by planners and subdivision developers on a

³³ Ohio Rev. Code Ann. § 711.001 (B) (1) (1953).

³⁴ American Society of Planning Officials, *op. cit. supra* note 7 at 4.

³⁵ *Kass v. Lewin*, 104 So.2d 572,578 (Fla. 1958). The statute required recording of plats whenever land, the plat of which had not been recorded, was divided into parcels of one acre or less, or whenever land, the plat of which had been recorded, was divided into parcels of one-half acre or less as condition precedent to conveying same.

³⁶ *Supra* note 14.

case-to-case basis, and this is as it should be. Often the planner and the land developer may fail to agree on a particular proposed street dedication, or on the amount of open space to be reserved for recreational purposes, etc. This is to be expected since the views of the planner are more likely to be broader in scope and to represent what he feels to be to the community interest, while the land developer has a direct pecuniary interest which may serve to circumscribe his outlook somewhat. However, in his zeal the planner may overstep his duty to the community and put the developer to unreasonable expense by requiring dedication of streets or reservation of recreational areas which are either unnecessary, or if necessary, the cost of which should be borne or shared by the city. These differences of opinion do not seem to reach the appellate court very frequently. Perhaps this is partly attributable to the ability of the planner to work out compromises and partly to the unwillingness of the developer to take the time or bear the expense of extended litigation.

The sections of the Kentucky statutes³⁷ relating the requirement of submission for approval of all subdivision plats and the sanctions against failure to comply with these sections seem adequate enough to discourage noncompliance. The platting requirement was earlier enforced by withholding the privilege of recording from an unapproved plat.³⁸ This meant that one had to describe the parcel in the instrument of conveyance by metes and bounds, which was much less convenient than making reference by block and lot to a recorded plat. This means of enforcing the submission of plats for approval apparently proved inadequate and the enforcements now found in the statutes were added.³⁹

Perhaps it should be mentioned here that there are some other advantages, not related to controlling land subdivisions, to the recording of a plat. Conveyancing by reference to a recorded plat greatly simplifies the wording of deeds and public records, and eliminates many possibilities of error which might cloud the title to the land.⁴⁰ Also, when a substantial portion of a county has been recorded on plats, a situation which is being accelerated by these relatively recent requirements in relation to platting discussed above, the feasibility of setting up a tract index⁴¹ to our county land

³⁷ *Supra* notes 18 through 21.

³⁸ Webster, *op. cit. supra* note 3 at 436; *e.g.*, KRS § 100.360.

³⁹ See *e.g.* KRS § 100.364, which was added to statutes in 1958.

⁴⁰ International City Managers Asso., Local Planning Administration 253 (1948).

⁴¹ Instead of indexing by grantor-grantee, the muniments of title would be indexed by the block and lot to a particular subdivision or area, with a cross reference to plat books. Therefore, the chain of title of any particular tract could be found in one place which would greatly simplify the searching of titles.

records should become more apparent. Of course there will be a good portion of any county which will never be subdivided and thereby required to be platted under the subdivision control requirements. But once a large enough percentage of a county had been platted under the requirements it would seem expedient to go ahead and plat the remainder expressly for tract indexing purposes.

It was pointed out above that in first class cities the planning commission has as much as one hundred and twenty days within which they must take action on a submitted plat,⁴² and in third class cities and below the commission must either approve or disapprove a plat within thirty days or the plat will be deemed approved,⁴³ while in a second class city there is no time limitation. In first class cities, where the planning commission work load would be expected to be the heaviest, it is understandable that the time provided might be necessary for the proper evaluation of a plat. The thirty-day limitation for the smaller cities should be adequate. But it seems that some time limitations should have been placed on the commissions of second class cities. A commission should not be allowed simply to table a plat indefinitely and thereby avoid having to disapprove or approve it, and perhaps let it die a natural death, or place the subdivider in such a position that he must seek the aid of the court to obtain action on the plat.

Conclusion

Under Kentucky law, planning and zoning commissions are given adequate rein to formulate and effectuate the regulations of subdivision development. The purposes to be accomplished by such regulation are broadly stated, the jurisdiction of the commission is extensive, the definition of which "subdivisions" are subject to regulation is all-inclusive, and the requirement of submission of a plat for commission approval is rigidly enforced. As has been pointed out, this may serve the interest of the community as a whole and the individual purchasers within the subdivision in question; however, there may also be injustices in individual cases arising out of such all inclusive provisions. Some amending of the subdivision control sections, as has been suggested, might better balance the interest of the community with that of individual subdividers not actually partitioning for development.

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⁴² KRS § 100.088.

⁴³ KRS § 100.750.