

#3610

MEMORANDUM

State of Alaska

TO: Claud M. Hoffman, Director
Division of Technical Services
Department of Natural Resources
703 W. Northern Lights Blvd.
Anchorage, Alaska 99503

DATE: August 27, 1980

FILE NO: A66-075-81

TELEPHONE NO:

FROM: WILSON L. CONDON
ATTORNEY GENERAL
By: Barbara J. Miracle *Bjm*
Assistant Attorney General
AGO - Anchorage

SUBJECT: Filing of Unapproved
State Subdivision
Plats With Recorder's
Office

By memorandum to this office you have requested an opinion whether the Division of Technical Services may file a State subdivision plat with the Recorder's Office which a local platting authority has failed to approve.

The short answer to your question is that the Division of Technical Services may file a State subdivision plat with the Recorder's Office which the local platting authority refuses to approve by obtaining a certificate of approval from the Platting Board under AS 29.33.160.

AS 29.33.150 as amended by the Legislature in 1979 provides as follows:

(a) The planning commission acting as the platting board has jurisdiction over platting and shall adopt and publish rules and regulations to implement this power. Jurisdiction includes, but is not limited to, the control of

(1) form, size, and other aspects of subdivision, dedications, and vacations of land;

(2) dimensions of lots or tracts;

(3) street width, arrangement, and right-of-way, including allowance for access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage, and other public utility facilities and improvements.

(b) The regulations adopted under (a) of this section apply to subdivision plats of undeveloped state land for disposal under AS 38.05 or AS 38.08 filed with the platting board, except that the platting board may not disapprove the subdivision plat or adopt regulations which require the state

Claud M. Hoffman

-2-

August 27, 1980

Re: Filing of Unapproved
State Subdivision Plats
With Recorder's Office

to construct access roads or capital improvements on state land included in the subdivision plat.

Assistant Attorney General Jonathan Tillinghast has recently opined that a local platting authority may not disapprove a state subdivision plat for any reason; however it may give conditional approval to the state plat, requiring the State to comply with matters listed in AS 29.33.150(a), such as lot size, configuration and lay-out. The local platting authority may not impose conditions relating to construction of access roads or capital improvements when reviewing a state subdivision plat. Formal opinion of Attorney General of March 24, 1980.

You have asked whether you can file a state subdivision plat with the recorder's office which has not been approved by a local platting authority. Under AS 40.15.010 the State Recorder may not accept a subdivision plat for filing unless it shows approval by the local platting authority. AS 40.15.010 states as follows:

Before the lots or tracts of any subdivision or dedication may be sold or offered for sale, the subdivision or dedication shall be submitted for approval to the authority having jurisdiction, as prescribed in this chapter. The regular approval of the authority shall be shown on it or attached to it and the subdivision or dedication shall be filed for record in the office of the recorder. The recorder shall not accept a subdivision or dedication for filing unless it shows this approval. If no platting authority exists as provided in §§ 70-130 of this chapter, lands may be sold without approval.

Therefore the State cannot file a subdivision plat with the State Recorder's Office unless it shows the approval required by AS 40.15.010. In those instances where a local platting authority fails to approve a state subdivision, the State

Claud M. Hoffman

-3-

August 27, 1980

Re: Filing of Unapproved
State Subdivision Plats
With Recorder's Office

may obtain the required certificate of approval by making a demand to the Platting Board under AS 29.33.160(a) which states as follows:

The platting board shall within 60 days of filing approve or disapprove the plat or shall return it to the applicant for modification or correction. If the board fails to act, the plat is considered approved and a certificate of approval shall be issued by the board on demand.