

AN ACT

RELATING TO REAL PROPERTY; AMENDING THE NEW MEXICO SUBDIVISION ACT TO PROVIDE FOR TRIBAL NOTIFICATION IN SPECIFIED INSTANCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 47-6-2 NMSA 1978 (being Laws 1973, Chapter 348, Section 2, as amended) is amended to read:

"47-6-2. DEFINITIONS.--As used in the New Mexico Subdivision Act:

A. "board of county commissioners" means the governing board of a county;

B. "common promotional plan" means a plan or scheme of operation, undertaken by a single subdivider or a group of subdividers acting in concert, to offer for sale or lease parcels of land where the land is either contiguous or part of the same area of land or is known, designated or advertised as a common unit or by a common name;

C. "final plat" means a map, chart, survey, plan or replat certified by a licensed, registered land surveyor containing a description of the subdivided land with ties to permanent monuments prepared in a form suitable for filing of record;

D. "immediate family member" means a husband, wife, father, stepfather, mother, stepmother, brother, stepbrother, sister, stepsister, son, stepson, daughter,

stepdaughter, grandson, stepgrandson, granddaughter, stepgranddaughter, nephew and niece, whether related by natural birth or adoption;

E. "Indian nation, tribe or pueblo" means any federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico;

F. "lease" means to lease or offer to lease land;

G. "parcel" means land capable of being described by location and boundaries and not dedicated for public or common use;

H. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity;

I. "preliminary plat" means a map of a proposed subdivision showing the character and proposed layout of the subdivision and the existing conditions in and around it and need not be based upon an accurate and detailed survey of the land;

J. "sell" means to sell or offer to sell land;

K. "subdivide" means to divide a surface area of land into a subdivision;

L. "subdivider" means any person who creates or who has created a subdivision individually or as part of a common promotional plan or any person engaged in the sale, lease or other conveyance of subdivided land; however,

"subdivider" does not include any duly licensed real estate broker or salesperson acting on another's account;

M. "subdivision" means the division of a surface area of land, including land within a previously approved subdivision, into two or more parcels for the purpose of sale, lease or other conveyance or for building development, whether immediate or future; but "subdivision" does not include:

(1) the sale, lease or other conveyance of any parcel that is thirty-five acres or larger in size within any twelve-month period, provided that the land has been used primarily and continuously for agricultural purposes, in accordance with Section 7-36-20 NMSA 1978, for the preceding three years;

(2) the sale or lease of apartments, offices, stores or similar space within a building;

(3) the division of land within the boundaries of a municipality;

(4) the division of land in which only gas, oil, mineral or water rights are severed from the surface ownership of the land;

(5) the division of land created by court order where the order creates no more than one parcel per party;

(6) the division of land for grazing or farming activities; provided the land continues to be used for

grazing or farming activities;

(7) the division of land resulting only in the alteration of parcel boundaries where parcels are altered for the purpose of increasing or reducing the size of contiguous parcels and where the number of parcels is not increased;

(8) the division of land to create burial plots in a cemetery;

(9) the division of land to create a parcel that is sold or donated as a gift to an immediate family member; however, this exception shall be limited to allow the seller or donor to sell or give no more than one parcel per tract of land per immediate family member;

(10) the division of land created to provide security for mortgages, liens or deeds of trust; provided that the division of land is not the result of a seller-financed transaction;

(11) the sale, lease or other conveyance of land that creates no parcel smaller than one hundred forty acres;

(12) the division of land to create a parcel that is donated to any trust or nonprofit corporation granted an exemption from federal income tax, as described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended; school, college or other institution with a

defined curriculum and a student body and faculty that conducts classes on a regular basis; or church or group organized for the purpose of divine worship, religious teaching or other specifically religious activity; or

(13) the sale, lease or other conveyance of a single parcel from a tract of land, except from a tract within a previously approved subdivision, within any five-year period; provided that a second or subsequent sale, lease or other conveyance from the same tract of land within five years of the first sale, lease or other conveyance shall be subject to the provisions of the New Mexico Subdivision Act; provided further that a survey shall be filed with the county clerk indicating the five-year holding period for both the original tract and the newly created tract;

N. "terrain management" means the control of floods, drainage and erosion and measures required for adapting proposed development to existing soil characteristics and topography;

O. "time of purchase, lease or other conveyance" means the time of signing any document obligating the person signing the document to purchase, lease or otherwise acquire a legal interest in land;

P. "type-one subdivision" means any subdivision containing five hundred or more parcels, any one of which is less than ten acres in size;

Q. "type-two subdivision" means any subdivision containing not fewer than twenty-five but not more than four hundred ninety-nine parcels, any one of which is less than ten acres in size;

R. "type-three subdivision" means any subdivision containing not more than twenty-four parcels, any one of which is less than ten acres in size;

S. "type-four subdivision" means any subdivision containing twenty-five or more parcels, each of which is ten acres or more in size; and

T. "type-five subdivision" means any subdivision containing not more than twenty-four parcels, each of which is ten acres or more in size."

