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# COUNTY ADVISORY BULLETIN

CAB

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**Bulletin 2002-06**

**September 2002**

## **HOUSE BILL 366 AUTHORIZES COUNTIES AND TOWNSHIPS TO ADOPT ACCESS MANAGEMENT REGULATIONS**

EFFECTIVE DATE: October 24, 2002.

REVISED CODE SECTIONS AFFECTED: 711.131 (Amended);  
5552.01 to 5552.11 and 5552.99 (Enacted).

LEAD SPONSOR: Core (R-Rushsylvania).

HOUSE CO-SPONSORS: Kearns (R-Springfield), Hollister (R-Marietta), Hagan (D-Alliance), Reinhard (R-Bucyrus), Willamowski (R-Lima), Lendrum (R-Huron), Flowers (R-Canal Winchester), Roman (R-Akron), Carano (D-Youngstown), Coates (D-Cincinnati), Distel (D-Conneaut), Fessler (R-New Carlisle), McGregor (R-Gahanna), Otterman (D-Akron), Schmidt (R-Loveland), Setzer (R-Vandalia), Sferra (D-Warren), Stapleton (R-Washington Court House), Strahorn (D-Dayton), Widowfield (R-Cuyahoga Falls), Sulzer (D-Chillicothe), Seitz (R-Cincinnati), Ogg (D-Scioto), Allen (D-Dayton), Niehaus (R-New Richmond), Metzger (R-New Philadelphia), Schneider (R-Cincinnati), Fedor (R-Toledo), Seaver (D-Minster), Peterson (R-Delaware), Latell (D-Girard), Damschroder (R-Fremont), Perry (R-Toledo), Manning (R-North Ridgeville), Calvert (R-Medina), and Womer Benjamin (R-Aurora).

### **INTRODUCTION**

After nearly five years of development and negotiation with a variety of interest groups, counties and townships have been granted specific enabling authority to enact access management regulations. The law in this area had been unclear, and as a result, there has been inconsistency among the counties. Some counties had been exercising this authority while others have not due to concerns from their county prosecutor. Therefore, various local government associations united to provide very clear statutory authority to counties and townships.

The enactment of Substitute House Bill 366 (Sub. H.B. 366) implements a CCAO legislative agenda item that has been standing policy of the Association for a number of years. It follows the development of legislation by CCAO staff and a variety of changes to make the bill acceptable to the County Engineers Association of Ohio (CEAO), the Ohio Townships Association (OTA), the Ohio Municipal League (OML), the Ohio Homebuilders Association, the Ohio Realtors Association, and the Ohio Department of Transportation (ODOT), to name the major “players.”

The legislation was sponsored by Rep. Tony Core (R-Rushsylvania). He worked to refine the legislation and develop a consensus on the bill after the death of his father, the late Rep. Ed Core, a former Logan County Commissioner, who originally worked with CCAO on the legislation. Governor Bob Taft signed the bill on July 25, 2002, and the act is effective on October 24, 2002. The purpose of this county advisory bulletin (CAB) is to explain the provisions of the new law relative to counties, which establishes Chapter 5552 of the Ohio Revised Code (ORC).

## **WHAT IS ACCESS MANAGEMENT?**

In general terms, access management is the regulation of traffic to and from roadways to minimize disruption to the roadway’s intended function and to minimize conflicts to traffic movement. More specifically, access management is a formal, structured program to coordinate and maintain the safety and capacity of the arterial and collector street system, while providing necessary vehicular access to adjacent lands (i.e., driveways/curb cuts and cross streets).

If principles of access management are used as a guide to planning and design of access points along a developing roadway corridor, adequate property access can be provided and the capacity of the roadway can be maintained, at a relatively low cost. If, however, the construction of access points occurs at random, with little thought given to long-term impacts, it will be very costly, and perhaps impossible, to correct the situation once development is complete.

### Elements of Access Management

Elements of access management may include:

1. Classification hierarchy based on function.
2. Maintaining functional integrity.
3. Set access level by class and adjust type, design, location, and frequency by class.
4. Define and apply appropriate design criteria to each class.
5. Establish uniform permit procedures ensuring equitable treatment.

