

REFERENCE TITLE: land divisions; water requirements

State of Arizona
House of Representatives
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2007

HB 2535

Introduced by
Representatives Ableser, Lujan, Saradnik, Schapira, Sinema: Bradley,
Brown, Farley, Gallardo, Kirkpatrick, Meza, Prezelski, Thrasher, Senator
Rios

AN ACT

AMENDING SECTIONS 9-463.01 AND 11-809, ARIZONA REVISED STATUTES; RELATING TO
LOCAL LAND DIVISIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 9-463.01, Arizona Revised Statutes, is amended to
3 read:
4 9-463.01. Authority
5 A. Pursuant to the provisions of this article, the legislative body of
6 every municipality shall regulate the subdivision of all lands within its
7 corporate limits.
8 B. The legislative body of a municipality shall exercise the authority
9 granted in subsection A of this section by ordinance prescribing:
10 1. Procedures to be followed in the preparation, submission, review
11 and approval or rejection of all final plats.
12 2. Standards governing the design of subdivision plats.
13 3. Minimum requirements and standards for the installation of
14 subdivision streets, sewer and water utilities and improvements as a
15 condition of final plat approval.
16 C. By ordinance, the legislative body of any municipality shall:
17 1. Require the preparation, submission and approval of a preliminary
18 plat as a condition precedent to submission of a final plat.
19 2. Establish the procedures to be followed in the preparation,
20 submission, review and approval of preliminary plats.
21 3. Make requirements as to the form and content of preliminary plats.
22 4. EITHER determine that certain lands may ~~either~~ not be subdivided,
23 by reason of adverse topography, periodic inundation, adverse soils,
24 subsidence of the earth's surface, high water table, lack of water or other
25 natural or man-made hazard to life or property, or control the lot size,
26 establish special grading and drainage requirements, and impose other
27 regulations deemed reasonable and necessary for the public health, safety or
28 general welfare on any lands to be subdivided affected by such
29 characteristics. **NOTWITHSTANDING ANY OTHER LAW, THE LEGISLATIVE BODY OF A
30 MUNICIPALITY SHALL NOT ALLOW LAND DIVISIONS OF THREE OR FEWER LOTS, TRACTS OR
31 PARCELS WITHOUT A CURRENT WATER SUPPLY AND ASSURED WATER SUPPLY AS DETERMINED
32 PURSUANT TO SUBSECTION I OF THIS SECTION.**
33 5. Require payment of a proper and reasonable fee by the subdivider
34 based upon the number of lots or parcels on the surface of the land to defray
35 municipal costs of plat review and site inspection.
36 6. Require the dedication of public streets, sewer and water utility
37 easements or rights-of-way, within the proposed subdivision.
38 7. Require the preparation and submission of acceptable engineering
39 plans and specifications for the installation of required street, sewer,
40 electric and water utilities, drainage, flood control, adequacy of water and
41 improvements as a condition precedent to recordation of an approved final
42 plat.
43 8. Require the posting of performance bonds, assurances or such other
44 security as may be appropriate and necessary to assure the installation of
45 required street, sewer, electric and water utilities, drainage, flood control

1 and improvements meeting established minimum standards of design and
2 construction.

3 D. The legislative body of any municipality may require by ordinance
4 that land areas within a subdivision be reserved for parks, recreational
5 facilities, school sites and fire stations subject to the following
6 conditions:

7 1. The requirement may only be made upon preliminary plats filed at
8 least thirty days after the adoption of a general or specific plan affecting
9 the land area to be reserved.

10 2. The required reservations are in accordance with definite
11 principles and standards adopted by the legislative body.

12 3. The land area reserved shall be of such a size and shape as to
13 permit the remainder of the land area of the subdivision within which the
14 reservation is located to develop in an orderly and efficient manner.

15 4. The land area reserved shall be in such multiples of streets and
16 parcels as to permit an efficient division of the reserved area in the event
17 that it is not acquired within the prescribed period.

18 E. The public agency for whose benefit an area has been reserved shall
19 have a period of one year after recording the final subdivision plat to enter
20 into an agreement to acquire such reserved land area. The purchase price
21 shall be the fair market value of the reserved land area at the time of the
22 filing of the preliminary subdivision plat plus the taxes against such
23 reserved area from the date of the reservation and any other costs incurred
24 by the subdivider in the maintenance of such reserved area, including the
25 interest cost incurred on any loan covering such reserved area.

