

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 93-F-04

Date issued: March 24, 1993  
Requested by: Timothy Wilhelm, Assistant State's  
Attorney, Ward County

- QUESTIONS PRESENTED -

I.

Whether a county may establish zoning regulations to apply to a township that has not relinquished to the county its powers to enact zoning regulations.

II.

Whether the provisions of N.D.C.C. ? 11-33.2-12 apply to a county which requires plat approval as a prerequisite to subdivision of land even if the county has not availed itself of N.D.C.C. ch. 11-33.2.

OPINIONS - ATTORNEY GENERAL'S

I.

It is my opinion that a county may establish zoning regulations to apply to a township that has not relinquished to the county its powers to enact zoning regulations unless and until the township establishes its own zoning regulations that are contrary to the county's.

II.

It is my opinion that the provisions of N.D.C.C. ? 11-33.2-12 apply to a county which requires plat approval as a prerequisite to subdivision of land even if the county has not availed itself of N.D.C.C. ch. 11-33.2.

- ANALYSES -

I.

The board of county commissioners may regulate and restrict within the county, "subject to the provisions of section 11-33-20 and chapter 54-21.3 [the state building code], the location and the use of buildings and structures and the use, condition of use, or occupancy of lands for residence, recreation, and other purposes." N.D.C.C. ? 11-33-01. N.D.C.C. ? 11-33-20 provides:

**11-33-20. Township zoning not affected - Township and city may relinquish powers.** The provisions of this chapter shall in no way prevent townships from making regulations as provided in sections 58-03-11 through 58-03-15, but such townships may relinquish their powers, or any portion thereof, to enact zoning regulations to the county by resolution of the board of township supervisors. The provisions of this chapter shall not be construed to affect any property, real or personal, located within the zoning or subdivision authority of any city of this state, except that any such city by resolution of its governing body may relinquish to the county its authority, or any portion thereof, to enact zoning regulations under chapter 40-47 or subdivision regulations under chapter 40-48, in which case such property shall be subject to the provisions of this chapter.

Thus, "if the township takes no action it is subject to the county zoning regulations until it exercises its authority. In this regard, the county regulations do not apply to cities without affirmative action on the part of the city. The county regulations do apply to the township unless and until it establishes its own inconsistent zoning regulations." Letter from Assistant Attorney General Gerald W. VandeWalle to Mr. Russell Staiger (March 27, 1974).

"[E]ven though the county has a zoning commission in operation, the township is at liberty to begin their own zoning operation provided they have not previously relinquished their [zoning] authority to the county . . . ." 1963 N.D. Op. Att'y Gen. 71. "[T]he regulations or ordinances established by a township zoning commission . . . if they are

within the zoning authority of the township . . . and are in accordance with the statutes, take precedence over any contrary zoning regulation enacted by a county zoning commission." Letter from Attorney General Nicholas Spaeth to Senator Jim Dotzenrod (April 6, 1992). "While the establishment of a township zoning commission would not invalidate all previous county zoning commission regulations, it would invalidate all inconsistent previous county zoning commission regulations." 1963 N.D. Op. Att'y Gen. 71. However, a township may not interfere with any vested rights which have been acquired under previous county zoning regulations applicable within the township. 1967 N.D. Op. Att'y Gen. 38. In such a case, it would appear that the entity with the vested rights must be allowed to continue its use as a nonconforming use.

In summary, it is my opinion that a county may establish zoning regulations to apply to a township that has not relinquished to the county its powers to enact zoning regulations unless and until the township establishes its own zoning regulations that are contrary to the county's.

## II.

A county may choose to avail itself of the powers conferred by chapter 11-33.2 on subdivision regulation. N.D.C.C. ? 11-33.2-04. However, "subsequent to July 1, 1981, the provisions of section 11-33.2-12 shall apply to any county requiring plat approval as a prerequisite to the subdivision of land." N.D.C.C. ? 11-33.2-02. N.D.C.C. ? 11-33.2-12 outlines the procedure to be used by a county commission when the county requires approval of plats as a prerequisite to the subdivision of land.

Ward County has not availed itself of chapter 11-33.2. Ward County, however, does require plat approval by the Ward County Planning Commission as a prerequisite to the subdivision of land in areas covered by county zoning resolutions.

The county commission is ultimately charged with the decision of approving subdivision plats pursuant to N.D.C.C. ch. 11-33. Berger v. County of Morton, 275 N.W.2d 315, 318 (N.D. 1979), N.D.C.C. ?? 11-33-04, 11-33-10. Thus, "final" plat approval under N.D.C.C. ch. 11-33 rests with the county commission, and

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not with the county planning commission. In addition, the language in N.D.C.C. ? 11-33.2-02 shows the Legislature's intent that the provisions of N.D.C.C. ? 11-33.2-12 apply to any county requiring plat approval as a prerequisite to the subdivision of land.

For the foregoing reasons, it is my opinion that the provisions of N.D.C.C. ? 11-33.2-12 apply to a county which requires plat approval as a prerequisite to subdivision of land even if the county has not availed itself of N.D.C.C. ch. 11.33.2.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. ? 54-12-01. It governs the actions of public officials until such time as the questions presented are decided by the courts.

Heidi Heitkamp  
ATTORNEY GENERAL

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