## Common Techniques of Access Management

Common techniques of access management may include:

1. Provide right turn lanes.
2. Provide left turn lanes.
3. Provide two-way left turn lanes.
4. Install median.
5. Close median.
6. Install frontage road.
7. Install/modify traffic signals.
8. Widen driveways and improve storage areas.
9. Consolidate driveways.
10. Relocate or reorient access.
11. Close driveway.
12. Redesign internal road and parking system.
13. Replacing curb parking with off-street parking

## Benefits of Access Management

Benefits of access management include:

1. Fewer accidents. (50-60% of accidents are access related, i.e., involving vehicles turning in and out of driveways and cross streets.)
2. Increased capacity. (Every access point contributes to the deterioration of the roadway system, and these impacts increase geometrically over time, as both traffic volume and number of access points increase. And after the problem is evident, it is too expensive and late to fix it.)
3. Shorter travel time and more efficient. (40% of all network-wide fuel consumption is attributable to vehicles stopped and idling at traffic signals.)

## **GENERAL SUMMARY OF THE LEGISLATION**

H.B. 366 allows boards of county commissioners and boards of township trustees to adopt access management regulations for the purposes of promoting traffic safety and efficiency and maintaining proper traffic capacity and traffic flow. County access management regulations generally apply to both county and township roads in the unincorporated area of the county. In addition, the same regulations that apply to county roads must also apply to township roads. Township access management regulations apply only to township roads in the unincorporated area of the township.

Given the fact that both counties and townships are given the same basic enabling authority under the act, the legislation includes special provisions to assure that either county or township regulations will apply, not both. A subsequent section of this CAB will explain these special provisions that determine whether county or township regulations apply to the roads in the unincorporated area of the county. Also included later in the CAB are the procedures required for the consideration and adoption of access management regulations. The legislation includes different provisions that are applicable to urban townships and other townships, which we will refer to as non-urban townships.

Once access management regulations are adopted, a county or township may regulate any construction, reconstruction, use, or maintenance of any point of access from public or private property onto those roads. Generally, the regulations cannot affect any access point that exists or on which construction has begun before the regulations become effective. However, once adopted, those regulations can affect the reconstruction or relocation of access points and can apply when land use is changed in a way that significantly increases the types of traffic or traffic volume on a street or highway. (ORC 5552.02(A) and (B) and 5552.11(A) and (B)).

Access management regulations may require the issuance of permits, including interim and temporary permits. If county commissioners or township trustees adopt regulations that require permits, the regulations must include standards that will be used for the approval or denial of a permit. Any regulations regarding the approval or denial, and must specify a reasonable period of time for the approval or denial of a permit, and must provide that a failure to approve or deny, in whole or in part, any permit, license, or other approval sought within that period constitutes a granting of approval for the permit, license, or other approval. (ORC 5552.02(A) and (B), and 5552.08.)

County access management regulations must, to the extent possible, be consistent with county zoning regulations and must be coordinated with any existing township zoning regulations. Township access management regulations must, to the extent possible, be consistent with any county or township zoning regulations that are in effect in the township (ORC 5552.03(E)).

Access management regulations also must designate a board to do the following: (1) to hear appeals from any administrative official's order or other action in their enforcement; and (2) to grant variances from the regulations due to special conditions, if the variances

are not contrary to the public interest. Violation of the regulations will result in a fine of not more than \$500 for each offense, and each day of violation is a separate offense. (ORC 5552.07 and 5552.99.)

### **PURPOSE OF ACCESS MANAGEMENT REGULATIONS ESTABLISHED UNDER HOUSE BILL 366**

Access management regulations may be adopted for the following specific purposes under the statute:

1. To promote traffic safety.
2. To promote traffic efficiency.
3. To maintain proper traffic capacity.
4. To maintain proper traffic flow.

(ORC 5552.02 (A) & (B))

### **IMPACT ON STATE AND MUNICIPAL ROADS, STREETS AND HIGHWAYS**

As was previously stated, county and township access management regulations apply only to county or township roads in the unincorporated area of the county or township. The act specifically provides that the county or township access management regulations or amendments to the regulations do not apply to:

1. The state highway system. In addition, such regulations do not modify any access management standards or procedures of ODOT under ORC Sections 5501.31 and 5515.01 (ORC 5552.11(C)).
2. To any streets, highways or other roadways located in a municipal corporation (ORC 5552.11(D)).

