HANDBOOK
Ohio County Commissioners
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CHAPTER 88

SUBDIVISION REGULATIONS

Latest Revision

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8.01 INTRODUCTION

County commissioners and county and regional planning commissions may adopt subdivision regulations pursuant to Ohio Revised Code Chapter 711. Unlike county zoning, which was not authorized until 1947, Ohio's basic subdivision law was first enacted in 1923. The need for effective subdivision regulations to insure accurate title records and the proper design and construction of quality improvements increases as development pressure accelerates.

The last exhaustive amendments to Ohio's subdivision enabling law occurred in 1953. Some minor changes have taken place since this time. One of the most significant recent changes was the enactment of S.B. 115 which became effective on April 15, 2005. This new law allows counties to adopt Large Lot Development Rules for parcels up to twenty acres in size and makes other important changes to the law.

Because a major cost of county government is the maintenance of roads and other public improvements, it is important that quality improvements are constructed as development occurs. This should minimize the long range cost of repairs using public tax dollars.

Finally, in 2000 CCAO and the County Engineer's Association of Ohio (CEAO) partnered to develop a set of *Model Subdivision Regulations*. These regulations are an excellent reference source for counties that need to amend or modernize their current regulations. These regulations are available on-line on the CCAO web site at

http://www.ccao.org/subdivision.html.

In addition, available on the CCAO home page are two *County Advisory Bulletins* that are excellent resource documents. CAB 97-7 discusses H.B. 22, effective 10-21-97 dealing with the changes to three mile extra-territorial municipal subdivision jursidiction and may be found at http://www.ccao.org/newsletter/cab199707.htm.

CAB 2005-02 explains the provisions of S.B. 115, effective 4-15-05 relating to the authority to adopt large lot development rules applying to parcels over five acres in size and making other changes to the subdivision enabling law. This CAB can be found at http://www.ccao.org/newsletter/cab200502.htm.

While much of the contents of these CAB's have been incorporated into this revised chapter of the *Handbook*, these documents are still good, and sometimes more detailed, reference sources.

88.02 PURPOSE OF SUBDIVISION REGULATIONS

Subdivision regulations control the division of land, its transfer, and the improvement of land as development occurs. Unlike zoning, the major purpose which is to control the use of land, subdivision regulations primarily control the design, layout, division and improvement of land as it is sold or developed. Under Ohio law (ORC 711.10), subdivision regulations, of uniform application, may be adopted by county and regional planning commissions for the following purposes:

1. To secure and provide for proper arrangement of streets and highways in relation to existing or planned streets or to the county or regional plan,

2. To assure adequate and convenient open space for traffic, utilities, access of fire fighting apparatus, recreation, light, air, and

3. To avoid congestion of population.

88.03 ADOPTION AUTHORITY

County commissioners have the authority to adopt subdivision regulations under ORC Section 711.05. In addition, a county or regional planning commission has authority to adopt subdivision regulations under the provisions of ORC Section 711.10. County commissioners also have the specific authority to adopt improvement regulations pursuant to ORC Section 711.101. This chapter will primarily deal with subdivision regulations adopted by a county or regional planning commission.

Most county subdivision regulations are now adopted and administered by county or regional planning commissions, however, the commission must first adopt "a plan for the major streets or highways" (ORC 711.10). Once this plan is adopted by the commission, any plat within the unincorporated area, except for those for which a

municipality may exert its extra-territorial authority, must be approved by the commission before it may be recorded.

Once the commission adopts subdivision regulations, its approval is "in lieu of any approvals provided for in other sections of the Revised Code." After a planning commission has been created and adopts subdivision regulations the authority to formulate rules and regulations governing the submission of plats and the ultimate approval of plats has been delegated to the commission.

It should also be noted that a county or regional planning commission is required to obtain approval of the county commissioners during the adoption and amendment process. ORC Section 711.10 does not allow the planning commission to adopt regulations requiring the actual construction of improvements or performance guarantees unless these requirements have been first adopted by the county commissioners after a hearing. Finally, ORC Section 711.132 requires that the commissioners must approve all rules and regulations of the planning commission before they become effective.

88.04 ADOPTION AND AMENDMENT PROCEDURE

Unlike the zoning law, (Chapter 303 Ohio Revised Code and Chapter 86 of this *Handbook*) Ohio's subdivision law is less specific concerning the adoption and amendment of subdivision regulations. Part of the problem results from an apparent conflict in the law. ORC Section 711.10 requires the commission to hold a hearing before adopting or amending its regulations. The commission is, however, precluded from adopting a requirement for the construction of improvements or performance guarantees "unless such requirements have first been adopted by the county commissioners after a public hearing."

Section 711.132 of the Revised Code, on the other hand, specifies that no regulation will become effective until it has “been approved after a public hearing by the board of county commissioners." It thus appears that the adoption or amendment of improvement regulations must be adopted by the commissioners prior to adoption by the planning commission. All regulations, however, must be approved by the commissioners after a hearing before they become effective. These confusing provisions mean that the exact procedures should be approved by legal counsel prior to beginning any adoption or amendment process.

88.05 ORIGINAL ADOPTION

The original adoption of subdivision regulations, which includes improvement requirements, could follow these steps:

1. County or regional planning commission adopts plan for the major streets or highways.
2. Proposed regulations are drafted by the county or regional planning commission.

