

VOLUME NO. 40

OPINION NO. 57

SUBDIVISION AND PLATTING ACT - Applicability of subdivision laws to planned apartment building construction project on tract of land owned by developer;

MONTANA CODE ANNOTATED - Sections 76-3-102, 76-3-103(3), 76-3-103(15), 76-3-204, 76-3-208, 76-3-601;

OPINIONS OF THE ATTORNEY GENERAL - 39 Op. Att'y Gen. No. 14 (1981); 39 Op. Att'y Gen. No. 74 (1982).

HELD: A developer's construction of 48 four-plexes, to be used as rental occupancy buildings, on a tract of land owned by the developer is a "subdivision," and consequently must be submitted for local review under the Subdivision and Platting Act.

27 June 1984

Jim Nugent
Missoula City Attorney
201 West Spruce
Missoula MT 59802-4297

Dear Mr. Nugent:

You have requested my opinion on the following question:

Whether a developer's proposal to construct 48 four-plexes, to be used as rental occupancy buildings, on a tract of land owned by the developer must go through local subdivision review.

Your question arises from the following facts. A corporation has submitted a request for building permits for construction of 48 four-plexes, which will result in 192 dwelling units. The entire tract of land upon which the construction is planned is owned by the corporation. The tract is less than 20 acres in size, and the corporation has indicated that it will retain ownership of all the four-plexes, as well as the land upon which they are constructed, upon completion of the project. Your question is whether the corporation may proceed with the project without submitting it to local review under the Subdivision and Platting Act (the Act). I conclude that it may not, as the proposed development constitutes a "subdivision" under the Act, and subdivisions must be submitted to the local governing body for review. § 76-3-601, MCA.

Section 76-3-103(15), MCA, provides:

"Subdivision" means a division of land or land so divided which creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and shall include any resubdivision and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles, or mobile homes.

In 39 Op. Att'y Gen. No. 14 (1981), I construed this section and determined that the following activities constitute subdivisions:

1. A division of land or land so divided which creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed.

2. Any resubdivision.
3. Any condominium.
4. Any area, regardless of size, which provides or will provide multiple space for recreational camping vehicles.
5. Any area, regardless of size, which provides or will provide multiple space for mobile homes.

The proposed construction project in this case clearly will not result in any of the subdivision activities listed in categories 2 through 5 above. Further analysis, however, reveals that it will result in the type of activity described in category 1 above.

Under category 1, regulated subdivision activity results only when there has first been a "division of land ... which creates one or more parcels containing less than 20 acres." § 76-3-103(15), MCA. A "division of land" is defined as

the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter.

§ 76-3-103(3), MCA. A division of land thus occurs when one or more "parcels" of land have been segregated from a larger tract held in single or undivided ownership. While the term is not defined in the Act, Black's Law Dictionary generally defines "parcel" as "[a] part or portion of land." This definition appears consistent with the intended meaning of the term in section 76-3-103(3), MCA, which states that the segregation of a parcel of land from a larger tract may come about by transferring possession of a portion of the tract. A "parcel" may therefore be thought of as a part or portion of land, or, in the context of the present analysis, as a "portion of the tract."

In the present circumstances, the developer has expressed an intention to construct a number of four-plexes which will be used as rental occupancy buildings. Possession of each individual dwelling unit within the four-plexes will eventually be transferred to tenants. Generally, when a portion of a building is leased, the tenant acquires, in addition to an interest in the individual dwelling unit, an interest in only that portion of the land necessary to enjoyment of the demised premises. 49 Am. Jur. 2d Landlord and Tenant § 195 (1970). At the very least, the tenants in this case will enjoy possession of that portion of the tract, or "parcel," upon which the four-plex which contains their dwelling unit is constructed. The end result of this construction project will therefore be a "division of land," as a number of parcels will be segregated from the larger tract by means of transference of possession of those parcels to the tenants occupying the four-plexes.

I am aware of the exemption contained in section 76-3-204, MCA, which provides:

Exemption for conveyances of one or more parts of a structure or improvement. The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land, as that term is defined in this chapter, and is not subject to the requirements of this chapter.

In 39 Op. Att'y Gen. No. 74 (1982), in considering the exemption provided by this statute, I stated:

The word "situated" indicates that the Legislature was referring to an existing building, built and utilized prior to the time the division occurs. This would be the situation where a developer converts an existing apartment or office building used for rental purposes to condominiums. [Emphasis added.]

In view of my prior construction of this statute, which I adhere to, I conclude that the exemption provided by section 76-3-204, MCA, would not apply to the initial rental or lease of portions of the four-plexes in the

instant case. This construction project will not result in the rental or lease of portions of buildings "situated" on one or more parcels of land, because these will not be "existing building[s], built and utilized prior to the time the division occurs." (Emphasis supplied.) The exemption provided by section 76-3-204, MCA, does not apply to this construction project since it will result in a "division of land."

A division of land that "creates one or more parcels containing less than 20 acres ... in order that title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed" is a "subdivision." § 76-3-103(15), MCA. The division of land in the instant case will create at least 48 parcels, in order that possession of the parcels may be rented, leased, or conveyed to individual tenants, or groups of tenants. Therefore, it constitutes a subdivision, and must be submitted to the governing body for local review.

I have applied a liberal construction of the statutes, but I believe this is consonant with the expressed purposes of the Act as articulated by the Legislature and the Montana Supreme Court. Section 76-3-102, MCA, provides:

It is the purpose of this chapter to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; to require that whenever necessary, the appropriate approval of subdivisions be contingent upon a written finding of public interest by the governing body; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to plat or certificate of survey.

Commenting on this legislative statement expressing the objectives of the Act, the Supreme Court, in State ex rel. Florence-Carlton School District v. Board of County

Commissioners of Ravalli County, 180 Mont. 285, 291, 590 P.2d 602, 605 (1978), noted:

Legislation enacted for the promotion of public health, safety, and general welfare, is entitled to "liberal construction with a view towards the accomplishment of its highly beneficent objectives."

A housing development such as the one proposed in this case will inevitably result in various social and economic impacts on the community. I find that this is the precise type of development which the Legislature intended should be submitted for local review under the Act.

Further support for the construction that I have applied is found in the express language of the Act itself. The definition of "division of land" in section 76-3-103(3), MCA, includes the segregation of parcels through the transference of either title to or possession of a portion of the tract. Similarly, in section 76-3-103(15), MCA, the definition of "subdivision" speaks in terms of sale, rental, lease, or other conveyance of parcels. When construing a statute, effect must be given to every word, phrase, clause, or sentence therein, and none shall be held meaningless if it is possible to give effect to it. Fletcher v. Paige, 124 Mont. 114, 220 P.2d 484 (1950); Campbell v. City of Helena, 92 Mont. 366, 16 P.2d 1 (1932). The use of these terms in the definitional sections of the Act reveals that the Legislature anticipated the creation of subdivisions by methods other than the outright sale of parcels of land, and intended that such subdivisions must similarly be submitted for local review. See also § 76-3-208, MCA.

THEREFORE, IT IS MY OPINION:

A developer's construction of 48 four-plexes, to be used as rental occupancy buildings, on a tract of land owned by the developer is a "subdivision," and consequently must be submitted for local review under the Subdivision and Platting Act.

Very truly yours,

MIKE GREELY
Attorney General