

No. 13817

IN THE SUPREME COURT OF THE STATE OF MONTANA

1978

PHIL YOUNG et al.,

Petitioners and Respondents,

-vs-

STILLWATER COUNTY COMMISSIONERS et al.,

Respondents and Appellants.

Appeal from: District Court of the Thirteenth Judicial District,
Honorable C. B. Sande, Judge presiding.

Counsel of Record:

For Appellants:

Anderson, Symmes, Brown, Gerbase, Cebull & Jones,
Billings, Montana
Joseph Gerbase argued, Billings, Montana

For Respondents:

Moulton, Bellingham, Longo & Mather, Billings, Montana
Ward Swanser argued, Billings, Montana

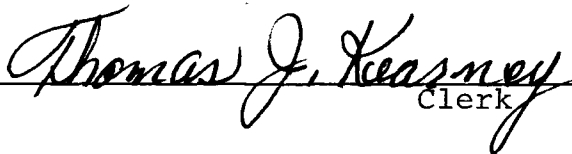
For Amicus Curiae:

Milodragovich, Dale and Dye, Missoula, Montana

Submitted: June 8, 1978

Decided: AUG 4 - 1978

Filed: AUG 1 1978


Clerk

Mr. Justice John C. Sheehy delivered the Opinion of the Court.

Respondents desired to plat two tracts of land, located within Stillwater County, which are part of the larger parcel, owned and subdivided by respondents. There is no dispute that the plats in question are "minor plats" within the meaning of the subdivision laws of the State of Montana, specifically section 11-3863(5), R.C.M. 1947.

On March 8, 1976, respondents submitted the two plats to appellant Stillwater County Planning Board for approval. On March 15, 1976, the Board denied summary approval of the plats and set the matter for a public hearing. Notice of said hearing was given pursuant to section 11-3866(3), R.C.M. 1947 and the hearing held on April 6, 1976. On April 19, 1976, the Planning Board disapproved the plats. Respondents appealed to appellant Stillwater County Commissioners, who, on May 17, 1976, affirmed the disapproval.

Respondents then petitioned for a writ of certiorari to the District Court, Stillwater County. Then both parties moved for summary judgment.

On February 28, 1977, the District Court, Honorable C. B. Sande presiding, granted summary judgment for respondents, reversing the decision of appellants and concluding as a matter of law:

"That the County Commissioners and County Planning Board of Stillwater County attempted to apply the provisions relative to a major plat to a minor plat in violation of Montana law.

" * * *

"The minimum requirements of Montana law did not require or authorize a public hearing to be held on the plat to obtain input in accordance with requirements of a major under R.C.M. 11-3866.

" * * *

"That the minor plats complied with all the requirements of Montana law and were eligible for summary approval and should have been approved by the County Commissioners and the County Planning Board of Stillwater County. * * * "

Appellants appeal the order of the District Court granting summary judgment as aforesaid.

The District Court further ordered that the Stillwater County Clerk and Recorder file the plats of record. Pursuant to that order, the plats were filed. Thereafter, the land was sold. Appellants made no attempt to stay the order of the District Court, or to enjoin the filing of the plats or the sale of land pending appeal.

Considering the applicable statutes in effect at the time of the decision of District Court, this Court must affirm the decision and hold there is no statutory authority for public hearings on "minor" plats absent local regulations to that effect.

Section 11-3863 (5), R.C.M. 1947, makes clear that subdivision plats containing five or fewer parcels (a "minor" plat) where there is proper access, where no land in the subdivision will be dedicated to public use, and which have been approved by the Department of Health and Environmental Sciences where such approval is required, shall be subject to summary review and approval. The only statutory requirement for a public hearing in any review procedure for a subdivision plat is provided in section 11-3866, R.C.M. 1947. However that section excepts from its procedural review requirements any "plat eligible for summary approval." Section 11-3866 (1), R.C.M. 1947. A public hearing may be had on a minor subdivision plat if such a hearing is required by local

regulations as indicated by the proviso to subsection (5) of section 11-3863, R.C.M. 1947: "reasonable local regulations may contain additional requirements for summary approval."

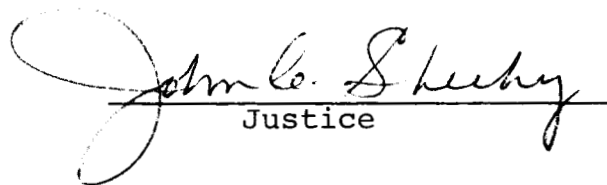
In the instant case the parcels in question were identified by the planning board as minor subdivision plats and eligible for summary review and approval. Therefore, unless the local regulations required a public hearing, no such public hearing was necessary under the statutory scheme set forth in section 11-3866. The planning board here admitted that it had no local regulations in effect at the time of the board action.

Appellants have argued that regulations promulgated by the Department of Community Affairs pursuant to the legislative direction given in section 11-3863 (2), R.C.M. 1947, are regulations the county can enforce as subdivision regulations in lieu of its own. This argument rests on a directive contained in section 11-3863(8), R.C.M. 1947, stating that if a county by July 1, 1974 had not adopted regulations regarding subdivisions, the Department of Community Affairs was to formulate reasonable regulations that the county could then be required to enforce until its own were adopted. Appellant contends that the regulation set forth at M.A.C. 1975 §22-2.4 (B)(6)-S420(1)(n), requiring local regulations to provide for summary review and approval procedures and for waiver of preliminary plat, environmental assessment and public hearing requirements, is such a regulation and under its authority the county can require a public hearing. Such is not the case. The regulations contained in Title 22, M.A.C. relating to subdivision are those regulations required by section 11-3863(2), to be prescribed to establish minimum requirements for subdivision regulations. They are not the regulations

required by section 11-3863(8), R.C.M. 1947 to be prescribed in the event the county did not meet the July 1, 1974 deadline. Apparently no such regulations were made for or adopted by Stillwater County. Therefore, in the absence of any local regulations requiring a public hearing, the appellants could only look to the statutory scheme for authority to hold a public hearing and none existed. The District Court was correct in its conclusion that no public hearing in this case was required or authorized to be held on the minor plats before summary approval.

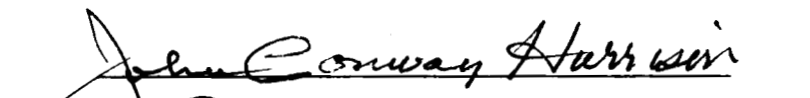

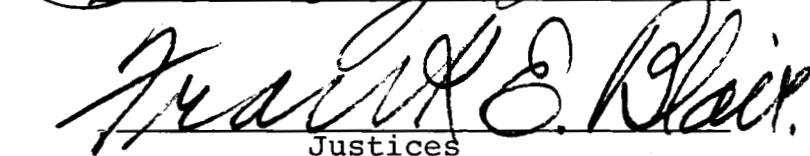
The question has been raised by amici curiae briefs whether the public interest finding requirements in section 11-3866(4), R.C.M. 1947, should be read into section 11-3866(6), R.C.M. 1947, which sets forth the review procedure for a minor plat, or whether the separate procedural requirements for major and minor plats mean separate standards for approval. Because section 11-3866(6), R.C.M. 1947, was not in effect on the dates pertinent to this appeal, we will not address that question at this time.

Affirmed.


Justice

We concur:

Chief Justice




Justices

Mr. Chief Justice Frank I. Haswell deems himself disqualified in this case.