Section 2. Section 47-6-11 NMSA 1978 (being Laws 1973, Chapter 348, Section 11, as amended) is amended to read:

"47-6-11. PRELIMINARY PLAT APPROVAL--SUMMARY REVIEW.--

A. Preliminary plats shall be submitted for type-one, type-two, type-three, except type-three subdivisions that are subject to review under summary procedure as set forth in Subsection I of this section, and type-four subdivisions.

B. Prior to approving the preliminary plat, the board of county commissioners of the county in which the subdivision is located shall require that the subdivider furnish documentation of:

(1) water sufficient in quantity to fulfill

the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses;

(2) water of an acceptable quality for human consumption and measures to protect the water supply from contamination;

(3) the means of liquid waste disposal for the subdivision;

(4) the means of solid waste disposal for the subdivision;

(5) satisfactory roads to each parcel, including ingress and egress for emergency vehicles, and utility easements to each parcel;

(6) terrain management to protect against flooding, inadequate drainage and erosion; and

(7) protections for cultural properties, archaeological sites and unmarked burials that may be affected directly by the subdivision, as required by the Cultural Properties Act.

C. In addition to the requirements of Subsection B of this section, prior to approving the preliminary plat, the board of county commissioners of the county in which the subdivision is located shall:

(1) determine whether the subdivider can fulfill the proposals contained in the subdivider's disclosure statement required by Section 47-6-17 NMSA 1978; and

(2) determine whether the subdivision will conform with the New Mexico Subdivision Act and the county's subdivision regulations.

D. The board of county commissioners shall not approve the preliminary plat if the subdivider cannot reasonably demonstrate that the subdivider can fulfill the requirements of Subsections B and C of this section.

E. Any subdivider submitting a preliminary plat for approval shall submit sufficient information to the board of county commissioners to permit the board to determine whether the subdivider can fulfill the requirements of Subsections B and C of this section.

F. In determining whether a subdivider can fulfill the requirements of Subsections B and C of this section, the board of county commissioners shall, within ten days after the preliminary plat is deemed complete, request opinions from:

(1) the state engineer to determine:

(a) whether the subdivider can furnish water sufficient in quantity to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses; and

(b) whether the subdivider can fulfill the proposals in the subdivider's disclosure statement concerning water, excepting water quality;

(2) the department of environment to

determine:

(a) whether the subdivider can furnish water of an acceptable quality for human consumption and measures to protect the water supply from contamination in conformity with state regulations promulgated pursuant to the Environmental Improvement Act;

(b) whether there are sufficient liquid and solid waste disposal facilities to fulfill the requirements of the subdivision in conformity with state regulations promulgated pursuant to the Environmental Improvement Act, the Water Quality Act and the Solid Waste Act; and

(c) whether the subdivider can fulfill the proposals contained in the subdivider's disclosure statement concerning water quality and concerning liquid and solid waste disposal facilities;

(3) the department of transportation to determine whether the subdivider can fulfill the state highway access requirements for the subdivision in conformity with state regulations promulgated pursuant to Section 67-3-16 NMSA 1978;

(4) the soil and water conservation district to determine:

(a) whether the subdivider can furnish terrain management sufficient to protect against flooding,

inadequate drainage and erosion; and

(b) whether the subdivider can fulfill the proposals contained in the subdivider's disclosure statement concerning terrain management;

(5) each Indian nation, tribe or pueblo with a historical, cultural or resource tie with the county that submits at least annually, via certified mail, return receipt requested, a written request for notification to the board of county commissioners, which request indicates the Indian nation, tribe or pueblo's historical, cultural or resource tie with the county, its contact information and a listing of the types of documentation required to be submitted by a subdivider to the county that may be necessary for its review to determine:

(a) whether the subdivider can furnish, fulfill or otherwise meet the requirements set forth in Paragraphs (1) through (4) of this subsection; and

(b) how the subdivider's proposed plat may directly affect cultural properties, archaeological sites and unmarked burials; and

(6) such other public agencies as the county deems necessary, such as local school districts and fire districts, to determine whether there are adequate facilities to accommodate the proposed subdivision.

G. If, in the opinion of each appropriate public

agency or an Indian nation, tribe or pueblo, a subdivider can fulfill the requirements of Subsection F of this section, the board of county commissioners shall weigh these opinions in determining whether to approve the preliminary plat at a public hearing to be held in accordance with Section 47-6-14 NMSA 1978.

H. If, in the opinion of the appropriate public agency or an Indian nation, tribe or pueblo, a subdivider cannot fulfill the requirements of Subsection F of this section or, if the appropriate public agency or the Indian nation, tribe or pueblo does not have sufficient information upon which to base an opinion on any one of these subjects, the subdivider shall be notified of this fact by the board of county commissioners, and the procedure set out below shall be followed:

(1) if the appropriate public agency or the Indian nation, tribe or pueblo has rendered an adverse opinion, the board of county commissioners shall give the subdivider a copy of the opinion;

(2) the subdivider shall be given thirty days from the date of notification to submit additional information to the public agency or the Indian nation, tribe or pueblo through the board of county commissioners; and

(3) the public agency or the Indian nation, tribe or pueblo shall have thirty days from the date the

subdivider submits additional information to change its opinion or issue a favorable opinion when it has withheld one because of insufficient information. No more than thirty days following the date of the expiration of the thirty-day period, during which the public agency or the Indian nation, tribe or pueblo reviews any additional information submitted by the subdivider, the board of county commissioners shall hold a public hearing in accordance with Section 47-6-14 NMSA 1978 to determine whether to approve the preliminary plat. Where the public agency has rendered an adverse opinion, the subdivider has the burden of showing that the adverse opinion is incorrect either as to factual or legal matters. Where the Indian nation, tribe or pueblo has rendered an adverse opinion, the subdivider may submit additional information to the board of county commissioners. If a public agency disagrees with an adverse opinion rendered by an Indian nation, tribe or pueblo, that agency shall submit a response to the board of county commissioners.