26 F. If the public agency for whose benefit an area has been reserved
27 does not exercise the reservation agreement set forth in subsection E of this
28 section within such one year period or such extended period as may be
29 mutually agreed upon by such public agency and the subdivider, the
30 reservation of such area shall terminate.

31 G. The legislative body of every municipality shall comply with all
32 provisions of this article and applicable state statutes pertaining to the
33 hearing, approval or rejection, and recordation of:

34 1. Final subdivision plats.

35 2. Plats filed for the purpose of reverting to acreage of land
36 previously subdivided.

37 3. Plats filed for the purpose of vacating streets or easements
38 previously dedicated to the public.

39 4. Plats filed for the purpose of vacating or redescribing lot or
40 parcel boundaries previously recorded.

41 H. Approval of every preliminary and final plat by a legislative body
42 is conditioned upon compliance by the subdivider with:

43 1. Rules as may be established by the department of transportation
44 relating to provisions for the safety of entrance upon and departure from
45 abutting state primary highways.

1 2. Rules as may be established by a county flood control district
2 relating to the construction or prevention of construction of streets in land
3 established as being subject to periodic inundation.

4 3. Rules as may be established by the department of health services or
5 a county health department relating to the provision of domestic water supply
6 and sanitary sewage disposal.

7 I. If the subdivision is comprised of subdivided lands, as defined in
8 section 32-2101, and is within a groundwater active management area, as
9 defined in section 45-402, the final plat shall not be approved unless it is
10 accompanied by a certificate of assured water supply issued by the director
11 of water resources, or unless the subdivider has obtained a written
12 commitment of water service for the subdivision from a city, town or private
13 water company designated as having an assured water supply by the director of
14 water resources pursuant to section 45-576 or is exempt from the requirement
15 pursuant to section 45-576. The legislative body of the municipality shall
16 note on the face of the final plat that a certificate of assured water supply
17 has been submitted with the plat or that the subdivider has obtained a
18 written commitment of water service for the proposed subdivision from a city,
19 town or private water company designated as having an assured water supply,
20 pursuant to section 45-576 or is exempt from the requirement pursuant to
21 section 45-576.

22 J. Every municipality is responsible for the recordation of all final
23 plats approved by the legislative body and shall receive from the subdivider
24 and transmit to the county recorder the recordation fee established by the
25 county recorder.

26 K. Pursuant to provisions of applicable state statutes, the
27 legislative body of any municipality may itself prepare or have prepared a
28 plat for the subdivision of land under municipal ownership.

29 L. The legislative bodies of cities and towns may by ordinance
30 regulate land splits within their corporate limits. Authority granted under
31 this section refers to the determination of division lines, area and shape of
32 the tracts or parcels and does not include authority to regulate the terms or
33 condition of the sale or lease nor does it include the authority to regulate
34 the sale or lease of tracts or parcels that are not the result of land splits
35 as defined in section 9-463.

36 M. For any subdivision that consists of ten or fewer lots, tracts or
37 parcels, each of which is of a size as prescribed by the legislative body,
38 the legislative body of each municipality may waive the requirement to
39 prepare, submit and receive approval of a preliminary plat as a condition
40 precedent to submitting a final plat and may waive or reduce infrastructure
41 standards or requirements except for improved dust-controlled access and
42 minimum drainage improvements.

1 Sec. 2. Section 11-809, Arizona Revised Statutes, is amended to read:
2 11-809. Review of land divisions: definitions

3 A. The board of supervisors of each county may adopt ordinances and
4 regulations pursuant to this section for staff review and approval of land
5 divisions of five or fewer lots, parcels or fractional interests, any of
6 which is ten acres or smaller in size. The county may not deny approval of
7 any land division that meets the requirements of this section. If review of
8 the request is not completed within thirty days after receiving the request,
9 the land division is considered to be approved. At its option, the board of
10 supervisors may submit a ballot question to the voters of the county to allow
11 the voters to determine the application of subsections B and C **OF THIS**
12 **SECTION** to qualifying land divisions in that county. **NOTWITHSTANDING ANY**
13 **OTHER LAW, THE BOARD OF SUPERVISORS SHALL NOT ALLOW LAND DIVISIONS OF FIVE OR**
14 **FEWER LOTS, TRACTS OR PARCELS WITHOUT A CURRENT WATER SUPPLY AND AN ASSURED**
15 **WATER SUPPLY AS DETERMINED PURSUANT TO SECTION 11-806.01, SUBSECTION B.**

