



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>MARK BRNOVICH ATTORNEY GENERAL</p> <p>December 16, 2022</p>	<p>No. I22-006 (R22-008)</p> <p>Re: A.R.S. § 11-831 and Land Surveys</p>
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To: Gail Griffin, Representative
Arizona House of Representatives

Question Presented

Under A.R.S. § 11-831 or any other law, may a county require/mandate a survey as part of a land division?

Summary Answer

No. Under A.R.S. § 11-831(B)(3), a county must approve an application for a land division if the applicant provides “a statement from a licensed surveyor or engineer . . . stating whether each lot, parcel or fractional interest has physical access that is traversable by a two-wheel drive passenger motor vehicle” and satisfies the other requirements in A.R.S. § 11-831(B). While A.R.S. § 11-831(B)(3) also allows a county to rely upon “other evidence acceptable to the county,” including a land survey, to approve an application, the phrase “or other evidence acceptable to the county” does not allow the county to refuse to accept a statement from a licensed surveyor or engineer and to instead require a land survey.

Background

In 2010, the Arizona Legislature enacted a detailed statutory scheme regulating county approval of land divisions. *See* 2010 Ariz. Legis. Serv. Ch. 244 (S.B. 1206). The statute, codified at A.R.S. § 11-831, is entitled, “Review of land divisions; definitions.” The statute begins by granting county boards of supervisors with authority to “adopt ordinances and regulations pursuant to this section for staff review and approval of land divisions of five or fewer lots, parcels or fractional interests, any of which is ten acres or smaller in size.” A.R.S. § 11-831(A). The statute makes clear that “[t]he county may not deny approval of any land division that meets the requirements of this section.” *Id.*

The statute gives boards of supervisors a number of options when addressing an application for a land division. If the board of supervisors determines that an application satisfies four criteria listed in the statute, then “[a]n application to split a parcel of land shall be approved.” A.R.S. § 11-831(B). A board of supervisors can instead “submit a ballot question to the voters of the county to allow the voters to determine the application of subsections B and C to qualifying land divisions in that county.” A.R.S. § 11-831(A). A board of supervisors must conditionally approve an application for a land division that does not fully comply with the four criteria in § 11-831(B) “if the applicant provides an acknowledgment that is signed by the applicant and that confirms that no building or use permit will be issued by the county until the lot, parcel or fractional interest has met the requirements of subsection B.” A.R.S. § 11-831(C). A board of supervisors is also permitted to “grant a variance from one or more of the items listed in subsection B.” A.R.S. § 11-

831(C). Finally, a board of supervisors may deny an application if one or more requirements in subsection B are not met and the board does not grant conditional approval or a variance.

The four requirements in § 11-831(B), therefore, often play a determinative role in the approval of an application for land division. The four requirements in subsection B are as follows:

1. The lots, parcels or fractional interests each meet the minimum applicable county zoning requirements of the applicable zoning designation.
2. The applicant provides a standard preliminary title report or other acceptable document that demonstrates legal access to the lots, parcels or fractional interests.
3. The applicant provides a statement from a licensed surveyor or engineer, or other evidence acceptable to the county, stating whether each lot, parcel or fractional interest has physical access that is traversable by a two-wheel drive passenger motor vehicle.
4. The applicant reserves the necessary and appropriate utility easements to serve each lot, parcel or fractional interest created by the land division.

A.R.S. § 11-831(B)(1)–(4). The question presented in this Opinion—whether a land survey is required—turns on the meaning of § 11-831(B)(3). More specifically, the question presented turns on whether the phrase “or other evidence acceptable to the county” allows a county board of supervisors to *require* documents other than those listed in § 11-831(B)(3) when considering applications for land division.

Analysis

The Attorney General’s Office concludes that the phrase “or other evidence acceptable to the county” does not allow a county board of supervisors to *require* documents in addition to those documents listed in A.R.S. § 11-831(B)(3). Rather, the phrase “or other evidence acceptable to the county” allows a board of supervisors to approve a land division application based on documents other than a statement from a licensed surveyor or engineer. The phrase does not allow

a board of supervisors to reject an application that includes a statement from a licensed surveyor or engineer based on a board demand for additional documents, like a land survey.

This conclusion flows from the Legislature’s use of the word “or” before the phrase “other evidence acceptable to the county,” rather than the word “and.” Courts “will usually interpret ‘or’ to mean what it says, and . . . will give it that meaning unless impossible or absurd consequences will result.” *State v. Pinto*, 179 Ariz. 593, 595 (App. 1994). “The word ‘or,’ as it is often used, is ‘[a] disjunctive particle used to express an alternative or to give a choice of one among two or more things.’” *Id.* (quoting *Rutledge v. Ariz. Bd. of Regents*, 147 Ariz. 534, 556–57 (App. 1985)). Applying the ordinary meaning of the word “or” to A.R.S. § 11-831(B)(3), the Legislature provided that an applicant for land division must provide a statement from a licensed surveyor or engineer, but also gave boards of supervisors the choice of approving if an applicant provides other documents *in lieu of* such a statement. The Legislature did not grant boards of supervisors the authority to require certain documents—like a land survey—instead of accepting a statement from a licensed surveyor or engineer. Giving the word “or” in § 11-831(B)(3) its ordinary meaning does not create impossible or absurd consequences.

The conclusion would be different had the Legislature decided to use the word “and” before the phrase “other evidence acceptable to the county.” “The word ‘and’ is a conjunction connecting words or phrases expressing the idea that the latter is to be added or taken along with the first.” *See Bither v. Country Mut. Ins. Co.*, 226 Ariz. 198, 200 ¶10 (App. 2010) (quotation omitted); *see also de la Cruz v. State*, 192 Ariz. 122, 125 ¶11 (App. 1998) (conjunction “and” between two words in a statute “requires the interpretation of the two words in combination, defeating the . . . argument that they operate in the disjunctive”). Had the Legislature used the word “and” before the phrase “other evidence acceptable to the county,” boards of supervisors could require that an

applicant for land division provide certain documents, including a land survey, in addition to a statement from a licensed surveyor or engineer. Because, however, the Legislature used the word “or” instead of “and” before the phrase “other evidence acceptable to the county,” if an applicant provides a county with a statement from a licensed surveyor or engineer that each lot, parcel or fractional interest has physical access that is traversable by a two-wheel drive passenger motor vehicle, and the applicant satisfies the other three requirements in § 11-831(B)(3), then the board of supervisors must approve the application, even if the applicant does not provide a land survey.

Conclusion

Under A.R.S. § 11-831(B)(3) a county must approve an application for a land division if the applicant provides “a statement from a licensed surveyor or engineer . . . stating whether each lot, parcel or fractional interest has physical access that is traversable by a two-wheel drive passenger motor vehicle,” and the applicant satisfies the other requirements in § 11-831(B), even where the applicant does not provide a land survey.

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