

**LETTER OPINION
2014-L-17**

December 29, 2014

Mr. Ted D. Seibel
Harvey City Attorney
PO Box 186
Harvey, ND 58341-0186

Dear Mr. Seibel:

Thank you for your letter asking two questions concerning a city's annexation of real property by resolution pursuant to N.D.C.C. § 40-51.2-07.¹ You first ask whether the accurate map of an annexed area must include more than the boundary legal description of the annexed area and must the city specifically identify each separately owned tract by a new legal description for recording and taxation purposes. You next ask whether a county recorder may refuse to record a document concerning land within an unplatted and annexed area where the legal description of the property is identical to the legal description used prior to annexation.

For the reasons stated below, it is my opinion that the accurate map of the annexed area does not need to include more than the boundary legal description of the annexed area and the city does not need to specifically identify each separately owned tract by a new legal description for recording and taxation purposes. It is my further opinion that the county recorder may not refuse to record a document affecting title to real property on the basis that the property is within a city's boundaries and not described as part of a plat where the land is not within a platted part of the city.

ANALYSIS

The governing body of a city may adopt a resolution to annex contiguous or adjacent territory under the procedures set forth in N.D.C.C. § 40-51.2-07. If these statutory procedures are followed and the resolution is completed, the territory described in the resolution becomes a part of the city. Additionally, the annexation becomes effective,

¹ This chapter also contains provisions allowing for annexation by petition of owners and electors. See N.D.C.C. §§ 40-51.2-03 through 40-51.2-06.

“[w]hen a copy of the resolution and an accurate map of the annexed area, certified by the executive officer of the city, are filed and recorded with the county recorder.”² Your questions concern what an accurate map of the annexed area must include.³

In construing statutes, the primary goal is to discover the intention of the Legislature.⁴ Courts first look to the language of the statute in seeking legislative intent, and if the statute’s language is clear and unambiguous, the legislative intent is presumed clear on the face of the statute.⁵ Usually, when the plain meaning of a statute is apparent, it is unwise and unnecessary to delve further.⁶ Thus, “[t]he Legislature’s intent must be sought initially from the statutory language.”⁷

Section 40-51.2-07, N.D.C.C., requires an accurate map of the annexed area to be filed and recorded. Words of the statute are given their plain, ordinary, and commonly understood meaning unless a contrary intention plainly appears.⁸ A map, when used as a noun, typically means “[a] representation, usually on a plane surface, of a region of the earth or heavens[, or] [s]omething that suggests such a representation, as in clarity.”⁹ As the Legislature has not specified any further or additional qualifications concerning the contents of the map, other than its accuracy, a map that outlines the area to be annexed in an accurate fashion should suffice to meet this statutory requirement.

You included with your letter some correspondence between you, the county recorder, and the county state’s attorney concerning these questions. It appears from this correspondence that the county wants additional information such as subdivision descriptions. We cannot, however, read into N.D.C.C. § 40-51.2-07 additional requirements which are not inherently necessary to provide an accurate map of the annexed area.¹⁰

Where the Legislature has intended that additional information is required, the Legislature has specified these requirements. For example, if boundaries of real property are

² N.D.C.C. § 40-51.2-07(1)(c).

³ A similar requirement exists when annexation occurs through a petition of owners and electors. N.D.C.C. § 40-51.2-06.

⁴ N.D.A.G. 98-L-05.

⁵ Northern X-Ray Co., Inc. v. State, 542 N.W.2d 733, 735 (N.D. 1996).

⁶ Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993).

⁷ Cnty. of Stutsman v. State Historical Soc’y, 371 N.W.2d 321, 325 (N.D. 1985).

⁸ N.D.C.C. § 1-02-02; State v. Wetzel, 756 N.W.2d 775, 776 (N.D. 2008).

⁹ The American Heritage Dictionary, 844 (4th coll. ed. 2010).

¹⁰ See N.D.C.C. § 1-02-05; Wetzel, 756 N.W.2d at 776-77 (If the language of a statute is clear and unambiguous, the letter of the statute is not to be disregarded under the pretext of pursuing its spirit.)

changed by a court judgment or arbitration proceeding, there is a requirement for a plat to be prepared by a land surveyor and filed pursuant to the Survey and Corner Recordation Act, N.D.C.C. ch. 47-20.1.¹¹ Similarly, whenever a city shall open or alter any street, alley, or public place within the city, it is required to file with the city auditor an accurate survey and plat.¹² In addition, if a person is laying out a town site, an addition to a town site, or a subdivision of land, a survey and plat must be recorded.¹³ However, an annexation of land to a city does not involve an alteration of private property boundaries, nor does it require that the city open or lay out any street, alley, or public place in that area, nor does it require the land to be platted as a town site, an addition to a town site, or a subdivision of land. To the contrary, N.D.C.C. § 40-51.2-07 specifically states that land being annexed may include agricultural lands,¹⁴ and agricultural lands are not typically platted into lots and do not typically include streets, alleys, or public places.¹⁵ A legislative change would be necessary in order for counties to make additional requirements for annexation.

Therefore, it is my opinion that a map which accurately conveys the boundary of the area being annexed to the city is legally sufficient under N.D.C.C. § 40-51.2-07, and there is no legal requirement that further information be provided from the city to the county recorder.

You also ask whether a county recorder may refuse to record a document affecting property within the annexed area where the legal description of the property is identical to the legal description used prior to annexation. More specifically, your letter and attached materials indicate a question concerning land that was described by township, range and section rather than by reference to a plat divided into blocks and lots.

There is no requirement that all land within a city's boundaries must be platted.¹⁶ A county recorder is required to keep a tract index of the instruments affecting title to real property pursuant to N.D.C.C. § 11-18-07. This statute provides two forms of indexes, one index that is appropriate for subdivisions or platted town sites and another which is appropriate for unplatted sites described by township, range and section. However, in no place does N.D.C.C. § 11-18-07 require that documents affecting real estate within a city, but not within a platted area of the city, may not be recorded pursuant to township, range and

¹¹ N.D.C.C. § 11-18-21.

¹² N.D.C.C. § 40-39-01.

¹³ N.D.C.C. §§ 40-50.1-01, -04.

¹⁴ N.D.C.C. § 40-51.2-07(1)(c).

¹⁵ Rice v. Bd. of Cnty. Comm'rs of Benson Cnty., 135 N.W.2d 597, 600 (N.D. 1965) (describing unplatted lands within a city where there has been no "statutorily dedication" of streets or public places).

¹⁶ See N.D.C.C. § 40-51.2-04 referencing unplatted land within a city. See also Rice 135 N.W.2d at 600-01 (unplatted lands within a city which are an integral part of a farming tract lying partly within and without the city limits is deemed agricultural land).

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section. Nor am I able to find other statutory authority which would prohibit documents concerning unplatted land within a city's boundaries from being recorded according to the township, range, and section numbers concerning that particular tract of land.

Therefore, it is my further opinion that a county recorder may not refuse to record a document affecting title to real property on the basis that the property is within a city's boundaries and not described as part of a plat where the land is not within a platted part of the city.

Sincerely,

Wayne Stenehjem
Attorney General

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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 question presented is decided by the courts.¹⁷

¹⁷ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).