16 B. An application to split a parcel of land shall be approved if:
17 1. The lots, parcels or fractional interests each meet the minimum
18 applicable county zoning requirements of the applicable zoning designation.
19 2. The applicant provides a standard preliminary title report or other
20 acceptable document that demonstrates legal access to the lots, parcels or
21 fractional interests.

22 3. The applicant provides a statement from a licensed surveyor or
23 engineer, or other evidence acceptable to the county, stating whether each
24 lot, parcel or fractional interest has physical access that is traversable by
25 a two-wheel drive passenger motor vehicle.

26 4. The applicant reserves the necessary and appropriate utility
27 easements to serve each lot, parcel or fractional interest created by the
28 land division.

29 C. An application to split a parcel of land that does not comply with
30 one or more of the items listed in subsection B **OF THIS SECTION** shall still
31 be approved if the applicant provides an acknowledgment that is signed by the
32 applicant and that confirms that no building or use permit will be issued by
33 the county until the lot, parcel or fractional interest has met the
34 requirements of subsection B **OF THIS SECTION**. The county may grant a
35 variance from one or more of the items listed in subsection B **OF THIS**
36 **SECTION**.

37 D. Any approval of a land division under this section may:

38 1. Include the minimum statutory requirements for legal and physical
39 on-site access that must be met as a condition to the issuance of a building
40 or use permit for the lots, parcels or fractional interests.

41 2. Identify topographic, hydrologic or other site constraints,
42 requirements or limitations that must be addressed as conditions to the
43 eventual issuance of a building or use permit. These constraints,
44 requirements or limitations may be as noted by the applicant or through

1 county staff review, but there shall be no requirement for independent
2 studies.

3 E. If the requirements of subsections A through D **OF THIS SECTION** do
4 not apply, a county may adopt ordinances and regulations pursuant to this
5 chapter for staff review of land divisions of five or fewer lots, parcels or
6 fractional interests but only to determine compliance with minimum applicable
7 county zoning requirements and legal access, and may grant waivers from the
8 county zoning and legal access requirements. The county may not deny
9 approval of any land division that meets the requirements of this section or
10 where the deficiencies are noticed in the deed. A county may not require a
11 public hearing on a request to divide five or fewer lots, parcels or
12 fractional interests, and if review of the request is not completed within
13 thirty days from receipt of the request, the land division shall be deemed
14 approved. If no legal access is available, the legal access does not allow
15 access by emergency vehicles or the county zoning requirements are not met,
16 the access or zoning deficiencies shall be noticed in the deed. If a county
17 by ordinance requires a legal access of more than twenty-four feet roadway
18 width, the county is responsible for the improvement and maintenance of the
19 improvement. If the legal access does not allow access to the lots, parcels
20 or fractional interests by emergency vehicles, neither the county nor its
21 agents or employees are liable for damages resulting from the failure of
22 emergency vehicles to reach such lot, parcel or fractional interest.

23 F. It shall be unlawful for a person or group of persons acting in
24 concert to attempt to avoid the provisions of this section or the subdivision
25 laws of this state by acting in concert to divide a parcel of land into six
26 or more lots or sell or lease six or more lots by using a series of owners or
27 conveyances. This prohibition may be enforced by any county where the
28 division occurred or by the state real estate department pursuant to title
29 32, chapter 20.

30 G. ~~It~~ **FOR THE PURPOSES OF** this section:

31 1. "Legal access" means a public right of vehicular ingress and egress
32 between the lots, parcels or fractional interests being created.

33 2. "Minimum applicable county zoning requirements" means the minimum
34 acreage and dimensions of the resulting lot, parcel or fractional interest as
35 required by the county's zoning ordinance.

36 3. "Utility easement" means an easement of eight feet in width
37 dedicated to the general public to install, maintain and access sewer,
38 electric, gas and water utilities.