



COUNTY ADVISORY BULLETIN

CAB

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CHANGES TO THREE MILE MUNICIPAL SUBDIVISION AUTHORITY

INTRODUCTION

With the enactment of Substitute House Bill 22 (HB 22) municipalities will no longer have much of the authority they had under previous law to approve subdivisions in the unincorporated area of the county. Cities had the authority for three mile extra-territorial subdivision approval since at least the 1920's. Villages were granted a limited one and one half mile jurisdiction in the 1970's

The legislation was sponsored by Rep. Mike Wise (R-Mayfield Village), and was supported by CCAO and the Ohio Township Association (OTA). HB 22 was signed by Governor Voinovich and will become effective on October 21, 1997.

This CAB will explain the new provisions of law relating to extra-territorial jurisdiction and will also offer some suggestions for implementation. HB 22 also made some minor changes in law relating to the authority to assure that plats comply with county or township zoning regulations. A copy of HB 22 in Act form is included at the end of this CAB. This CAB will also discuss this issue.

EXTRA-TERRITORIAL CITY SUBDIVISION REGULATION AUTHORITY

Under former law cities had the right to approve plats within three miles of the city. In order to exert this extra-territorial control the city had to 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 area. If the land was within three miles of more than one city, the one closest had jurisdiction.

Thus, under former law, the city had the exclusive right to approve plats within three miles of their boundaries unless:

1. There were five or more cities in the county 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); and

2. The municipality and the county or regional planning commission had entered into a written agreement "...that approval of the plat...shall be conditioned upon receiving advice or approval by the county or regional planning commission."

With the enactment of HB 22 cities no longer may 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.

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

EXTRA-TERRITORIAL VILLAGE SUBDIVISION REGULATION AUTHORITY

Former law granted villages the right to approve plats within one and one half miles of the village. Like cities, a village also had to adopt a street and park plan. In the case of villages, however, the 1 1/2 mile jurisdiction only applied to villages located in counties that contained no city and that had not adopted subdivision regulations.

In addition to the limitations above, HB 22 established the following restrictions on villages' authority to exert 1 1/2 mile extra-territorial jurisdictions:

1. If the township that is within 1 1/2 miles of the village is covered by a county or township zoning resolution; and
2. If the county has a county or regional planning commission, then the village has no extra-territorial jurisdiction.

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 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 the basic municipal 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 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 prosecutor should be obtained first. In particular, refer to OAG 75-085.

COMPLIANCE WITH COUNTY OR TOWNSHIP ZONING AS A PART OF SUBDIVISION REGULATIONS

Under former law (ORC 711.05 and 711.10), county subdivision regulations could, as a condition for approval of a plat, require compliance with township zoning resolutions regarding lot size, frontage, and width. HB 22 broadens this authority in two respects:

1. The county subdivision regulations may now require compliance with both county and township zoning; and
2. If the county subdivision regulations require compliance with county and township zoning, the regulations can now require proof of compliance with any requirements in the zoning resolutions, not only compliance with lot size, frontage and width.

It should be noted that current law, which is not changed, also allows the subdivision regulations to “require the county department of health to review and comment on a plat...” It thus appears that a planning commission can reject a plat if it does not comply with zoning, but it is questionable whether a plat can be disapproved because of negative comments from a health department.

While ORC 711.05 and 711.10 deal primarily with plats, compliance with zoning for lot splits is also contained in current law. ORC 711.131 currently provides that lot split approval is allowed if the “...proposed division is not contrary to applicable platting, subdividing, or zoning regulations...” It is now clear that county subdivision regulations may require compliance with county and township zoning regulations for both platted major subdivisions and for minor subdivisions or “lot-splits.” While ORC 711.131 does not specifically mention county health department regulations, many counties still require a certification from the health department that the lot is acceptable for on-lot treatment as a condition of approval.

Finally, counties should note that in all cases the locally adopted subdivision regulations must specifically include provisions relating to the requirement of compliance with zoning as a condition of plat approval in order to implement this authority. What is authorized in ORC 711.05 and 711.10 is only enabling language. In order to implement the authority, local subdivision regulations may have to be amended.

ACKNOWLEDGMENT

The purpose of this CAB has been to provide a general summary of Sub HB 22. A copy of the final bill should also be obtained and reviewed. CCAO thanks the following for their review of this bulletin: Mike Cochran, Ohio Township Association; Mike Juengling, Butler County Planning Director; and Vince Squillace, Ohio Home Builders Association.