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OPINION NO. 74

SUBDIVISIONS - Remainders, subdivision plats, Sanitation in Subdivisions Act; SANITATION - Subdivisions, remainders, review by the Department of Health and Environmental Sciences; PLATS - Subdivisions, remainders; REVISED CODES OF MONTANA, 1947 - Sections 11-3859, 11-3860, 11-3861, 69-5001 through 69-5005.

- HELD: 1. The Department of Health and Environmental Sciences may require that plats submitted under the Sanitation in Subdivisions Act show the remainder of land less than twenty acres left after the segregation of subdivided parcels.
2. The Department of Health and Environmental Sciences has the authority to review remainders under the Sanitation in Subdivisions Act.

7 October 1977

Sandra R. Muckelston, Esq.
Chief Legal Counsel
Department of Health
and Environmental Sciences
Helena, Montana 59601

Dear Ms. Muckelston:

You have requested my opinion on the following question:

1. Does the "remainder" of the original tract left after the subdivision and sale of the balance of the tract have to be shown on plats submitted to the department pursuant to the Sanitation in Subdivisions Act?
2. Does the department have authority to review remainders pursuant to the Sanitation in Subdivisions Act?

Subdivision development in Montana is primarily related by the Subdivision and Platting Act, section 11-3859 et seq., R.C.M. 1947, and the Sanitation in Subdivisions Act, section 69-5001 et seq., R.C.M. 1947. Until recently, both Acts defined the term "subdivision" in substantially identical language which provided that a subdivision included "only those parcels less than twenty (20) acres which have been segregated from the original tract, and the plat thereof shall show all such parcels...." (Sections 11-3861(12) and 69-5002(1).) Chapter 557 of the 1977 Session Laws, an "Act to generally revise Title 69," amended the above-quoted language in section 69-5002(1) of the Sanitation Act to provide that a subdivision includes "only those parcels of less than 20 acres which have been created by a division of land, and the plat thereof shall show all such parcels...." (Emphasized language new.) As a result of this amendment, the Platting Act and the Sanitation Act now contain differing definitions of the term "subdivision."

An example of the situation in question here would involve the subdivision of two five-acre tracts from a twenty-acre parcel, with the remaining ten acres being retained by the original owner. Prior to the 1977 amendment to the Sanitation Act, neither of the Acts considered this "remainder" to be part of the subdivision. The subdivision included only those parcels segregated from the original tract.

A comparison of the original "subdivision" definition with the amended definition in the Sanitation Act clearly shows that the Legislature intended, for the purposes of that Act, that all parcels of land less than twenty acres "created by a division of land" be deemed part of the subdivision. In the example given above, the ten-acre tract remaining in original ownership is created by the division of land the same as are the two five-acre tracts which were separated and sold. Since the department must review and approve "subdivisions" (section 69-5003), the ten-acre "remainder,"

as well as the segregated tracts, is subject to review under the Sanitation Act.

It is further clear that this "remainder" must be shown on the plat submitted to the department for review under the Sanitation Act. Section 69-5002(1), as amended, clearly requires that "all...parcels" created by a division of land must be shown on the plat. As determined above, these parcels include not only the segregated parcels, but also any tract less than twenty acres remaining in original ownership.

While these determinations lead to somewhat different treatments of subdivisions under the two Acts, that is a result mandated by the Legislature. Further, there were differences in the Acts prior to the amendment. A "plat" under the Platting Act is a "graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, and alleys, and other divisions and dedications." (Section 11-3861(6).) While the Platting Act is broadly concerned with all aspects of subdivision development (see sections 11-3860 and 11-3863), the Sanitation Act is primarily concerned with the public health aspects of water supply, sewage disposal, and solid waste disposal (see section 69-5001). In contrast to the "plat" defined for purposes of the Platting Act, the plat submitted under the Sanitation Act must show such things as the total development area, the total number of proposed dwellings, evidence of sufficient water supply, evidence of potability of the water supply, storm drainage plans, sanitary sewer plans, water supply systems, and solid waste disposal plans (see section 69-5005(3)). Thus there were preexisting differences in the Acts resulting from the more specialized nature of the Sanitation Act.

THEREFORE, IT IS MY OPINION:

1. The Department of Health and Environmental Sciences may require that plats submitted under the Sanitation in Subdivisions Act show the remainder of land less than twenty acres left after the segregation of subdivided parcels.
2. The Department of Health and Environmental Sciences has the authority to review remainders under the Sanitation in Subdivisions Act.

Very truly yours,

MIKE GREELY
Attorney General