### **APPLICATION OF ACCESS MANAGEMENT REGULATIONS**

The application of county or township access management regulations are governed by the following provisions of the new law:

1. Access management regulations do not apply to subdivisions that are subject to plat approval under ORC Sections 711.05 or 711.10. Under this provision, platted "major subdivisions" are not subject to the new regulations. The statute also provides that nothing in ORC Chapter 5552 limits the authority granted in the subdivision law to provide for the proper arrangement of streets or other highways in relation to existing or planned streets or

highways or to the county or regional plan (ORC 5552.03(A)).

2. Access management regulations do apply to subdivisions subject to approval without a plat under ORC Section 711.131. Under this provision, “minor subdivisions” or “lot splits” are subject to access management regulations.

In addition, the act amends ORC Section 711.131 to specifically require the designated representative of a county or regional planning commission to assure that the “lot split” is not contrary to access management regulations as a part of the “minor subdivision” approval process (ORC 5552.03(B) and 711.131).

The law also specifies that if the regulations apply to a “minor subdivision” and an access management permit request is filed pertaining to it, the access management permit must be approved or disapproved within the 7 day approval period for “minor subdivisions” under ORC 711.131 (ORC 5552.10).

3. Access management regulations do apply to any parcel of property that is not subject to regulations adopted under ORC Chapter 711. Under this provision of the act, the regulations apply to parcels of land that are not defined as subdivisions under ORC Section 711.001, which generally means parcels over five acres in area.

### **SPECIAL PROVISIONS TO DETERMINE WHETHER COUNTY OR TOWNSHIP ACCESS MANAGEMENT REGULATIONS APPLY**

Because both counties and township are granted the same general enabling authority to adopt access management regulations, the new law includes special provisions to guarantee that either county or township regulations apply to county and township roads, not both.

In addition, the act includes different provisions as it relates to urban townships. An urban township is a township that has a population in the unincorporated area of the township of at least 15,000 and has adopted a limited home rule government under ORC Section 504.02.

Following is a summary of the special provisions as they relate to non-urban townships and urban townships:

#### **Non-Urban Townships**

Non-urban townships may not adopt township access management regulations if the county has adopted county access management regulations. Essentially, county regulations take precedence over non-urban township access management regulations. A non-urban township may initiate the process to adopt township access management

regulations if the county has not taken action to initiate the process of adopting county access management regulations before October 24, 2003. In addition, if a county initiates the process to adopt county access management regulations before October 24, 2003, but does not actually adopt the regulations within one year of that date, a non-urban township may then proceed to initiate the process to adopt township access management regulations. (ORC 5552.02 (A) and (C))

In addition, if a non-urban township adopts township access management regulations in the absence of county regulations and the county subsequently adopts regulations, the township's access management regulations become void one year after the effective date of the county regulations. Likewise, the county regulations apply to such a township one year after the effective date of the county regulations. (ORC 5552.02 (C))

The law also allows the board of township trustees to adopt a resolution to make the township access management regulations void on an earlier date. If the township chooses to take this action, it must notify the board of county commissioners of the earlier date by sending a certified copy of the resolution to the commissioners. (ORC 5552.03(C))

### Urban Townships

In the case of township roads in an urban township, the access management regulations adopted by an urban township take precedence over county access management regulations on such township's roads. An urban township may adopt regulations at any time, and need not wait for the county to adopt county regulations or initiate the process to adopt county regulations, as is the case for non-urban townships.

If an urban township adopts access management regulations after the county has adopted its regulations, the county's regulations remain in effect on township roads for one year after the effective date of the urban township access management regulations. The board of county commissioners may, however, establish an earlier expiration date for the county regulations on township roads to expire within the urban township.

The urban township regulations would then apply to township roads in the township, but the county regulations would continue to apply to county roads in the urban township. (ORC 5552.03 (D))

## **PROCEDURE FOR THE ADOPTION OF COUNTY ACCESS MANAGEMENT REGULATIONS**

### Initiation of the Process

The process of adopting county access management regulations may be initiated in the following ways:

1. The board of county commissioners may adopt a resolution on its own initiative proposing the consideration of access management regulations.

2. The board of county commissioners must adopt a resolution proposing the consideration of access management regulations if the county engineer certifies to the board a request in writing.
3. The board of county commissioners must adopt a resolution proposing the consideration of access management regulations if a majority of boards of township trustees in the county certify resolutions to the commissioners requesting the county to do so.