3. An informal hearing is held by the planning commission on the proposed regulations.

4. Proposed regulations are revised by the commission and sent to the county commissioners.

5. County commissioners hold a public hearing on the regulations, and give 30 days notice in a newspaper before the hearing (ORC 711.10, 1963 OAG 395).

6. County commissioners adopt the regulations and transmit them to the planning commission.

7. The planning commission holds a public hearing on the regulations as adopted by the commissioners and adopts them. A 30 day notice in a newspaper should precede the hearing. In addition, notice of this public hearing must be sent to each township in the county by regular or electronic mail at least 30 business days before the hearing. It might be possible to combine steps 5, 6, and 7 into a joint hearing by the commissioners and the planning commission. Adoption by the county commissioners, however, should precede the adoption by the planning commission.

8. Certify a copy of the adopted regulations to the county recorder.

88.06 AMENDMENT OF IMPROVEMENT REGULATIONS

The amendment of improvement regulations or regulations requiring performance guarantees should generally follow the procedures outlined in the previous section. The important point is that the commissioners must adopt the amended regulations relating to improvements or performance guarantees prior to their adoption by the planning commission.

The specific authority for commissioners to adopt improvement regulations is contained in ORC Section 711.101. Under this section, the commissioners have authority to adopt general rules setting standards for improvements and provisions requiring and securing the construction of improvements shown on plats.

These rules may establish standards and specifications for the construction of:

1. Streets

2. Curbs

3. Gutters

4. Sidewalks

5. Street Lights

6. Water Mains

7. Sanitary Sewers

8. Other utility mains, piping, and other facilities

The improvement rules may also require complete or partial construction of the improvements as a condition that must precede the sale or lease of lots in a subdivision or the issuance of building permits. In lieu of actual construction of the improvements, the rules may require a performance agreement and a performance bond or other performance guarantee to assure the construction of the improvements. The performance bond or other performance guarantee is limited to improvements directly affecting the lots in the subdivision.

The rules may provide for the submission of plans and specifications for the improvements as a condition for the approval of the plat. The rules can not require a developer to alter the plans and specifications for improvements as long as they comply with the rules in effect when the plat was submitted for approval.

Variances from the improvement regulations are authorized where unusual or exceptional factors or conditions require modifications. The commissioners may provide for the administration of the improvement regulations within its office or may delegate their administration to the county or regional planning commission. The improvement regulations may provide for needed inspections and examinations, and for the issuance of such certificates, permits, and orders as is necessary to enforce the regulations. Before improvement regulations may become effective the commissioners must hold a public hearing and must give reasonable notice of the hearing in a newspaper (1963 OAG 395). Willful violation of the improvement standards or failure to comply with orders issued thereto can result in civil penalties of up to $1,000.

88.07 AMENDMENT OF OTHER REGULATIONS

If the regulations to be amended do not change improvement or performance guarantee requirements they need to be approved by the commissioners, but this takes place after adoption by the planning commission. In this case, the recommended procedure is:

1. Proposed amendments are prepared by the county or regional planning commission.

2. The planning commission holds a public hearing, giving 30 days prior notice in a newspaper (ORC 711.10, 1963 OAG 395). In addition, written notice to each township in the county must be sent by regular or electronic mail at least 30 business days before the hearing.

3. Planning commission adopts amendments to subdivision regulations.

4. Planning commission transmits adopted regulations to county commissioners.

5. Commissioners publish 30 day notice of public hearing on the amendments and hold a hearing at a regular meeting of the board (1963 OAG 395).

6. Commissioners adopt a resolution approving the amendments previously adopted by the planning commission.

7. Certify the amendments and the resolution of the commissioners approving the adoption by the planning commission to the county recorder.

88.08 VARIANCES

Section 711.10 of the Revised Code provides that subdivision regulations "may provide for the modification thereof by such county or regional planning commission in specific cases where unusual topographical and other exceptional conditions require such modification."

Opinion 73-040 of the Attorney General, however, ruled that the planning commission "cannot grant a variance which is in conflict with the rules and regulations." It appears that the reasoning was that since the commissioners must first adopt improvement or development regulations, that variances to such improvement standards cannot be delegated. It should be noted that in the referenced opinion, the issue was one where the planning commission granted a variance in the specifications of private streets in a subdivision that was contrary to the specifications established by the county commissioners and the county engineer. In some instances, improvement regulations of the county engineer are not a part of the subdivision regulations but are simply referenced. This may also affect the authority to grant variances and it is always best to pose a question about a specific factual situation to the county prosecutor.

88.09 ENFORCEMENT --- COUNTY PROSECUTOR

Even though a regional planning commission is not a "county board" and the county prosecutor is not required to serve as its legal advisor (1961 OAG 2382), the Attorney General has apparently distinguished the function of legal advice to the regional planning commission under ORC Section 713.21 from the enforcement of subdivision regulations. The county prosecutor, thus, is the proper agent to institute court action to enforce any violation of the subdivision regulations (OAG 72-020).

A series of civil penalties are established in state law relating to subdivision regulations. For example any person who disposes of, offers for sale, or leases for more than five years any lot or part of a lot in a subdivision with the intent to violate the law can pay a civil penalty of up to $500 for each lot or part of a lot. (ORC 711.15). Likewise, anyone who willfully transfers any lot, parcel or tact of land before a plat has been recorded is

liable for a civil penalty of up to $500 per lot (ORC 711.13). Finally, a county recorder who records a plat contrary to the law can also be required to pay a civil fine of up to $500.

