

**LETTER OPINION
2002-L-52**

October 2, 2002

Mr. Allen M. Koppy
Morton County State's Attorney
210 2nd Avenue NW
Mandan, ND 58554

Dear Mr. Koppy:

Thank you for your letter asking if Morton County may require the use of a surveyed subdivision plat, as opposed to an "auditor's plat," for the sale of part of a quarter of land.

Your letter states that persons have sought to sell portions of rural real estate by submitting an auditor's lot or auditor's plat description rather than submitting a subdivision plat. According to information provided to this office, Morton County has adopted regulations governing subdivisions as provided by N.D.C.C. ch. 11-33.2. The county's regulations require approval of plats as a prerequisite to the subdivision of land.

A "subdivision" is:

the division of a lot, tract, or parcel of land, creating one or more lots, tracts, or parcels for the purpose, whether immediate or future, of sale or of building development, and any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights of way, whether public or private, for access to or from any such lot, tract, or parcel, and the creation of new or enlarged parks, playgrounds, plazas, or open spaces.

N.D.C.C. § 11-33.2-01. Even the sale of a single lot from a parcel of land for a building site constitutes a subdivision under section 11-33.2-01 and can be regulated by the county. 1989 N.D. Op. Att'y Gen. F-03 (copy attached for your information). If a county requires the approval of plats as a prerequisite to subdividing land, no subdivision can be made without the approval of the county commissioners. N.D.C.C. §11-33.2-11. In addition, N.D.C.C. ch. 40-50.1, requiring the platting of subdivisions and townsites, also applies to land beyond the boundaries and zoning jurisdiction of cities. 1987 N.D. Op. Att'y Gen. F-19.

A county auditor's plat made under N.D.C.C. § 57-02-39 is made for taxation purposes only. Great Lakes Pipe Line Co. v. City of Grand Forks, 142 N.W.2d 126, 136 (N.D. 1966); Frandsen v. Mayer, 155 N.W.2d 294, 297 (N.D. 1967). In Frandsen, the North Dakota Supreme Court said:

that the platting of municipalities is governed by N.D.C.C. Chapter 40-50, and that a county auditor's plat made under N.D.C.C. § 57-02-39 is for taxation purposes only, and is not a platting pursuant to N.D.C.C. Chapter 40-50.

An auditor's plat is made for taxation purposes for the convenience of the tax officials in describing the property on the tax rolls and does not confer rights in or transfer title to land.

Id. at 297. The statute governing county auditor's plats made for taxation purposes, N.D.C.C. § 57-02-39, does not contain all the requirements for making plats found in N.D.C.C. § 40-50.1-04 and N.D.C.C. ch. 11-33.2. It is possible for an auditor's plat to be made without a survey pursuant to N.D.C.C. § 57-02-39. Great Lakes Pipe Line Co., 142 N.W.2d at 136. Thus, an auditor's plat would not be satisfactory for compliance with N.D.C.C. chs. 40-50.1 and 11-33.2, and a county's subdivision regulations enacted pursuant to that chapter.

It is therefore my opinion that an "auditor's plat" is not a satisfactory subdivision plat for the purposes of N.D.C.C. chs. 11-33.2 and 40-50.1. Furthermore, a division of a lot into one or more lots for the purposes of building development constitutes a subdivision under N.D.C.C. ch. 11-33.2, and a county may regulate that subdivision according to its regulations adopted under that chapter.

Sincerely,

Wayne Stenehjem
Attorney General

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Enclosure