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Legal Opinion 2019-003

TO: Mayor John Engen, City Council, Mike Haynes, Mary McCREA, Jenny Baker, Denise Alexander, Andrew Boughan, Donna Gaukler, Elizabeth Erickson, Neil Minor, Department Attorney

FROM: Jim Nugent, City Attorney

DATE February 11, 2019

RE: Montana Subdivision and Platting Act intent that there not be a park dedication requirement when only one additional lot is being created.

FACTS:

A family owns a 1.09-acre parcel of land near lower Miller Creek where they would like to divide their land into two (2) lots pursuant to a family transfer subdivision exemption, whereby they would create a lot and transfer it to their son. This family transfer subdivision exemption is currently pending before the Missoula City Council and will be the subject of a city council public hearing Monday February 11, 2019. The reason that the application was referred to city council public hearing is that in May 2018 there was a boundary line relocation subdivision exemption between two contiguous properties that related to the parcel that is proposed for the creation of the family transfer subdivision exemption. Pursuant to city subdivision regulations, if a parcel of land is the subject of more than one subdivision exemption application, the subsequent subdivision exemption applications after the first approved subdivision exemption application are scheduled for public hearing before the city council

During May 2018 a subdivision exemption boundary line relocation between two adjacent lots that included the parcel in question was approved. This boundary relocation did not create any additional lots. A subdivision exemption boundary line relocation is not a “division” of land. There has been suggestion, by some, that an open space trail easement should be a required condition of approval for the family transfer subdivision exemption application. The applicant’s representative has expressed concern to city development services staff that such a requirement would be an eminent domain taking of private property by the City.

ISSUE:

Does the Montana Subdivision and Platting Act provide any provision or intent requiring either that a subdivision exemption or a subdivision creation of one additional lot requires that a park dedication requirement occur?

CONCLUSION:

The Montana Subdivision and Platting Act expressly provides that a park dedication requirement may not be required for a subdivision in which only one additional lot is created. There is no provision in the Montana Subdivision and Platting Act requiring or authorizing that the creation of a family transfer subdivision exemption should include a park dedication requirement.

LEGAL DISCUSSION:

The Montana Subdivision and Platting Act is set forth in title 76, chapter 3, part 1 MCA. Pursuant to the Montana Subdivision and Platting Act definition of the term “division”, a division of land means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership. See subsection 76-3-103(4) MCA defining “division of land”. Basically in order to be a “division” of land one or more additional parcels/lots/tracts of land must be created from the single or undivided ownership of land.

The prior May 2018 boundary line relocation was not a “division of land”. No additional lots were created pursuant to the May 2018 boundary line relocation.

It should also be noted and emphasized that Montana local government law applicable to self-government local governments provides pursuant to section 7-1-113 MCA that a local government is prohibited the exercise of any power in a manner inconsistent with state law or administrative regulation in any area affirmatively subjected by state law to state regulation.

Section 76-3-621 MCA of the Montana Subdivision and Platting Act is entitled “PARK DEDICATION REQUIREMENT”. Pursuant to subsection 76-3-621(3) MCA the Montana Subdivision and Platting Act provides that “(3) A PARK DEDICATION MAY NOT BE REQUIRED FOR: (d) A SUBDIVISION IN WHICH ONLY ONE ADDITIONAL PARCEL IS CREATED”. (emphasis added)

There is no provision in the Montana Subdivision and Platting Act park dedication section or in any of the subdivision exemption sections that requires or authorizes a park dedication requirement be imposed for a family transfer subdivision exemption creating one additional lot. The only Montana Subdivision and Platting Act provision pertaining to park dedication requirements pertaining to the creation of a single additional lot is a provision stating that a park dedication may not be required for “a subdivision in which only one additional parcel is created”.

When the Montana State Legislature has affirmatively subjected a topic to state law, any local regulation or ordinance is required pursuant to section 7-1-113 MCA to be consistent with the Montana state law provisions.

CONCLUSION:

The Montana Subdivision and Platting Act expressly provides that a park dedication requirement may not be required for a subdivision in which only one additional lot is created. There is no provision in the Montana Subdivision and Platting Act requiring or authorizing that the creation of a family transfer subdivision exemption should include a park dedication requirement.

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/s/

Jim Nugent, City Attorney
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