88.10 APPLICABILITY OF REGULATIONS

The subdivision regulations of the county are applicable to all subdivisions of land in the subdivision regulation jurisdiction of the county or regional planning commission. The subdivision regulation jurisdiction of the county is usually all of the unincorporated areas of the county unless a city of village is exercising extra-territorial jurisdiction pursuant to ORC Section 711.09. When administering county subdivision regulations, it is critical to understand the exact definition of a subdivision in ORC Section 711.001.

Generally speaking, a subdivision is the division of any parcel of land into two or more parcels, any one of which is less than 5 acres in size. The following are, however, exempt:

1. The division of land into parcels greater than five acres and where no new streets or easements of access are established.

2. Parcels of land that are sold or exchanged between adjoining property owners where additional building sites are not created.

3. If the county has adopted Large Lot Development rules pursuant to ORC Section 711.133, any parcel between 4 and 5 acres that are regulated under the adopted Large Lot Development Rules.

In addition, a subdivision is also defined to include the improvement of parcels of land for residential, commercial or industrial structures involving the division or allocation of land for the opening, widening or extension of public or private streets, except private streets serving industrial structures. Likewise, a subdivision is defined as the improvement of parcels of land involving the division or allocation of land as open space for the common use of owners, occupants or leaseholders. Finally, a subdivision also includes the division or allocation of land as easements for the extension and maintenance of public or private sewer, water, storm drainage, or other similar facilities.

The Revised Code, however, does not stipulate who or what agency determines if a land transfer is or is not a subdivision. The cooperation and understanding of the county auditor and recorder is important to insure the proper administration of the regulations.

It should be noted that apartment developments, mobile home parks, and shopping centers can also be considered as subdivisions under ORC Section 711.001(B)(2) of the Revised Code. Even though land is not being sold or divided, the "improvement" of the land by the developer makes it a subdivision. A plat would thus have to be submitted "showing the portions of the tract which are to be allocated for use as streets, easements, or common open spaces" (OAG 72-020). Some counties also consider

industrial parks to be subdivisions as they are considered improvements. Other counties require land contracts to comply because they anticipate the future transfer of ownership and division of land.

88.11 TYPES OF SUBDIVISIONS

Although "subdivisions" are popularly associated with larger residential development projects, it should be clear from the prior discussion that a subdivision as defined by Ohio law may include the sale of a single lot as well as the approval of a housing development of 300 lots. Both are technically defined as a “subdivision” under Ohio law.

Ohio law does, however, recognize these differences and authorizes a procedure where lots that fall under the definition of a subdivision, but that does not involve intensive development, may be approved without the requirement of a record plat. These subdivisions are often referred to as either "Major Subdivisions" or "Minor Subdivisions". Minor Subdivisions are also commonly known as "Lot Splits." Following is a discussion of these two types of subdivisions.

88.12 MAJOR SUBDIVISIONS

This type of subdivision often involves more than five lots with new streets and other related improvements. A Major Subdivision involves the submission of a record plat to the county or regional planning commission for approval, and its recording by the county recorder. Once it is recorded, future transfers of lots in the “platted subdivision” generally do not include a full legal description of the lot, but are simply referenced to a lot number on the recorded subdivision plat.

The plat of a Major Subdivision must describe streets, alleys, commons or public grounds and all in-lots, out-lots and fractional lots. The description must include the courses, boundaries and extent (ORC 711.01). In-lots must be numbered in progressive numbers and the plat must contain their precise length and width. Out-lots, which do not exceed ten acres, must likewise be numbered, surveyed and their precise length and width must also be shown on the plat along with any streets, alleys or roads that divide or border out-lots (ORC 711.02(A)).

Another requirement of a plat is that it must be superimposed on a survey of the lands of the owners of the current parcels. It must contain an accurate background drawing of any metes-and-bounds descriptions of lands from which the plat in being drawn (ORC 711.02(B)).

State law (ORC 711.03) also requires certain types of survey monuments including cornerstones, markers, and pins to identify lots and other survey control points. The locations of such markers and control points are usually shown on the plat.

88.13 PRELIMINARY AND FINAL PLATS

Planning commissions generally require both a preliminary and final plat in addition to various engineering and improvement drawings and construction guarantees prior to approval. While the legal authority to require the submission of a preliminary plat was in doubt for a number of years as a result of a court ruling, the law now specifically authorizes county subdivision regulations to require a preliminary plat (ORC 711.01(B)).

If a preliminary plat is required, the regulations must provide for a review process for the preliminary plat. The process must provide for approval, approval with conditions, or disapproval within 35 business days after submission of the preliminary plat. The decision must be in writing and under the signature of the secretary of the county or regional planning commission. If a preliminary plat is disapproved, the reason for the disapproval must be stated.

Once a preliminary plat is approved the applicant may apply for final plat approval. The law (ORC 711.10(C)) requires the planning commission to schedule a meeting to consider the plat within five calendar days after it is submitted. The commission must also send a notice, by regular or electronic mail, to the township fiscal officer and the board of health where the plat is located. This notice informs the parties of the submission of the plat and the date, time and location of any meeting where the commission will consider or act on the final plat. This meeting must take place within 30 calendar days of submission of the final plat, but at least seven calendar days after the required notices were sent.

