

VOLUME NO. 36

Opinion No. 51

SUBDIVISION — Classify as agricultural property; TAXATION — Subdivisions as agricultural property; Sections 84-429.12 and 84-437.2, Revised Codes of Montana 1947.

HELD: The filing of a subdivision plat does not, by that fact alone, foreclose the possibility that land within that subdivision may qualify as "agricultural" property under section 84-437.2.

January 20, 1976

Mr. Keith D. Haker
Custer County Attorney
County Courthouse
Miles City, Montana 59301

Dear Mr. Haker:

Your office has requested my opinion concerning the following question:

Where land that has been previously classified as "agricultural", for purposes of taxation, is subdivided into residential plots, does the

classification change to "residential" at the time the subdivision plat is filed?

Your question arises from the fact that in the case of many subdivisions there is a lengthy period of time between when the plat is filed and when the land has been sold. During this time the developer will often continue to use the land for agricultural purposes until such time as he sells it. You ask whether this developer could be entitled to have the land classified as "agricultural" rather than "residential" and thus lower his tax liability.

Section 84-429.12 provides that **[a]ll** lands shall be classified according to their **use or uses**. ... (emphasis supplied). It is the present use to which land is employed that determines whether it can be classified as "agricultural". Section 84-437.2 provides that "[l]and which is actively devoted to agricultural use" is eligible for tax treatment as "agricultural" property. This section goes on to establish the criteria by which property can qualify as "agricultural" property. There is nothing in this legislation which suggests that the filing of a subdivision plat forecloses the possibility of qualifying for "agricultural land" status.

This position is supported by 84-437.2 (2). That section provides:

Land shall not be classified or valued as agricultural if it is subdivided with stated restrictions prohibiting its use for agricultural purposes.

That language clearly suggests that while a subdivision which prohibits agricultural use cannot qualify as agricultural property, the mere process of creating a subdivision does not disqualify land for agricultural status. To repeat, it seems clear that whether land within a subdivision qualifies as agricultural land should be determined solely on the basis of whether it meets the guidelines set out in section 84-437.2.

THEREFORE, IT IS MY OPINION:

The filing of a subdivision plat does not, by that fact alone, foreclose the possibility that land within that subdivision may qualify as "agricultural" property under section 84-437.2.

Very truly yours,

ROBERT L. WOODAHL
Attorney General