

Opinion No. 1

**COUNTIES; Planning and Zoning Districts; petitions for—ZONING;
County Planning and Zoning Districts; contents of petition—Sections
16-4101 to 16-4105, Revised Codes of Montana, 1947.**

Held: A petition for a county planning and zoning district need not include zoning regulations that the petitioners desire for the district. The county planning and zoning commission has the exclusive duty to make and adopt a development pattern for the district.

February 13, 1959

Mr. Anthony F. Keast
Missoula County Attorney
Missoula, Montana

Dear Mr. Keast:

You have requested my opinion whether a petition for a county planning and zoning district must set forth the zoning regulations that the petitioners desire to be adopted.

Section 16-4101, RCM, 1947, provides that on receipt of a petition signed by 60% of the freeholders affected thereby, the board of county commissioners is authorized and empowered ". . . to order and create a planning and zoning district . . ." Proposed regulations are not required in a petition since all regulations are created, made and adopted by the county planning commission.

Section 16-4102, RCM, 1947, makes it a duty of the planning and zoning commission ". . . to make and adopt a development pattern for the physical and economic development of the planning and zoning district . . ." The development program is made and adopted by the planning and zoning commission and establishes the restrictions concerning the type of structures that may be established within the district. Subject to the authority of the County Commissioners to grant a variance, the planning commission has the exclusive power to determine the development pattern for the district. However, Section 16-4103, RCM, 1947, requires a public hearing before the pattern is adopted. Section 16-4105, RCM, 1947, provides for an appeal to the district court from any decision or order of the planning commission

or board of county commissioners. These two provisions protect the freeholders within the district from arbitrary or capricious action by the commissions.

Therefore, it is my opinion that a petition for a county planning and zoning district need not include the zoning regulations that the petitioners desire for the district. The county planning and zoning commission has the exclusive duty to make and adopt a development pattern for the district.

Very truly yours,
FORREST H. ANDERSON
Attorney General