State law requires the planning commission to take action on a final plat within 30 calendar days after it is submitted or the "plat is deemed approved" (ORC 711.10(C)). This time period can only be extended if there is a written agreement with the applicant. The commission may take the following types of action on the final plat (1) approval (2) conditional approval, and (3) disapproval.

88.14 CONDITIONAL APPROVAL OF PLATS

The authority to conditionally approve a plat is fairly recent. Prior to this change in law, which applies to both preliminary and final plats, many counties felt they had to disapprove a plat even for minor problems that could be easily corrected. It is now clear that conditional approval is legally authorized. In addition, a conditional approval should specify a period of time during which the applicant must make the required changes.

88.15 OTHER PROVISIONS OF LAW RELATING TO PLATS

The law authorizes county subdivision regulations to require the board of health to comment on the plat before the commission acts on it, and may require proof of compliance with household sewage treatment rules as a basis for disapproval of the plat. In addition, the regulations may also require proof of compliance with any applicable county or township zoning regulations. In both cases, recent changes in the

law may require amendments to the subdivision regulations to implement these new authorities that have been granted by the General Assembly.

On the other hand, the statute specifically prohibits a commission from requiring an applicant to alter a plat if it is in conformance with the subdivision regulations that were in effect at the time the plat was submitted for approval.

Finally, the law also specifically authorizes a county or regional planning commission to enter into a written agreement with a municipality if the city or village is exercising extra-territorial subdivision authority in the unincorporated area adjacent to the city or village. The agreement may provide that the approval by the city or village platting authority will be conditioned upon receiving advice from or approval by the county or regional planning commission.

88.16 APPEAL OF THE DISAPPROVAL OF A FINAL PLAT

If the final plat is denied, the ground of refusal must be stated in the minutes of the planning commission. This must include a citation or reference to the specific rule in the subdivision regulations that was violated resulting in the disapproval. If the plat is disapproved, the applicant has 60 calendar days to appeal to common pleas court. A board of township trustees does not have standing to appeal the approval or denial of a plat.

88.17 DEDICATION AND ACCEPTANCE OF ROADS

Readers should also refer to Chapter 30 of this Handbook concerning the relationship of subdivision regulations to the dedication and acceptance of roads. Generally speaking, approval of a final plat is not considered an acceptance of the dedication of a road or an open space shown on a plat (ORC 711.10(C), 711.04).

88.18 MINOR SUBDIVISIONS (LOT SPLITS)

This type of subdivision usually involves fewer than five lots. ORC Section 711.131 allows for this type of subdivision to be approved without record plat. A sketch and "other information," which can include a survey, may be required if provided for in local subdivision regulations (1953 OAG 3285).

It should also be noted that there is no statutory requirement that these subdivisions be platted or surveyed (ORC 711.40, 1960 OAG 1921). Counties may, however, adopt rules and regulations requiring surveys and plats in such instances under the provisions of Sections 711.05 or 711.10 of the Revised Code. In the absence of such rules, however, the provisions of the subdivision law may not apply to any division of land by an instrument conveyance (OAG 71-083).

In order to exercise review authority over these types of subdivisions, it is necessary to specify that the requirement is being adopted pursuant to ORC Section 711.131 when

adopting or amending subdivision regulations. This is necessary, again, because ORC Section 711.40 exempts “the division of any parcel of land by and instrument of conveyance” unless specifically required by locally adopted subdivision regulations.

The director of the county or regional planning commission, or other designated official, has the authority (as the administrative agent of the commission) must determine if the parcel meets the following conditions before it can be approved:

1. The land is located along an existing public road.

2. The division does not involve the opening, widening, or extension of any public or private road.

3. No more than five lots are involved after the original tract is completely subdivided, and

4. The proposal is not contrary to any of the following applicable regulations if they have been adopted:

    a. Platting.

    b. Subdividing.

    c. Zoning.

    d. Health.

    e. Sanitary.

    f. Access management regulations (ORC Chapter 5552).

    g. Building code regulations pertaining to existing surface and subsurface drainage (ORC 307.37(B)(3)), and

    h. Rules governing household sewage treatment systems.

It should be noted that S. B. 115, effective on 4-15-05, amends ORC Section 711.131 to make parcels subject to review for conformance with health and sanitary rules, including rules governing household sewage treatment systems. These were not included under the former law. Thus, it is now clear that a Lot Split can be denied if it can not comply with the county health department's household sewage disposal regulations. Under the former law this may not have been authorized.

If the designated administrative official finds that a proposed parcel meets the applicable requirements above, the official is directed to approve the proposed division within seven business days and stamp the deed or conveyance "approved by (planning

authority); no plat required." With the change in the law allowing for Large Lot Development Rules, CCAO suggests that this stamp be changed to read "approved by (planning authority), no plat required under R.C. 711.131" to ensure that this approval is clearly distinguished from approvals pursuant to ORC Section 711.133 (Large Lot Development Rules).

The proper administration of minor subdivision regulations can be a controversial and time consuming job. It is also vital to have the support of the county auditor and county recorder who must agree not to transfer or record the land prior to approval by the planning commission. ORC Section 711.121 of the Revised Code specifies that the county auditor and recorder "....shall not transfer property or record deeds or leases which attempt to convey property contrary to the provisions of Chapter 711 of the Revised Code."