I. If a type-three subdivision contains five or fewer parcels of land, and unless the land within the subdivision has been previously identified in the county's comprehensive plan, as amended or supplemented, or zoning ordinances as an area subject to unique circumstances or conditions that require additional review:

- (1) if the smallest parcel is not less than

three acres in size, the board of county commissioners shall use the same summary procedure for reviewing the subdivision as the board uses for reviewing type-five subdivisions; or

(2) if the smallest parcel is less than three acres in size, the board of county commissioners may use the same summary procedure for reviewing the subdivision as the board uses for reviewing type-five subdivisions.

J. Prior to approving the final plat of a type-five subdivision, the board of county commissioners of the county in which the subdivision is located shall:

(1) determine whether the subdivider can fulfill the proposals contained in the subdivider's disclosure statement required by Section 47-6-17 NMSA 1978; and

(2) determine whether the subdivision conforms with the New Mexico Subdivision Act and the county's subdivision regulations.

K. The board of county commissioners shall not approve the final plat of any type-five subdivision if the subdivider cannot reasonably demonstrate that the subdivider can fulfill the requirements of Subsection J of this section.

L. Any subdivider submitting a plat of a type-five subdivision shall submit sufficient information to the board of county commissioners to permit the board to determine whether the subdivider can fulfill the requirements of Subsection J of this section.

M. The board of county commissioners shall by regulation establish a procedure for summary review for certain type-three subdivisions, as provided in Subsection I of this section, and all type-five subdivisions. If the board of county commissioners fails to adopt criteria for summary review, the board of county commissioners shall approve the plat if it complies with Sections 47-6-3 and 47-6-4 NMSA 1978 within the time limitation set forth in Section 47-6-22 NMSA 1978. The board of county commissioners may delegate to any county administrative officer or planning commission member the authority to approve any subdivision under summary review. Approval by summary review is conclusive evidence of the approval of the board of county commissioners."

Section 3. Section 47-6-20 NMSA 1978 (being Laws 1973, Chapter 348, Section 20, as amended) is amended to read:

"47-6-20. PUBLIC AGENCIES REQUIRED TO PROVIDE COUNTIES WITH INFORMATION.--

A. Any public agency receiving a request from the board of county commissioners for an opinion and any Indian nation, tribe or pueblo that chooses to submit an opinion pursuant to Section 47-6-11 NMSA 1978 shall furnish the board with the requested opinion within the time period set forth in Subsection A of Section 47-6-22 NMSA 1978. The board of county commissioners shall furnish the appropriate public agency and Indian nation, tribe or pueblo with all relevant

information that the board has received from the subdivider on the subject for which the board is seeking an opinion. If the public agency or Indian nation, tribe or pueblo does not have sufficient information upon which to base an opinion, the public agency or Indian nation, tribe or pueblo shall notify the board of this fact.

B. All opinion requests mailed by the board of county commissioners shall be by certified mail, return receipt requested. Boards of county commissioners delivering opinion requests shall obtain receipts showing the day the opinion request was received by the particular public agency or Indian nation, tribe or pueblo."

Section 4. Section 47-6-22 NMSA 1978 (being Laws 1973, Chapter 348, Section 22, as amended) is amended to read:

"47-6-22. TIME LIMIT ON ADMINISTRATIVE ACTION.--

A. All opinions required of public agencies or submitted by an Indian nation, tribe or pueblo shall be furnished to the board of county commissioners within thirty days after the public agencies or Indian nation, tribe or pueblo receives the written request and accompanying information from the board of county commissioners. If the board of county commissioners does not receive a requested opinion within the thirty-day period, the board shall proceed in accordance with its own best judgment concerning the subject of the opinion request. The failure of a public

agency or Indian nation, tribe or pueblo to provide an opinion when requested by the board of county commissioners does not indicate that the subdivider's provisions concerning the subject of the opinion request were acceptable or unacceptable or adequate or inadequate.

B. Final plats submitted to the board of county commissioners for approval shall be approved or disapproved at a public meeting of the board of county commissioners within thirty days of the date the final plat is deemed complete.

C. If the board of county commissioners does not act upon a final plat within the required period of time, the subdivider shall give the board of county commissioners written notice of its failure to act. If the board of county commissioners fails to approve or reject the final plat within thirty days, the board of county commissioners shall, upon demand by the subdivider, issue a certificate stating that the final plat has been approved."