#### Adoption of Resolution to Proceed

The first step in the process of adopting access management regulations is for the board of county commissioners to adopt a resolution proposing the consideration of county access management regulations. This resolution shall include a request for the county engineer to draft proposed regulations.

#### Appointment of Advisory Committee

Upon adopting the resolution to proceed, the county commissioners appoint an advisory committee to review the county engineer's proposed access management regulations. Mandatory members of the advisory committee include:

1. The county engineer or his designee.
2. A registered surveyor in private practice.
3. A representative of the homebuilding industry.
4. A licensed realtor.
5. A representative of the county or regional planning commission.
6. A professional engineer with expertise in traffic engineering.
7. A representative of the Metropolitan Planning Organization (MPO), where applicable. An MPO must be designated under Section 9(a) of the Federal Highway Act of 1962.
8. At least three township trustees from the county. The county township trustees and clerks association select the three trustees.
9. A member of the board of county commissioners, and
10. Any other persons the board of county commissioners chooses to appoint.



## Preparation of Access Management Regulations

After adoption of the resolution to proceed, the county engineer prepares a set of proposed regulations. When the engineer has completed his proposal, he must send a copy to the members of the advisory committee. This transmittal shall include a notice of the time and place of the initial meeting of the advisory committee. The meeting must take place within 30 days of the completion of the proposed regulations.

At the initial meeting of the advisory committee, the committee shall select one member to serve as the chair of the committee.

## Transmittal to Board of County Commissioners

The advisory committee then reviews the engineer's proposed access management regulations, and within 270 days after the initial meeting of the advisory committee, must provide the board of county commissioners with the following:

1. A copy of the regulations originally proposed by the county engineer.
2. The advisory committee's recommendations about each of the proposed regulations.
3. Any other recommendations about the access management regulations the committee considers appropriate.

(ORC 5552.04)

## Public Hearings by the Board of County Commissioners

Prior to adopting the regulations, the commissioners must hold at least two public hearings. The hearings may be held at either a regular or special session of the board.

Notice of the public hearings must be published in a newspaper of general circulation in the county once a week for at least two weeks immediately preceding the hearings. The notice must include the date, time and place of each hearing. In addition, copies of the proposed regulations shall be made available to the public at the board's office, and if the county engineer is proposed to administer the regulations, in the county engineer's office.

In addition to this notice, at least 30 days before holding the public hearing, the county commissioners must send a copy of the engineer's proposed regulations and a copy of the advisory committee's recommendations, and a request for written comments to:

1. The board of township trustees of each township in the county.
2. The ODOT district deputy director.

3. The MPO, where applicable.
4. At a minimum, the following local professional associations representing:
  - a. Homebuilders.
  - b. Realtors.
  - c. Professional surveyors.
  - d. Attorneys.
  - e. Professional engineers.

(ORC 5552.06)

#### Adoption of Access Management Regulations by County Commissioners

Prior to adoption of the access management regulations, the commissioners must consider the county engineer's proposed regulations and all comments on the regulations. After the public hearings, the commissioners have discretion to adopt any or all of those proposed regulations, or they may decide not to adopt any access management regulations. (ORC 5552.06)

If the commissioners adopt the regulations, they become effective on the 31<sup>st</sup> day following their adoption, unless another date is indicated in the regulations. The commissioners must then publish a notice of their adoption in at least one newspaper of general circulation in the county within 10 days of the adoption of the regulations. The notice must include a statement that the regulations are available at the board's office. A copy of the adopted regulations must also be provided to the ODOT district deputy director. (ORC 5552.09)

Attached at the end of this CAB are procedural flow charts showing the major steps in the adoption of county access management regulations.

Finally, the same general adoption procedure applies when a board of township trustees adopts access management regulations. In this case, a county commissioner serves on the township advisory committee and the county engineer also has significant involvement in the process of adopting township access management regulations.

#### **OTHER PROVISIONS OF THE LEGISLATION**

##### Administration of Access Management Regulations

The law specifies that the board of county commissioners must designate the county engineer to administer county access management regulations. In the event the county engineer declines to administer the regulations, the commissioners may designate another person or a planning commission to administer the access management regulations.