In the past, some counties have experienced a circumvention of subdivision regulations by individuals using Chapter 5307 of the Revised Code dealing with "partition" actions in court. However, the legislature enacted legislation (HB 296, 9-4-84) closing that loophole by requiring that all partition actions initiated pursuant to ORC Sections 5307.06, .07 and .08 must comply with local subdivision regulations.

Finally, many counties have adopted land conveyance standards pursuant to ORC Section 319.203 and requirements for boundary surveys under ORC Section 315.231. These will be explained in a subsequent section of this Chapter of the Handbook.

88.19 THE DEFINITION OF ORIGINAL TRACT AND COMPLETELY SUBDIVIDED

To properly administer minor subdivision regulations, it is important to understand the definition of the terms “original tract” and “completely subdivided” in the statute. The issue of how these two terms are applied locally is one of the more confusing areas of subdivision law, and many counties do this differently.

Rather than trying to explain the various rulings of the Attorney General on this topic, readers are encouraged to refer to the various opinions that have been issued on this topic. Please refer to 1964 Ohio Attorney General Opinion Number 1044 and to OAG Opinions 69-161, 71-083, 84-073, 85-004, and 97-019.

A major change in this section, however, became effective with the enactment of S.B. 115, effective 4-15-05. The change grants permissive authority to amend the subdivision regulations to apply the term "original tract" differently than it has been defined by previous rulings of the Attorney General. Generally, counties should continue to do what they have been doing in this regard and follow the advice of legal counsel if they do not take advantage of the new law to change how to apply the term original tract.

S. B. 115 authorizes an amendment to the subdivision regulations so that the planning authority would approve proposed divisions of parcels of land without a plat under a

new Division (B) of ORC 711.131. If such an amendment is adopted, the new law provides that: "If the authority so amends its rules, it may approve no more than five lots without a plat from an original tract as that original tract exists on the effective date of the amendment to the rules." This means that no more than five lots, including the original tract, may be approved without going through the major subdivision process. The original tract will be defined as any parcel that exists at the time the amendment to the subdivision regulations becomes effective.

In addition, if a county wants to amend its regulations to change the way to count the number of splits that are allowed without a plat, this amendment to the subdivision regulations must be completed no later than two years after the effective date of the act, or not later than 4-15-07. After this date the definition of original tract can not be changed through amendment of local subdivision regulations. Counties that desire to make this change need to begin this process far enough in advance of the deadline so that the change in the subdivision regulations becomes effective by 4-15-07.

In addition, it should be noted that the two-year window applies only to the original tract change, and does not apply to any other provisions of S.B. 115, including the authority to adopt Large Lot Development Rules which will be discussed next.

88.20 LARGE LOT DEVELOPMENT RULES

The most important new authority granted to counties under S. B. 115 is the power to adopt rules so that new parcels of up to 20 acres in size may become subject to a new mid-level review and approval process. This authority is granted under ORC Section 711.133. Remember that, generally speaking, any parcel over five acres in size is not, by definition, a subdivision and is thus not subject to any review under ORC Chapter 711.

The new law authorizes the Large Lot Development Rules to designate the size range of parcels that will be subject to Large Lot Development approval. It should be noted that the term “Large Lot Development Rules” will not be found in the ORC. This term, along with the terms “Major and Minor Subdivisions” and “Lot Splits” are not statutory terms but are common terms used in an effort to distinguish these types of approvals. When adopting Large Lot Development Rules, counties should follow the same procedure required to adopt or amend subdivision regulations.

When adopting Large Lot Development Rules, the size of parcels subject to approval may be in the range of not less than 4 acres nor more than 20 acres. Thus, counties that choose to take advantage of this new authority could make the new law apply to lots between 4 and 20 acres, or they could choose to make the new law apply only to parcels greater than 5 acres and up to 20 acres. Another option would be to make the new law apply to a lesser number of acres, for example, parcels of up to only 10 acres. These are decisions to be made locally.

If, however, Large Lot Development Rules are adopted that include parcels between 4

and 5 acres, "the rules shall state that the proposed division (of parcels between 4 and 5 acres) shall not be considered a subdivision for the purposes of division (B)(1) of Section 711.001 of the Revised Code and need only be approved as specified in Division (A) of this Section (ORC 711.133) and the rules adopted under this section."

In addition, the rules adopted under ORC Section 711.133 "shall exempt from the approval requirements of this section parcels of land to be used only for agricultural and personal recreational purposes." This portion of the bill was one of the compromises that CCAO accepted during the process of passing the bill, and will be discussed in greater detail later.

The approval process of parcels subject to Large Lot Development Rules is similar to the process for the approval of Minor Subdivisions under ORC Section 711.131. In order for the lot to be subject to approval under the Large Lot Development Rules, the following must apply:

1. The proposed division must be along an existing public street;

2. The proposed division must not involve the opening, widening, or extension of any street or road; and

3. The proposed division must involve the establishment of a lot within the acreage range that is specified in the Large Lot Development Rules.

4. Once it is determined that the lot is subject to approval pursuant to the Large Lot Development Rules as specified above, the administrative official must determine that the proposed division is not contrary to applicable:

    a. Zoning.

    b. Health.

    c. Sanitary.

    d. Access management regulations (See ORC Chapter 5552).

    e. Building code regulations pertaining to existing surface and subsurface drainage (See ORC 307.37(B)(3)).

    f. Rules governing household sewage treatment systems, and

    g. Rules that regulate lot frontage and width-to-depth ratios.

