		West Virginia Department of Health and Human Resources			
		MANUAL OF ENVIRONMENTAL HEALTH PROCEDURES			
Section	Waste Water	Date	May 1, 1992	Procedure #	WW-18
Subject	Subdivision Requirements			Page	1 of 1

The office of the Attorney General recently issued a memorandum, attached, clarifying some often asked questions concerning the Sewage System Rules' subdivision requirements. The following is a brief restatement of the questions posed and the response:

1. Question: Does the term "by act of construction" as found in the definition of a subdivision in the Sewage System Rules indicate that the addition of a second dwelling to a lot constitutes a subdivision when the lot has undergone no further surveying, platting or recording?

Answer: Yes.

2. Question: When a subdivision is created "by act of construction" must the second dwelling added to the lot have a separate 10,000 square reserve area?

Answer: Yes.

3. Question: Can the Sewage System Rules be interpreted to require that surveys or plats showing the 10,000 square foot reserve area be presented to the Clerk of the County Commission and admitted to the county record?

Answer: No. Such information is required, however, to be on file with the health department as part of the overall subdivision approval, and can be recorded at the courthouse at the option of the subdivider.

References

History

Attachments

[Attorney General Memorandum dated April 15, 1992](#)



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MEMORANDUM

TO: Joseph P. Schock, M.P.H., P.E., Director
Office of Environmental Health Services

FROM: Jeffrey K. Matherly 
Deputy Attorney General

DATE: April 15, 1992

RE: Sewage System Rules - Subdivisions

This is in response to the questions raised in Max R. Fisher's memorandum of March 5, 1992.

Section 64-9-4.23 of the Sewage System Rules provides in general that the division of land into two or more parts, one of which is less than two acres, for the purposes of dwelling development constitutes a subdivision. The section further provides that this division of land may be done "... by act of construction." Based upon this language, I agree with Mr. Fisher's interpretation that the addition of a second dwelling to any piece of property constitutes a subdivision unless each dwelling is on its own two acre or larger lot.

I also concur with Mr. Fisher that §64-9-10.10.1 of the Rules mandates that when a second dwelling is added to a lot, each dwelling must have a separate 10,000 square foot disposal area. This section further mandates that no developments or structures shall be permitted on this disposal area. Obviously, this restriction would be difficult to comply with unless the disposal area is properly identified through surveying, platting, and recording. However, there is no specific language in the Rules requiring that this be done. To erase any doubt as to this requirement, I would recommend that the Rules be amended to specifically set forth this requirement.

If I may be of any further assistance in regard to these issues, please let me know.