

VOLUME NO. 43

OPINION NO. 26

CITIES AND TOWNS - Relationship of county subdivision review authority and extraterritorial plat review power of municipality;

COUNTIES - Relationship of county subdivision review authority and extraterritorial plat review power of municipality;

COUNTY GOVERNMENT - Relationship of county subdivision review authority and extraterritorial plat review power of municipality;

LAND USE - Relationship of county subdivision review authority and extraterritorial plat review power of municipality;

LOCAL GOVERNMENT - Relationship of county subdivision review authority and extraterritorial plat review power of municipality;

SUBDIVISION AND PLATTING ACT - Relationship of county subdivision review authority and extraterritorial plat review power of municipality;

MONTANA CODE ANNOTATED - Sections 7-1-4111, 7-3-4444, 76-2-310 to 76-2-312, 76-3-101 to 76-3-614, 76-3-601.

HELD: The board of county commissioners has final authority to approve subdivisions that are within the three-mile area immediately outside the corporate limits of the city when the city has a commission-manager form of government.

July 20, 1989

Mike Salvagni  
Gallatin County Attorney  
Law and Justice Center  
615 South 16th Street  
Bozeman MT 59715

Bruce Becker  
Bozeman City Attorney  
P.O. Box 640  
Bozeman MT 59715-0640

Gentlemen:

You have requested my opinion on a question which I have phrased as follows:

Does the board of county commissioners or the city commission, pursuant to section 7-3-4444, MCA, have final authority to approve subdivisions that are within the three-mile area immediately outside the corporate limits of the city when it has a commission-manager form of government?

I understand that, in your situation, the governing bodies of both Gallatin County and the city of Bozeman have adopted the same city/county subdivision regulations which cover, *inter alia*, the three-mile area immediately outside the corporate limits of the city. Bozeman is a first-class city, as defined in section 7-1-4111, MCA, and has the commission-manager form of local government.

The statutory provisions which generally define a municipality's authority to regulate subdivisions beyond its corporate limits are sections 76-2-310 and 76-2-311, MCA. However, section 76-2-312, MCA, excludes a city having a commission-manager form of government from the provisions of sections 76-2-310 and 76-2-311, MCA. As a result, your question can be answered by referring to the Montana Subdivision and Platting Act, §§ 76-3-101 to 614, MCA.

The Subdivision and Platting Act specifically addresses the issue of municipal extraterritorial authority in sections 76-3-601(2) and (3), MCA:

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat shall be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the preliminary plat shall be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town or within 2 miles of a second-class city or within 3 miles of a first-class city, the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment.

(c) If the proposed subdivision lies partly within an incorporated city or town, the proposed plat thereof must be submitted to and approved by both the city or town and the county governing bodies.

....

(3) This section and 76-3-604, 76-3-605, and 76-3-608 through 76-3-610 do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444.

Section 76-3-601, MCA, thus limits the extraterritorial role of municipalities over subdivisions to "review and comment" concerning the preliminary plat except as permitted by section 7-3-4444, MCA.

Section 7-3-4444, MCA, applies only to commission-manager municipal governments and reads:

(1) The director of public service shall be the supervisor of plats of the municipality. He shall see that the regulations governing the platting of all lands require all streets and alleys to be of proper width and to be coterminous with the adjoining streets and alleys and that all other regulations are conformed with. Whenever he shall deem it expedient to plat any portion of the territory within the corporate limits in which the necessary or convenient streets and alleys have not already been accepted by the municipality so as to become public streets or alleys or when any person plats any land within the corporate limits or within 3 miles thereof, the supervisor of plats shall, if such plats are in accordance with the regulations prescribed therefor, endorse his written approval thereon.

(2) No plat subdividing lands within the corporate limits or within 3 miles thereof shall be entitled to record in the recorder's office of the county without such written approval so endorsed thereon.

This provision grants to the city director of public service authority to review and approve all plats for subdivisions located within three miles of the city's

corporate limits. However, such review is limited to ensuring that the involved plat complies with all the requirements generally conditioning the filing of any plat. This construction not only gives effect to the restriction on municipal extraterritorial authority over subdivisions under the Subdivision and Platting Act but also recognizes the largely ministerial power of the director of public service under section 7-3-4444, MCA, to review plats only with respect to their technical adequacy. See In re Estate of Wilhelm, 45 St. Rptr. 1468, 1474, 760 P.2d 718, 723 (1988). Section 7-3-4444, MCA, accordingly does not authorize a municipality to engage in plenary subdivision review or to deny filing because of noncompliance with its subdivision regulations.

The city has suggested that Gallatin County has not taken the necessary steps to exert its subdivision authority. Its suggestion, however, ignores the county's adoption of subdivision regulations for the area in question. I need not resolve the question of whether the county has adopted a master plan since, even if the county has not, enforceable subdivision regulations do exist.

THEREFORE, IT IS MY OPINION:

The board of county commissioners has final authority to approve subdivisions that are within the three-mile area immediately outside the corporate limits of the city when the city has a commission-manager form of government.

Sincerely,

MARC RACICOT  
Attorney General