As is the case for Minor Subdivisions, Large Lot Developments are submitted to the administrative official designated in the Large Lot Development Rules for approval without a plat in accordance with ORC Section 711.133. No public hearings are

required. As is the case for Minor Subdivisions, the statute allows for the submission of a sketch and other information that is pertinent for determining if the parcel should be approved.

The administrative official must stamp the conveyance "approved by (planning authority) no plat required" and have it signed by the administrative official. We suggest that the stamp actually read, "approved by (planning authority); no plat required under R.C. 711.133."

It is also suggested that approvals of Minor Subdivisions be stamped "approved by (planning authority); no plat required under R.C. 711.131" in an effort to distinguish the two types of approvals without a plat. Likewise, those parcels that are within the range specified in the Large Lot Development Rules which are exempt under the agricultural and personal recreational purposes exemption should be stamped "no approval or plat required under R.C. 711.133; for agricultural or personal recreational use only."

88.21 LARGE LOT DEVELOPMENT REGULATIONS PERTAINING TO LOT FRONTAGE AND WIDTH TO DEPTH RATIOS

As was mentioned in a previous section, one of the criteria for the approval of lots subject to Large Lot Development Rules is compliance with lot frontage requirements and width-to-depth ratios. It should be noted that Division (B) of ORC Section 711.133 specifically authorizes the Large Lot Development Rules to regulate lot frontage and width-to-depth ratios for lots approved under this new authority.

In addition, the statute provides that these lot frontage requirements or width-to-depth ratios apply to parcels approved under the Large Lot Development Rules only if "there is no applicable zoning regulation for lot frontage or width-to-depth ratios that apply to the parcel." Thus, if county or township zoning is in effect and the zoning resolution contains lot frontage or width-to-depth ratios, these take precedence over those included in the Large Lot Development Rules irrespective of whether the requirements in the zoning resolution are more or less stringent than those established by the Large Lot Development Rules.

88.22 SPECIAL PROVISIONS FOR PARCELS EXEMPT FROM LARGE LOT DEVELOPMENT RULES BECAUSE THEY ARE TO BE USED ONLY FOR AGRICULTURAL OR PERSONAL RECREATIONAL PURPOSES

To review previous sections, Large Lot Development Rules must "exempt from the approval requirements of this section parcels of land to be used only for agricultural and personal recreational purposes" (ORC 711.133(C)). In this case the statute provides that the administrative officer is to stamp the conveyance "no approval or plat required under R.C. 711.133; for agricultural and personal recreational use only."

While the statute is silent on how a determination is made if a parcel qualifies for the agricultural and personal recreational use exemption, it does specify that parcels

exempted under this provision shall not be excluded from regulation under ORC Chapter 711 for any "future divisions or partitions of those parcels." Further, for parcels of land that are exempt as a result of the agricultural and personal recreational use exemption which are "subsequently to be used for other than agricultural or personal recreational purposes, the planning authority shall first determine that such a parcel complies with the rules adopted under this section."

This provision of the new law is one of the more difficult to understand and to apply. It has been suggested that the determination of whether a parcel qualifies for the agricultural and personal recreational use exemption is one where counties may have to rely on signed statements from owners and buyers of land. A form could be designed that requires both parties to certify that the land will be used only for agricultural or personal recreational use. It might also be wise to include some standards to be used to determine if parcels qualify for both agricultural and personal recreational use exemptions.

As a result of this exemption in the statute, it might be preferable to only apply Large Lot Development Rules to lots over 5 acres, not to lots in the range of 4 to 5 acres as the statute permits. If a county adopts Large Lot Development Rules for parcels of 4 to 5 acres, the agricultural and personal recreational use exemption can be claimed. No such exemption is available for Minor Subdivisions approved pursuant to ORC Section 711.131.

88.23 TIME PERIODS FOR APPROVAL OF LOTS SUBJECT TO LARGE LOT DEVELOPMENT RULES

When approving lots subject to Large Lot Development Rules, the designated administrative official is directed to approve the parcels within certain time frames that vary with the number of lots or parcels that are submitted for approval as follows:

Number of Parcels	**Up to the Number of Days**
1-6	7 Calendar Days
7-14	14 Calendar Days
15 Or More	21 Calendar Days

88.24 APPLICATION OF LARGE LOT DEVELOPMENT RULES TO PARCELS BETWEEN 4 AND 5 ACRES

Currently under ORC Section 711.131, Lot Splits or Minor Subdivisions are subject to approval without a plat if the parcel being conveyed is not greater than 5 acres in area. With the enactment of S. B. 115, Large Lot Development Rules may be adopted that apply to parcels between 4 and 20 acres. Thus, if such regulations are adopted that include parcels of from 4 to 5 acres in size, the Minor Subdivision process would only apply to parcels of up to, but not including 4 acres.

CCAO questions if it would be beneficial to include lots in the 4-5 acre range under Large Lot Development Rules. There are two reasons it may not be beneficial. First, under the Large Lot Development Rules adopted pursuant to ORC Section 711.133, parcels for agricultural and personal recreational purposes are exempt. Second, the approval of parcels under the Large Lot Development Rules may not consider "platting and subdividing rules" which may be considered under the Minor Subdivision process pursuant to ORC Section 711.131.

