

Beware the Pitfalls of L.I. Subdivisions

By Kathleen Deegan Dickson and Peter R. Mineo

THE DEVELOPMENT AND sale of real property on Long Island presents many unique challenges that are not present in other parts of the country or even elsewhere in New York state. Nowhere is this inimitable experience more evident than in the land subdivision process in Nassau and Suffolk counties. There are many significant differences between these two counties, and each individual municipality within them has its own idiosyncrasies as well. One snare for the unwary is the possibility of closing title on a site only to find that the property was not legally subdivided.

Subdivisions in Nassau County are governed by Real Property Law Section 334 and County Charter Section 1610. Subdivisions must be approved by the “planning authority having jurisdiction” in an area. This means the County Planning Commission for land outside of the cities and villages (the County Planning Commission acts as the planning board for the three Nassau County towns), and city and vil-



lage planning boards for properties within their boundaries. There is a catch, however, which many developers, attorneys, and municipalities often miss. If the property is within three hundred feet of a municipal boundary, the adjacent municipality’s planning authority also has to approve the subdivision. The failure to obtain this approval renders the subdivision incomplete; a result that is often not discovered until the new lot is being sold, sometimes even after construction on it is completed.

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Historically, most planning boards of adjacent municipalities deferred to the municipality in which the property was located and would perform a pro forma review of the collat-

eral application and issue a letter of approval or waiver. More recently, as land development has become more controversial, adjacent jurisdictions have sought to expand their authority and impose a higher level of review. There is substantial debate within the field over the reach and purview of this collateral jurisdiction. Recent experience demonstrates that local planning agencies will continue to seek to expand their jurisdiction, and it is likely that the courts will be required to step in to more clearly define their roles.

In Nassau County the risk of purchasing an improperly subdivided parcel is relatively low, but not non-existent. The County Clerk’s office will not accept a deed for recording against part of a tax lot, and the assessor’s office will not assign a new tax lot number to a parcel unless and until subdivision is complete. There is a greater risk, however, now that the County Planning Commission has eliminated the “old filed map exception” to the subdivision regulations. It used to be that if a parcel was depicted on a subdivision map filed prior to 1945, and the parcel was zoning compliant, no subdivision was required in order to sell one of the lots, even if it was part of a “lot group” for assessment purposes. That exception was eliminated in 2009, and now, even if the lot to be sold already has its own tax lot number assigned, it may still

require a formal subdivision before it can be conveyed separate from the other lots in the group. This may not be readily apparent from a title search of the property.

The subdivision of land in Suffolk County is controlled by the various town planning boards and the Department of Health. Both must approve a subdivision map before it can

be filed in the County Clerk’s Office. In Suffolk County the risk of purchasing a parcel which has not been properly subdivided is greater than in Nassau, as the office of Real Property Tax Service Agency assigns tax lot numbers, and will issue new tax lot designations upon request, even if a subdivision map has not been filed. The assignment of the new tax numbers can create the false sense that the approvals of the town planning board and the Department of Health have been obtained and a subdivision map has been filed. Again, it is not always readily apparent from a title search, as the lot is now separately designated, and, presumably, a valid and saleable lot.

Often the problem is not discovered until after the sale, when the Department of Health denies a building permit because it never approved the subdivision. While this can be remedied by completing the subdivision after the fact, the new owner now has to undertake a process which affects not only its lot, but also the remaining property, over which it has no control.

To minimize this risk, a purchaser’s due diligence should always include a search of Department of Health records, town or village planning department records, and the County Clerk’s office to determine if a map has been filed. It is absolutely essential that transactional counsel coordinate and communicate with the land use counsel to avoid these pitfalls. ♦

Kathleen Deegan Dickson and Peter R. Mineo are attorneys with Forchelli, Curto, Deegan, Schwartz, Mineo, Cohn & Terrana LLP in Uniondale.