

**OPINION
76-200**

December 3, 1976 (OPINION)

Mr. Glenn Dill

Attorney at Law

Kenmare, ND 58746

Dear Mr. Dill:

This is in response to your letter of 24 November 1976 with regard to action taken and to be taken by a Planning Commission and City Council, pursuant to section 40-47-04 of the North Dakota Century Code.

You quote that portion of the statute stating:

" . . . such notice shall contain a description of any property involved in any zoning change, by street address if streets have been platted or designated in the area affected."

You enclose a copy of the published notice giving for street address, the following:

" . . . every Street Address in the City of . . . and the entire area surrounding the City for one-half (1/2) mile . . ."
(Deletions ours)

You inform us further that the City Council will now be holding a hearing pursuant to section 40-47-04. You indicate that the City has never had any zoning map or regulations before this time.

You indicate that listing every street address within the City would require a full page in the newspaper and the Planning Commission desires our opinion regarding whether statement of the published notice by the Planning Commission is sufficient under this section.

We note that the former provision of section 40-47 required more generally - "a public hearing thereon at which parties in interest and citizens shall have an opportunity to be heard." And that "At least fifteen days' notice of the time and the place of such hearing shall be published in the official newspaper of the city."

Comparing the old statute with the new, applying the usual standards of statutory construction, or some of the standards for taking judicial notice, such as for example, subsection 77 of 31-10-02, "Of such contemporaneous history as led up to and probably induced the passage of a law", it certainly is not difficult to visualize the practical problems that induced the placing of the new language in the statutory provision.

While the old statute definitely required "a public hearing" and did require notice obviously to enable the affected members of the public, to make the "hearing" truly "public", where the affected

members of the public could make known their views, there could be substantial questions as to just what was adequate notice thereof. Probably a good percentage of such notices, referred to the affected property by correct legal descriptions, i.e. block and lot number. Probably a good percentage of such notices, also referred to a specified portion or the entirety of a specific addition, or part of the city involved. While some are (obviously to us attorneys being founded as they are, on plats, deeds, etc. recorded in the register of deeds offices) perfectly good "legal descriptions", it seems equally obvious that the average city property owner hasn't considered such block and lot number or the addition to the city since he bought his lot. Some property owners actually never have seen the block and lot number or the addition name, having left such "details" to their realtor, abstractor, attorney, and mortgagee. On the other hand, we are sure every city property owner, tenant, etc. in any of our cities are fully aware of their "street address", i.e., the place where they get their mail and the return address they put on mail they are sending out.

Actually, of course, it is perhaps a bit more difficult, for a planning, zoning, etc. commission to locate all of the "street addresses", for a given zoning, planning, etc. project, though it certainly is possible. Generally streets are shown on those plats by number and/or name, the advent of the modern city directory and the telephone directory probably simplify their problems in this regard.

To summarize on this point, we would necessarily have to conclude, that a notice of a planning or zoning project by "street address" will obviously give much more effective notice to the affected property owners, than any formal legal description that might or might not induce such property owners to start digging down through ancient files, deeds and abstracts etc., to determine whether their property is in one of the lots, blocks, or additions described in such notice.

We note that your letter suggests the possibility of utilizing a full page in the newspaper to list every street address in the city. We are not quite so sure that requiring any reader of the newspaper to scan through a haphazard listing of every or almost every street address in the city, would comply with the spirit or purpose of this statute. In the type of project to which you refer, we would conclude, that possibly the only litigation proof publication that could be made, would be one first notifying the public that every street address in the city was included, and then listing every such street address. While, we are certain that such a publication would definitely satisfy the jurisdictional prerequisite of the statute as to the giving of notice, even in that situation, we could not, of course, guarantee that some irate taxpayer might not bring legal action questioning the propriety of using taxpayer's moneys to publish such repetitious material.

We have checked "Words and Phrases" "Permanent Edition" and note that same contains no judicial definition of the term "street address", though we find judicial considerations of the correct definition of both the word "Street" and the word "Address", though not in context relevant to your question. It would thus appear that the legislative assembly has in this instance come up with a phrase, unquestionably

understandable to the man in the street, but not a technical "word of art", with a closely prescribed legal and judicial definition.

We would thus conclude, that probably the better view, is that the phrase used by the planning commission here - "every Street Address in the City of . . ." (naming the city), would be held by the courts to adequately comply with the statutory requirement, without further language giving specific house addresses. As heretofore mentioned, however, a jurisdictional question could still be raised before the courts as to whether the specific address of every house within the city must also be included in such advertisement.

We hope the within and foregoing will be sufficient for your purposes.

Sincerely,

ALLEN I. OLSON

Attorney General