88.25 MANDATORY DEDICATION OF OPEN SPACE

While counties generally do not have the authority to impose impact fees on new development and efforts are being made to pass enabling legislation for impact fees, the Attorney General has ruled (OAG Opinion 7113 of 1956) that a county or regional planning commission may require the dedication of a reasonable amount of land for park purposes as a condition precedent to approval of a plat.

Some believe that under this authority a county could find that “for every additional single-family lot developed or home constructed, the incremental need is created for a certain amount of land for parks. That need could be offset by mandated dedication of land on-site for park purposes or the payment of a fee-in-lieu so that a park could eventually be purchased and developed off-site”. [1]

In addition, great care must be taken in developing the methodology by which it is determined how much land is to be dedicated or how fees-in-lieu of dedication are calculated. For more information see C. Reed, Formulas and Standards for Parkland Dedication, 11 The Zoning Report, No. 13 (October 22, 1993). This publication is available from P.O. Box 6529, Margate, Florida 33063.

88.26 LAND CONVEYANCE STANDARDS AND BOUNDARY SURVEY REQUIREMENTS

The county auditor and the county engineer, by written agreement, may adopt standards governing the conveyance of real property in the county (ORC 319.203). These standards may include the requirements of ORC Section 315.251 dealing with boundary surveys. Once these standards are adopted the county auditor must review all conveyances to determine compliance with the standards and can not allow transfer if the conveyance does not comply with the standards.

In order to adopt or modify these standards the county auditor and the county engineer must hold two public hearings at least ten days apart and the standards must be available for public inspection in both offices during normal business hours.

If a deed conveying real property is presented to the county auditor for transfer and it contains a legal description for land that is cut-up or split from an existing parcel or if the legal description of the land to be conveyed is different from the legal description in the prior deed a boundary survey plat in conformity with the new description must be

submitted with the deed for transfer. The boundary survey plat and property description on the deed must meet the minimum standards for boundary surveys pursuant to ORC Chapter 4733. If the boundary survey plat and legal description in the deed comply with these requirements as determined by the county engineer then the county auditor will accept the deed for transfer. A copy of the survey plat is then filed in the county engineer's survey file and is open for public inspection.

Finally, if the county engineer is not a "full-time" engineer and is still engaged in the private practice of engineering and surveying, the county auditor must designate another engineer employed in the county engineer's office to perform the duty of the county engineer so as to avoid any conflict of interest (See ORC 315.251(B)).

88.27 NOTICE REQUIREMENTS TO TOWNSHIP TRUSTEES

Ohio law requires the planning commission or the county commissioners to notify the township trustees of proposed plats in the township. Counties are required to give township trustees notice of any meeting where the plat will be considered or approved. Following are some additional aspects of this requirement:

1. The notice must be sent to the trustees within five calendar days after the plat is received,

2. The notice must state that the plat has been submitted and the date, time, and location of any meeting where the plat will be considered or acted on,

3. The notice is sent by either regular mail or electronic mail,

4. The meeting can not occur until at least seven calendar days after the notice was sent to the township,

5. This procedure does not eliminate the requirement that the plat be acted on within 30 calendar days after submission.

It should be noted that this requirement applies only to the final plat, not to the preliminary plat. While the law does not require this notification on a preliminary plat, this appears to have been an oversight when the law was recently amended to specifically authorize a preliminary plat. Thus, CCAO recommends that notice also be given on the filing of a preliminary plat.

In addition, when a county adopts or amends subdivision regulations the statue requires all townships to be notified on any public hearing on the regulations or amendment. This notice must be given by regular or electronic mail at least 30 business days before the meeting.

88.28 EXTRATERRITORIAL MUNICIPAL JURISDICTION

Cities and villages have been granted limited authority to control subdivisions in the unincorporated area of the county under ORC Section 711.09. Under former law, cities had the right to approve plats within three miles of the city and certain villages had the right to exert this authority in an area of up to one and one-half miles of the village. This all changed in 1997 when the legislature enacted H.B. 22.

With this change in the law cities may no longer exert the three mile extra-territorial jurisdiction if all of the following conditions exist:

1. The township that is within three miles of the city is covered by a county or township zoning resolution;

2. The county has a county or regional planning commission; and

3. The county has adopted subdivision regulations.

Likewise in the case of villages, they may no longer exert their extra-territorial jurisdiction under the same conditions as exist for cities, plus the only villages that have the authority to exert this jurisdiction are those located in counties that contain no cities.

The practical effect of this change in state law is to eliminate the extra-territorial jurisdiction of many municipalities. Since most counties have both established planning commissions and adopted subdivision regulations, city jurisdiction in the three mile area and village jurisdiction in the one and one-half mile area is primarily limited to unincorporated townships where the residents have not adopted zoning.

In addition, for those cities and villages that may still exert extra-territorial jurisdiction under the restrictions enacted in H.B. 22 there is another limiting requirement in the law. In order to exert this extra-territorial control the city or village must adopt "a plan for the major streets or thoroughfares and for the parks and other public grounds of the city" and all or any part of the three mile or one and one-half mile area as the case may be. If the land is within three miles or one and one-half miles of more than one city or village, the municipality closest has jurisdiction.

The law (ORC 711.09 (D)) also provides that if the county contains five or more cities and the county or regional planning commission had adopted a resolution to exercise subdivision regulation authority within the three mile area (refer to 1962 OAG Opinion 3285 for more details) the city may not exert any extra-territorial jurisdiction. This provision applies only to cities and not to villages.

