



ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 93-015

REAL ESTATE:
Plat Act Exceptions for
Adjoining and Contiguous Lands

Honorable Thomas J. Difanis
State's Attorney, Champaign County
101 East Main Street
Urbana, Illinois 61801-2778

Dear Mr. Difanis:

I have your letter wherein you inquire (1) whether, for purposes of subsection 1(b) of the Plat Act (Ill. Rev. Stat. 1991, ch. 109, par. 1(b); 765 ILCS 205/1(b) (West 1992)), a tract of land which is conveyed to an adjoining and contiguous landowner should be treated as a separate tract which may then be conveyed to a third party without the need for an approved plat of subdivision, and, (2) whether a tract which is conveyed between owners of adjoining and contiguous land must also be adjoining and contiguous to the land of each in order to qualify for the exception set out in subsection 1(b). You have also asked whether, through a prearranged

series of sales between owners of adjoining and contiguous land, a tract may be divided into parcels of less than five acres without the necessity of filing a plat. For the reasons hereinafter stated, it is my opinion that, in order to be excepted from plat requirements under subsection 1(b) of the Plat Act, a tract which is conveyed between the owners of adjoining and contiguous land must itself adjoin and be contiguous to the land of each owner, and that such a parcel becomes a part of the larger tract of the purchaser, rather than a separate tract which can be conveyed to a third party as an undivided tract. From these conclusions it necessarily follows that the requirements of the Act may not be circumvented through a prearranged series of conveyances of adjoining tracts.

Section 1 of the Plat Act (Ill. Rev. Stat. 1991, ch. 109, par. 1; 765 ILCS 205/1 (West 1992)) 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;

* * *

3. The sale or exchange of parcels of land between owners of adjoining and contiguous land;

* * *

In determining the intent of the General Assembly in enacting a statute, it is proper to consider not only the language of the statute but also the reason and necessity for the law, the evils sought to be remedied and the purpose to be achieved. (American County Ins. Co. v. Wilcoxon (1989), 127 Ill. 2d 230, 239.) The proper interpretation of a statute cannot simply be based upon its language; it must be grounded upon the nature, objects and consequences which would result from construing it one way or another. Andrews v. Foxworthy (1978), 71 Ill. 2d 13, 21.

The purpose of the Plat Act is to require the submission of plats for governmental approval to insure that adequate provision has been made for streets, alleys, parks and other public facilities indispensable to the particular community affected. (Gricius v. Lambert (1972), 7 Ill. App. 3d 716, 720;

Weber v. Village of Skokie (1968), 92 Ill. App. 2d 355, 360.)

The Act is equally applicable to rural or unincorporated areas and to urban communities. (Shoreline Builders Co. v. City of Park Ridge (1965), 60 Ill. App. 2d 282, 290.) The exceptions to the requirement that a subdivision plat be recorded must be considered in view of this purpose.

Of the nine exceptions to the plat requirement enumerated in subsection 1(b) of the Act, only the two exceptions quoted above may be applicable in the circumstances you have described.

In view of the purposes of the Act, it is my opinion that paragraph 3 of subsection 1(b) of the Plat Act must be construed to apply only to tracts that are adjoining and contiguous with other land of both owners, and that tracts so conveyed become part of the adjoining, contiguous land of the purchaser. The provision, when considered in the context of the entire Act, serves to permit adjoining land owners to adjust boundaries between themselves without the necessity of filing a plat. No concerns over access, which are crucial to platting requirements, are likely to arise with respect to a parcel which is already contiguous to the property of the purchaser. Applying the exception to property which is not adjoining or contiguous to that of the adjoining landowners, for no other reason than that the owners hold adjoining property at some other location, would in no way effectuate the purposes of the Act.

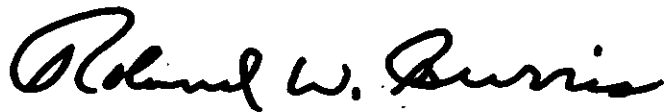
Similarly, to permit a tract to be sold to a third party as an "undivided" tract simply because it had previously been conveyed between adjoining contiguous landowners would not further the purposes of the Act. Such a theory was suggested in Orrin Dressler Inc. v. Village of Burr Ridge (1988), 173 Ill. App. 3d 454, 459, wherein the court assumed, arguendo, that it might be possible for a single owner to own two adjoining and contiguous, but separate, parcels. Because the result in that case was not dependent upon that issue, however, the court was not required to decide it and no authority was cited supporting the position. Such a construction would defeat the purposes of the Plat Act, since a third party purchase of such a tract would raise considerations of access and the need for public services to the same extent as would any other subdivision of property which is not excepted from the requirements of the Act.

Lastly, you have inquired whether paragraphs 1 and 3 of subsection 1(b) of the Plat Act might be employed together to abrogate, through a prearranged series of conveyances, the need for the filing of a plat. My responses to your first two questions require that the third be answered in the negative. As discussed above, the tract first transferred between the adjoining and contiguous owners will not remain an undivided tract which can be separately transferred, without the filing of a plat, to a third party. The exceptions in the Act cannot

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be construed to permit doing indirectly that which the Act prohibits doing directly, which is the subdivision of land into several tracts without a plat providing for streets and other public facilities. If the exceptions were so construed, the Act would become, at best, a trap for the unwary, and it cannot be assumed that the General Assembly intended such an absurd result. Harris v. Manor Healthcare Corp. (1986), 111 Ill. 2d 350, 362-63.

Respectfully yours,

A handwritten signature in black ink that reads "Roland W. Burris". The signature is written in a cursive style with a large initial "R".

ROLAND W. BURRIS
ATTORNEY GENERAL