If a board of township trustees adopts access management regulations, the board may administer the regulations or may appoint the township clerk or any other person to administer them, with the advice of the county engineer. (ORC 5552.10)

### Appeals and Variances

County access management regulations must include the designation of a board to hear and decide appeals and variances. This appellate board may be a separate new board provided for in the regulations or it may be some other board, including the board of county commissioners, acting in an administrative capacity. If the board of county commissioners serves as the appellate board, appeals of its decisions would thus become subject to appeal under ORC Chapter 2506 to the court of common pleas and would not be subject to a referendum.

The appellate board would hear appeals where it is alleged that the administrative official of the access management regulations made an error in the enforcement of the access management regulation.

The appellate board would also hear requests from applicants for variances from the regulations. Variances to the regulations can be granted if not contrary to the public interest and where, owing to special conditions, a literal enforcement of the regulations will result in unnecessary hardship, and so that the spirit of the regulations will be observed and substantial justice done. (ORC 5552.07)

### Provisions Related to Access Management Permits

An access management permit must prescribe permitted uses and limitations on the permit. Once a permit is issued, no modifications or amendments to the permit are possible. If an applicant wants changes from a previously approved access management permit, the applicant must apply for a new permit. The new permit then supercedes the original permit. (ORC 5552.08)

### Fees For Permits

The act specifically authorizes the county to charge a fee for the processing of a permit. The amount of the fee, however, may not exceed the actual cost of administering the access management permit. (ORC 5552.08)

### Amendments to Access Management Regulations

Once a board of county commissioners has adopted access management regulations, they may be amended. ORC 5552.06 specifically requires county commissioners to hold two public hearings on the proposed amendments and to make the amendments available for review at the board's office. It is unclear under the statute whether the advisory committee must be convened and whether various other provisions required when originally adopting regulations must be met. In such instances, we recommend that you get a ruling from the

county prosecutor, however, full compliance with the procedures required for original adoption should eliminate any question. (ORC 5552.06)

## **SUMMARY CHECKLIST ON THE CONTENT OF ACCESS MANAGEMENT REGULATIONS**

While the law is a basic enabling statute for the adoption of county access management regulations, the statute does include some specific provisions that must be included in the body of the regulations. County access management regulations should include the following specific provisions to comply with the statute:

1. The regulations must be for the purpose of promoting traffic safety and efficiency and to maintain proper traffic capacity and flow.
2. County access management regulations apply to only county and township roads in the unincorporated area of the county. The regulations do not apply to streets, roads or highways within municipal corporations or to roads on the state highway system.
3. The same access management regulations that apply to county roads must also apply to township roads.
4. Urban township access management regulations take precedence over county access management regulations on township roads.
5. The regulations do not apply to platted “major subdivisions,” but do apply to “minor subdivisions” or “lot splits.” The regulations also do apply to parcels that are not defined as subdivisions under ORC Section 711.001, which generally means parcels over five acres in area.
6. County access management regulations may regulate any construction, reconstruction, use or maintenance of any point of access from public or private property onto county or township roads.
7. Access management regulations must, to the extent possible, be consistent with existing county zoning regulations, and must be coordinated with existing township zoning regulations.
8. The regulations may not apply to any access point that exists or on which construction has begun prior to the effective date of the regulations.
9. The regulations may affect the reconstruction or relocation of access points and can apply when land use is changed if the land use change significantly increases the types of traffic or traffic volume on the street or road.
10. County access management regulations may require the issuance of

permits, including temporary or interim permits.

11. The regulations may provide for charging a permit fee, but the amount of the fee may not exceed the actual cost of administering the regulations.
12. If the regulations require permits, the regulation must also include standards that will be used for the approval or denial of permits.
13. The regulations must include a reasonable period of time for the approval or denial of a permit, and must include a provision that failure to grant or deny the permit within that time period constitutes the granting of the permit.
14. Access management permits must prescribe the permitted uses and limitation of the permit. Amendments or modifications to a permit are not allowed. Changes sought to a previously granted permit require the applicant to apply for a new permit that supercedes the original permit.
15. The regulations must designate a board to hear appeals and variances to the regulations. The appellate board may be the board of county commissioners, however, if the regulations so provide, the board of county commissioners are acting in an administrative capacity.
16. Violation of the regulations will result in a fine of not more than \$500, and each day of violation is considered a separate offense.
17. The board of county commissioners must designate the county engineer to administer county access management regulations, unless the engineer declines. In this event, they may designate another person or a planning commission to administer the regulations.

## **ACKNOWLEDGEMENTS**

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