

FILE

Subject

*City Annexation
Consolidation*



Copy to _____

STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

August 26, 1974

Opinion No. 74- 291

Lloyd C. Bloomer
Osborne City Attorney
202 West Main Street
Osborne, Kansas 67473

Dear Mr. Bloomer:

You advise that the City of Osborne has recently annexed approximately sixteen acres of farm land adjoining the city limits. The ordinance was adopted after owners of the land petitioned for annexation. The owners then presented to the governing body a proposed plat of the land, platting the area into blocks, lots, streets and the like. The governing body referred the proposed plat to the planning commission for study and recommendation, which returned the proposed plat to the governing body with its findings, disapproving the proposed plat because it did not conform to the comprehensive plan as to the width and length of lots, and in other respects. The city governing body wishes to override the planning commission and approve the plat.

You inquire whether the governing body may do so, or whether the procedure set out at K.S.A. 12-705b is mandatory. Similarly, you inquire whether the action of the planning commission is advisory only, and whether the governing body may approve the plat notwithstanding the disapproval of the planning commission.

As you point out, prior to its amendment in 1965, K.S.A. 12-705 provided that a plat

"shall be submitted to the city planning commission for their consideration, and their recommendation shall then be submitted to the governing body of such city for their official consideration and action."

No such plat could be filed with the register of deeds until there was endorsed thereon the fact

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"that it has first been submitted to the city planning commission and by the city planning commission to the governing body of such city and by such governing body duly approved."

There now exists no provision for review by the city governing body of the approval or disapproval of a particular plat by the planning commission. K.S.A. 12-705b states in pertinent part thus:

"All such plats shall be submitted to the city planning commission . . . , which shall determine if the same conforms to the provisions of the subdivision regulations. If such determination is not made within sixty (60) days after the plat has been submitted for consideration, such plat shall be deemed to have been approved and a certificate shall be issued by the secretary of the planning commission . . . upon demand. If the planning commission . . . shall find that the plat does not conform to the requirements of the subdivision regulations, it shall notify the owner or owners of such fact. If the plat conforms to the requirements of such regulations, there shall be endorsed thereon the fact that it has been submitted to and approved by the city planning commission No building permit shall be issued for the construction of any structure upon any lot, tract or parcel of land located within the area governed by the subdivision regulations that has been subdivided, re-subdivided or replatted after the date of the adoption of such regulations by the governing body . . . but which has not been approved in the manner provided by this act. . . . *The register of deeds shall not file any plat as provided by law until such plat shall bear the endorsement hereinbefore provided.*" [Emphasis supplied.]

This provision gives the city governing body simply no role whatever in the approval or disapproval of plats for conformance or nonconformance with the comprehensive plan. The city governing body is entitled to approve or disapprove any subdivision regulations adopted by the city planning commission, which must submit such regulations or changes therein to the governing body for its approval under K.S.A. 12-705. However, insofar as concerns approval of a plat under existing regulations in force, review of the plat rests solely with the city planning commission. The procedure set forth in K.S.A. 12-705b appears to be the sole and exclusive procedure for the approval of a plat of land subject to regulations of the planning commission. Under that provision, the action of the planning commission is not advisory only, but

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conclusive. A plat may not be filed merely because it has the approval of the city governing body endorsed thereon, for it is the endorsement of the city planning commission which by law is required.

There appears to be no legal obstacle to the proceeding under K.S.A. 12-504, as you suggest, to exclude the land in question from the city, and thereafter to plat the area, so long as the existing comprehensive plan does not include areas presently outside the city limits, in which instance, of course, approval of the planning commission would still be required. You advise, however, that the subdivision regulations and the comprehensive plan do not include land outside the city limits.

I hope the foregoing will be helpful to you.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm