

**OPINION
69-53**

June 26, 1969 (OPINION)

Mr. John A. Alphson

State's Attorney

Grand Forks County

RE: Cities - Platting - Approval by County Planning Commission

This is in response to a request for an opinion on the following situation:

A local contractor made application to the Grand Forks City Zoning and Planning Commission for approval of a plat south of the City of Grand Forks - approximately seven miles. The contractor was turned down in his application. The contractor then applied to and obtained approval of the Grand Forks County Planning and Zoning Commission. The plat was then brought to the County Commissioners, which approved said plat by a two-thirds vote. You then inform us that it is contended by some that the following underscored language in Section 40-48-19 of the North Dakota Century Code will not permit the filing or the recording of the plat as approved by the County Commissioners:

"MAJOR STREET PLAN ADOPTED BY COMMISSION - REGULATIONS GOVERNING FILING AND APPROVAL OF PLAT. Whenever a planning commission shall have adopted a major street plan of the territory within its subdivision jurisdiction, or of a part thereof, and shall have filed a certified copy of such plan in the office of the register of deeds of the county in which such territory or part is located, no plat of a subdivision of land within such territory or part thereof shall be filed or recorded until it shall have been approved by such planning commission and such approval shall have been entered in writing on the plat by the chairman or secretary of the commission."
(Emphasis supplied.)

The expression, "such planning commission", as found in the underscored provision of Section 40-48-19 and quoted herein, obviously refers to a "planning commission" as same appears in the first portion of Section 40-48-19. The expression, "A planning commission", refers to the planning commissions mentioned in the preceding section, which is Section 40-48-18. The entire provision of Section 40-48-19 simply provides that a plat which has not been approved by such planning commission shall not be filed or recorded. However, Section 40-48-18 sets forth how approval of a plat may be obtained. Said section reads as follows:

"JURISDICTION OF SUBDIVISION - APPROVAL OF COUNTY PLANNING COMMISSION NECESSARY - FAILURE TO AGREE. The territorial jurisdiction of any municipal planning commission over the subdivision or platting of land shall include all land located in the municipality and all land lying within six miles of the corporate limits of the municipality and not located in any

other municipality. In the case of any such nonmunicipal land lying within six miles of more than one municipality having a planning commission, the jurisdiction of each municipality shall terminate at a boundary line equidistant from the respective corporate limits of such municipalities. The approval of the county planning commission, if there is one, shall be necessary on all plats in areas outside the corporate limits of any municipality. If the county planning commission fails to agree with a city planning commission having jurisdiction over any plat, the board of county commissioners, by a two-thirds vote of its entire membership, may overrule the findings of one planning commission and approve said plat as recommended by another planning commission."

Your letter does not provide us with any information, nor do we have any information, as to whether or not a major plan other than the present plat was adopted and, if so, by which planning commission. Neither are we informed whether such plan, if any, was approved by the County Planning Board, which appears to be a prerequisite under Section 40-48-18.

Exclusive jurisdiction under Section 40-18-26 is given to the planning commission within its territory, except as provided for in Section 40-48-18. The exception must be given full and true consideration, and as a result of this the provisions of Section 40-48-18 would appear to be applicable in this instance.

In your specific instance we have doubt that the City Planning Commission has jurisdiction because the plat, as stated, is approximately seven miles south of the City of Grand Forks. Section 40-48-18 gives territory jurisdiction to a municipal planning commission only within six miles of a corporate limit. If it is within the six miles, the provisions of Section 40-48-18 permit the County Commissioners to overrule the City Planning Commission if the plat involves an area outside the corporate limits of the municipality and was approved by the County Planning Commission. An approval is equivalent to a recommendation.

It is therefore our opinion, upon the facts presented and the assumption made, that where a proposed plat pertains to an area which is outside of the corporate limits of a municipality the County Commissioners, by a two-thirds vote, may overrule the City Planning Commission and approve a recommended plat by the County Planning Commission. It is our further opinion that a plat which has not been approved by the appropriate planning commission, as the case may be, may not be filed or recorded. Final approval of a plat depends on the location of the area and the body which has final jurisdiction.

In arriving at this conclusion, we are aware of the provisions of Chapters 11-33 and 11-34. We assumed that the Board of County Commissioners had adopted a county planning commission.

HELGI JOHANNESON

Attorney General