



OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2008-007

TO: John Engen, Mayor; City Council; Bruce Bender, CAO; Steve King, Public Works Director; Kevin Slovarp, City Engineer; Dan Jordan, Public Works; Brentt Ramharter, Finance Director; Beckie Christiaens, Chief Accountant; Roger Millar, OPG Director; Cindy Wolfkuhl, OPG; Mike Barton, OPG; Dept. Atty.

FROM: Jim Nugent, City Attorney

DATE: May 14, 2008

RE: Established fees for examination of subdivision exemption applications.

FACTS:

The purpose of this legal opinion is to once again remind City officials that the 2003 Montana State Legislature specifically authorized local governments to establish fees for examination of subdivision exemption applications. Approximately 24 to 36 subdivision exemption applications are received each year. The City Public Works Office, City Engineer Office, and Office of Planning and Grants in addition to the City Attorney Office each have some limited role as part of the City's subdivision exemption review process.

ISSUES:

1. May a local governing body establish a fee for examination of proposed subdivision exemption applications?
2. Is there a maximum fee amount that a local government may establish for examination of subdivision exemption applications?

CONCLUSIONS:

1. The 2003 Montana State Legislature, pursuant to House Bill 298 (Chapter 563), authorized a local government to establish reasonable fees for examination of subdivision exemption applications.
2. The 2003 Montana State Legislature, pursuant to House Bill 298 (Chapter 563), set a maximum amount of \$200 that a local government may establish as a fee for examining subdivision exemption applications.

LEGAL DISCUSSION:

Pursuant to HB 298 (Chapter 563) the 2003 Montana State Legislature added subsection (4) to Mont. Code Ann. § 76-3-201 and subsection (4) to Mont. Code Ann. § 76-3-207 expressly authorizing a local government to establish reasonable fees, up to a maximum of \$200, for examination of subdivision exemption applications.

Mont. Code Ann. §§ 76-3-201 and 76-3-207 as amended provide:

76-3-201. Exemption for certain divisions of land -- fees for examination of division. (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter may not apply to any division of land that:

(a) is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) subject to subsection (3), is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes;

(c) creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

(d) creates cemetery lots;

(e) is created by the reservation of a life estate;

(f) is created by lease or rental for farming and agricultural purposes;

(g) is in a location over which the state does not have jurisdiction; or

(h) is created for rights-of-way or utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of this chapter.

(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.

(3) An exemption under subsection (1)(b) applies:

(a) to a division of land of any size;

(b) if the land that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. A transfer of the divided land, by the owner of the property at the time that the land was divided, to any party other than those identified in this subsection (3)(b) subjects the division of land to the requirements of this chapter.

(c) to a parcel that is created to provide security as provided in subsection (1)(b). The remainder of the tract of land is subject to the provisions of this chapter if applicable.

(4) The governing body may examine a division of land to determine whether or not the requirements of this chapter apply to the division and may establish reasonable fees, not to exceed \$200, for the examination.

76-3-207. Divisions of land exempted from review but subject to survey requirements and zoning regulations -- exceptions -- fees for examination of

division. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

- (a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;
- (b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;
- (c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;
- (d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; and
- (e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body and an amended plat must be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.

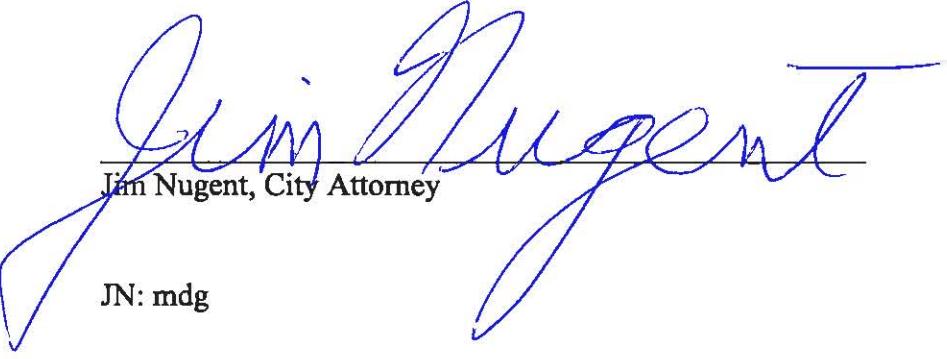
(4) The governing body may examine a division of land to determine whether or not the requirements of this chapter apply to the division and may establish reasonable fees, not to exceed \$200, for the examination.

CONCLUSIONS:

1. The 2003 Montana State Legislature, pursuant to House Bill 298 (Chapter 563), authorized a local government to establish reasonable fees for examination of subdivision exemption applications.

2. The 2003 Montana State Legislature, pursuant to House Bill 298 (Chapter 563), set a maximum amount of \$200 that a local government may establish as a fee for examining subdivision exemption applications.

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JN: mdg