Once the city or village planning commission, which is still authorized to exert extra-territorial jurisdiction under the new provisions established under H.B. 22, has adopted the required plans for the area of jurisdiction, the city or village has "exclusive jurisdiction as to the approval of plats.....and the county or regional planning commission has no jurisdiction as to that area" (1962 OAG 3285).

A city or village also may adopt regulations that establish standards and specifications for streets and other public improvements in the unincorporated area which must be complied with "as a condition precedent to the approval of a plat.....by the city (or village) planning commission" (1962 OAG 3166). The acceptance of the dedication of the streets, however, must still involve the appropriate action of the county commissioners (Adamson v Wetz, 69 Abs 281).

Finally, state law (ORC 711.10(C)) also authorizes a city or village and the county or regional planning commission to enter into a written agreement "...that approval of the plat...shall be conditioned upon receiving advice from or approval by the county or regional planning commission." This provision allows a method to provide the type of cooperative arrangements that could prove beneficial.

88.29 ABILITY TO ALLOW MUNICIPALITIES TO CONTINUE TO APPROVE PLATS

CCAO has been asked whether the county can continue to allow a city or village to exercise its former extra-territorial control. It has been pointed out that ORC Section 711.10 allows, by written agreement, a city or village to condition its approval "upon receiving advice from or approval by the county or regional planning commission."

It appears that this provision of law is no longer practically operative given the fact that municipal extra-territorial authority really only exists where there is no county or township zoning. This provision of law thus appears to only apply to a situation where a municipality retains jurisdiction because the territory does not meet the standards for exclusive county control.

Another option might be for the county to contract with the municipality. The general authority for contracts with other political subdivisions is contained in ORC Section 307.15. Using this section of Ohio law it might be possible to maintain the former system or something close to it; however, an opinion from the county prosecutor should be obtained first. In particular, refer to OAG 75-085.

88.30 CONDOMINIUM PROPERTY

Condominium property is an increasingly popular type of property ownership. Chapter 5311 of the Revised Code deals with condominium property in detail. Under condominium ownership, land is not actually divided or transferred and "neither the submission of property to the provisions of this chapter (ORC Chapter 5311) nor the conveyance or transfer of a condominium ownership interest constitutes a subdivision within the meaning of, or is subject to Chapter 711 of the Revised Code" (ORC 5311.02).

The Attorney General has ruled (OAG 86-074) that condominium property is exempt from any platting requirements that may be imposed under ORC Chapter 711 and that the county or regional planning commission has no authority to review condominium plats. Likewise in a city case, the court ruled that a city could not attempt to redress

alleged deficiencies in a condominium development using its subdivision ordinance (*Ohio Mall Contractors, Inc. v. Dickinson, 65 Ohio App. 3d 806).*

Some developments that purport to be a "condominium development," and thus exempt from subdivision regulations, may not actually be a condominium under Ohio law. For example, "property can not be qualified as a condominium...where it consists of a group of lots, where each lot is intended for private ownership and where the "common areas" consist primarily of roads and similar types of commonly used property (OAG 71-031).

At times, particularly in small counties, a developer may attempt to exclude review of his development under the county's subdivision regulations by calling it a condominium, planned development or other fancy term. Legal advice should be obtained in such instances to determine if the development does actually fall within the jurisdiction of the subdivision regulations.

88.31 LAND CONTRACT SALES

One problem area that often arises is the relationship of subdivision regulations to sales of land by executory contracts, commonly referred to as land installment contracts. A problem arises because at the time of the execution of the contract, no land is actually being transferred although the execution of the contract anticipates a future transfer of ownership. It would thus seem prudent to assure that the division that is anticipated by the land contract complies with the subdivision regulations so that the lot will meet the requirements of the regulations when actual transfer of ownership occurs.

The vendor of any land installment contract that contains a metes and bounds legal description must obtain the approval of the county engineer on the contract when the engineer reviews the description as required by law, effective March 19, 1993 (ORC 5313.02). In addition, all land contracts executed after September 29, 1961 must be recorded by the county recorder (ORC 317.08(A)(2)(b) and 5301.25). The law also requires the vendor to deliver a copy of the contract to the county auditor within 20 days after the contract has been signed by both parties (ORC 5313.02).

Although there have been no formal legal rulings on the issue, a land contract might fall under the definition of a subdivision which deals with divisions of land ".....for the purpose, whether immediate or future, of transfer of ownership...." (ORC 711.001).

It might thus prove helpful, with the agreement of the county engineer, to have land contracts referred to the planning commission to assure conformance to lot size and other related requirements. Such a voluntary procedure could insure that the purchaser will be able to receive a deed when all payments are completed and the actual transfer occurs. It may also minimize variances that are often requested later.

In addition, many counties require land contract sales to comply with land conveyance standards adopted jointly by the county engineer and the county auditor pursuant to

ORC Section 319.203.

Likewise, it might be helpful to work with the county auditor and recorder in a similar manner, although since the contract is executed prior to the time it is filed for recording and transmittal to the auditor, this may be too late in the process to assure that the contract conforms to lot area and other requirements. It is recommended that provision for land contracts be included in locally adopted subdivision regulations. For further information refer to Chapter 5313 of the Revised Code - Land Installment Contracts.

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[1] Meck, Stuart and Pearlman, Kenneth, Ohio Planning and Zoning Law. Baldwin's Ohio Handbook Series, Thompson/West Publishing, Cleveland, Ohio, 2005