

Subdividing Land re: Kentucky Land Use Regulations

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When we think of subdivisions, we generally think of large housing estates with a house on each lot, but technically the subdivision of land means the creation of saleable lots by splitting a tract into smaller parcels. In communities that have adopted land use regulations, the subdivision of property is typically handled by submitting a subdivision plat to the planning commission in the jurisdiction where the property is located. The subdivision of land is considered a ministerial matter. This means that if the proposal meets the minimum requirements of the zone in which it is located, the planning commission must approve it. Unlike rezoning of property, which requires notice to surrounding property owners and a full due process hearing, a subdivision plat does not trigger notice and hearing procedures. Typically all that is required is submission of a subdivision plat that meets the minimum requirements set out in the zoning ordinance and land subdivision regulations as well as the payment of a processing fee. Under Kentucky law, the planning jurisdiction has the power to assign the review and approval of subdivision plats to a staff person. After a plat is approved, it is recorded in the county clerks' office. A recorded subdivision plat creates the new lots. No new lot can be sold until after the subdivision plat is recorded.

The fact that approving subdivision plats is ministerial and that neighbors do not receive actual notice that the plat is under review does not prevent neighborhood opposition in some cases. For example, in many older neighborhoods, the lots are much larger than the minimum lot size for underlying zoning classification. The owners of such properties sometimes submit a plat to subdivide their property to create a new lot of record in what has been their side yard. Often, neighboring owners are opposed to such a subdivision because it adds more density and changes the streetscape and overall look or character of their neighborhood. However, in Kentucky, the case law makes clear that the planning commission cannot disapprove the plat based on any of those arguments, nor can it use comprehensive plan recommendations as a basis to deny the plat. The sole criterion is whether the plat meets the minimum dimensional requirements of the underlying zone.

The division of land for agricultural purposes is not included within the definition of a subdivision under Kentucky law. The owner of land that is intended to be used as for agricultural purposes, as defined in state statute, does not typically go through the subdivision plat approval process and can be accomplished merely by dividing the property by deed. Occasionally this can create problems for subsequent owners or zoning enforcement officials if the new owner or his successor applies for a building permit to construct a house on the property, because under state law such a structure must be used for persons engaged in agriculture. Making the determination that a person is engaged in agriculture on the property can be difficult.

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