

OFFICE OF THE ATTORNEY GENERAL

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Honorable Manley L. Cummins, III
Attorney, City of Daphne
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Municipalities - Subdivisions
- Zoning

Unimproved lots in a subdivision are subject to a subsequently enacted zoning ordinance, and property owner must seek a variance from the Zoning Board of Adjustment.

Dear Mr. Cummins:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTIONS ONE, TWO AND THREE

1. Are the substandard lots located within the instant subdivision subject to the regulations contained within the zoning requirements of the Daphne Land Use and Development Ordinance?
2. If the answer to Question No. 1 is affirmative, will a property owner seeking to encroach within the setback area of his lot be required to obtain a variance from the Daphne Board of Zoning Adjustments in order to accommodate his development plans?
3. If the answer to Question No. 1 is negative, are lots such as the ones at issue completely exempt from the setback

provisions of the zoning Ordinance in particular such that the owner may erect improvements at any location upon his property?

FACTS AND ANALYSIS

Your request states that a subdivision known as Bertagnolli's plat was filed of record in 1924. The lots on the plat are only fifty feet in width. Some lots are improved and others are unimproved.

The owner of an unimproved lot in the subdivision designated as Bertagnolli's plat is currently seeking to build a residence that will not meet the setback requirements of the zoning regulations in the 1987 Daphne Land Use and Development Ordinance. The threshold issue before us is whether the substandard lots in Bertagnolli's plat are subject to zoning regulations under the Daphne Land Use and Development Ordinance. The answer is yes.

This question was answered in an opinion to Honorable Austin Caldwell, Mayor of Demopolis, under date of November 26, 1991, A.G. No. 92-00056, which, in pertinent part, states:

"This office has previously held that subdivisions cannot be regulated by subdivision regulations adopted after the approval of the subdivision plats. Opinion to Honorable B. C. Hornady, Mayor, City of Monroeville, dated June 29, 1979, and opinion to Honorable H. T. Mathis, Mayor, City of Florala, dated May 20, 1985. However, in these opinions, we also held that a city may regulate new construction in previously adopted subdivisions under its zoning and other police powers. Specifically, in the opinion to Mayor B. C. Hornady, we stated that:

". . . the City of Monroeville may, under its general police power and under other specific grants of power, adopt ordinances, rules and regulations which would require the present owner or developer to meet

certain requirements in future building so as to eliminate future drainage problems. Code of Alabama 1975, §§ 11-45-1, 11-47-117, 11-47-130 and 11-47-140.'

"In a more recent opinion to Mayor B. C. Hornady, City of Monroeville, dated August 31, 1987, we stated that the city may enforce fire and building codes in existence at the time of construction."
(Emphasis in original.)

Since we reach this conclusion in response to your first question, we must also conclude that the property owner must seek a variance from the Board of Zoning Adjustment in order to accommodate his development plans.

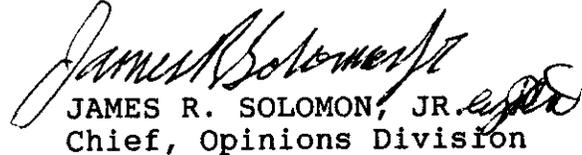
CONCLUSION

The unimproved lots located in a plat filed in 1924, while not subject to subdivision regulations, are subject to the subsequently enacted zoning requirements of the Daphne Land Use and Development Ordinance. A property owner seeking to avoid these requirements must obtain a variance from the Daphne Board of Zoning Adjustment.

I hope this sufficiently answers your questions. If our office can be of further assistance, please contact Carol Jean Smith of my staff.

Sincerely,

JEFF SESSIONS
Attorney General
By:


JAMES R. SOLOMON, JR. *epd*
Chief, Opinions Division

JS/CJS/jho
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