

OFFICIAL OPINION NO. 78-44, Approval of plats

October 19, 1978

Mr. Craig D. Grotenhouse
Lawrence County State's Attorney
Lawrence County Courthouse
Deadwood, South Dakota 57732

Official Opinion No. 78-44

Approval of plats

Dear Mr. Grotenhouse:

You have requested an official opinion from this office based on the following factual situation:

FACTS:

The owner of a particular piece of property in Lawrence County, said property being located more than three miles from an existing municipality, is interested in subdividing this property for development purposes. Accordingly, the owner had this property platted into lots and according to the Lawrence County Comprehensive Plan took the plat to the Planning Commission for their approval. The Lawrence County Planning Commission on the 13th day of September, 1977, denied this preliminary plat for certain reasons. The reasons for their denial are not important in this situation. Subsequent to this denial the owner of the property in question took the plat to the Lawrence County Commissioners seeking their approval of the plat. The Lawrence County Commissioners by a vote of 3 to 2 approved the plat at their regular meeting. The chairman of the Lawrence County Commissioners has refused to sign the plat where necessary and has requested my opinion as to whether or not he must sign the plat.

Based on the above factual situation, you have asked the following questions:

QUESTIONS:

1. Does the County Planning and Zoning Commission have statutory authority to approve or disapprove plats not within a municipality and not within the three mile limit of the municipality?
2. If the answer to Question 1 is yes, will a 2/3 vote of the County Commissioners be required to overrule the decision of the Planning and Zoning Commission on the adoption or rejection of plats?
3. If the answer to Question 1 is yes, does this not then limit the jurisdiction of the County Commissioners as to the adoption of plats over the rejection of the same plat by the Planning and Zoning Commission as provided in SDCL 11-2-24?

SDCL 11-2-17 provides:

Official controls may include specific regulations and controls pertaining to other elements incorporated in the comprehensive plan or establishing standards and procedures to be employed in land development including, but not limited to, subdividing of land and the approval of land plats and the preservation of streets and land for other public purposes requiring future dedication or acquisition and general design of physical improvements.

SDCL 11-2-24 provides:

Whenever any board of county commissioners shall have adopted the comprehensive plan or any part thereof, then and thenceforth, no street, road, park, or other public way, ground, place, space, no public building or structure, no public utility, whether publicly or privately owned, if covered by the comprehensive plan or any adopted part thereof or adjunct thereto, shall be constructed or authorized in the county or within its subdivision jurisdiction, until and unless the location and extent thereof shall have been submitted to and approved by the planning commission, provided that in case of disapproval, the commission shall communicate its reasons to the board. By vote of not less than two-thirds of its entire membership, the board shall have power to overrule such disapproval.

IN RE QUESTION NO. 1:

It is my opinion SDCL 11-2-24 provides the planning commission with authority to approve

or disapprove plats not within a municipality and not within the three-mile limit of the municipality when platting requirements are contained within the County Comprehensive Plan, pursuant to SDCL 11-2-24.

IN RE QUESTION NO. 2:

SDCL 11-2-24 (see above) specifically provides the board of county commissioners power to overrule disapproval by not less than a two-thirds vote of the entire membership. The statute makes no distinction between a three-member board or a five-member board. It is therefore my opinion that while two of three members of a three-man board may overrule planning commission disapproval, SDCL 11-2-24 requires four of five members of a five-man board to overrule planning commission disapproval by "not less than two-thirds of the entire membership."

IN RE QUESTION NO. 3:

The county commission adopts the comprehensive plan. (See SDCL 11-2-24 above.) If, within the comprehensive plan there are standards and procedures pertaining to approval of land plats as per SDCL 11-2-17 (see above), the county commission has set the standard for approval of the plats within the county.

Any disapproval by the planning commission would need be in conformity with the county comprehensive plan established by the board. The board may overrule by a two-thirds vote of its members (see SDCL 11-2-24). Therefore, it is my opinion that the jurisdiction of the county commissioners is not "limited" as you seem to indicate. See also SDCL 11-3-11.

Respectfully submitted,

William J. Janklow
Attorney General

WJJ:RHW:jo