

1973 WL 27049 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 14, 1973

*1 (1) Submerged land is taxable to the owner thereof unless specifically exempted by law.

(2) Where a plat is filed dividing land into lots the owner can abandon the plat by filing notice to the clerk of court when no lots have been sold. In cases where lots have been sold the platted property should be taxed as lots where statutes provide and there can be no abandonment without the consent of all owners of lots in the platted area or by order of the court.

Honorable W. S. Richbourg
Auditor
Clarendon County
Manning, South Carolina 29102

Dear Mr. Richbourg:

Reference is made to your letter of June 11, 1973, and to the request therein for the opinion of this office concerning the following issues:

- (a) Is land covered by water; in example, that in a canal, title to which is held by an individual, subject to ad valorem taxation?
- (b) Being required to assess land on which a plat has been filed dividing the tracts into lots as lots, what is the responsibility of this office when the owner of the remaining lots wishes to abandon the plat and have the remaining lots taxed as a single parcel?

It has been held by the United States Supreme Court, in the case of [Susquehanna Power Co. vs. State Tax Commission of Maryland](#), 51 S. Ct. 434, 283 U. S. 291, that submerged land is subject to state taxation. See also 84 C.J.S., Taxation, Section 69, page 179.

It is therefore the opinion of this office that submerged land is subject to taxation to the owner unless specifically exempted by statute or constitutional provision.

Act No. 547, Acts of 1971, provides:

‘In Clarendon County when real property is subdivided for the purpose of sale and is sold or offered for sale and a plat of such property has been recorded in the office of the clerk of court, such property shall thereafter be returned in the auditor’s office as lots rather than acreage.’

We find no case specifically in point as to the abandonment of a plat when there are no restrictions or covenants placed upon the property so platted. Where such restrictions are, however, provided, the general rule is stated as:

‘The general rule is that so long as the owner of land on which building restrictions have been established continues to own the entire tract, he may modify the restrictions in any manner he sees fit. This is true notwithstanding he has filed a plat containing the restrictions. * * *. When a sale of a lot is made as designated on the plat, it operates as a dedication of all the streets and alleys marked on such plat. * * *.’ [Wischmeyer v. Finch](#), Indiana, 107 N. E. 2d 661, [Gardner v. Maffitt](#), Mo. 74 S. W. 2d 604.

It thus appears that the owner of the platted property can abandon the plat at any time he chooses and give notice to the Clerk of Court of such abandonment provided that no lots have been sold in the platted property. In those cases where lots have been sold and the owner of the unsold lots thereafter wishes to abandon the plat, it is doubtful that an abandonment can be effected without the consent of those that have purchased any lots or by order of the Court.

*2 It is therefore the opinion of this office that the plat may be abandoned when no lots have been sold in the platted parcel upon proper notice to the Clerk of Court of such abandonment. Where, however, lots have been sold, the plat cannot be abandoned as to the remaining lots except by consent of all property owners of the platted parcel or by Court order and such property should continue to be returned and taxed as provided by the 1971 Act.

Yours very truly,

Joe L. Allen, Jr.
Assistant Attorney General
South Carolina Tax Commission

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