



1

Sub. S.B. 115

125th General Assembly
(As Passed by the Senate)

Sen. Robert Gardner

BILL SUMMARY

- Changes the definition of "subdivision" in the Subdivision Law.
- Changes the procedure for the approval of plats by county or regional planning commissions.
- Provides different methods for implementing the statute authorizing the approval of certain subdivisions without the submission of a plat.
- Authorizes the payment of compensation to the appointive members of county or regional planning commissions.

CONTENT AND OPERATION

Background

The Subdivision Law (Revised Code Chapter 711.) provides that the division of some tracts of land must be platted (mapped) and is subject to regulations adopted by a local government for securing and providing for (1) the coordination of the streets within a subdivision with existing streets, roads, or highways, (2) the proper amount of open spaces for traffic, circulation, utilities, access of fire-fighting apparatus, recreation, light, and air, and (3) the avoidance of future congestion of population detrimental to the public health, safety, or welfare. Proof of compliance with local zoning ordinances and comments by the health commissioner also may be required. (Secs. 711.05, 711.09, and 711.10.) Only land located in areas where subdivision regulations as described above have been adopted is subject to the Subdivision Law (sec. 711.40).

Land covered by the Subdivision Law

Existing law

Generally, the Subdivision Law covers the following situations (sec. 711.001):

(1) The division, for the purpose of immediate or future transfer of ownership, of any parcel of land into two or more parcels, any one of which is less than *five* acres, but not including (a) parcels of more than *five* acres not involving any new streets or easements or (b) a sale or exchange of parcels between adjoining lot owners that does not create additional building sites;

(2) The improvement of one or more parcels of land for residential, commercial, or industrial structures involving the division or allocation of land for the opening, widening, or extension of any street or streets, except private streets that serve industrial structures;

(3) The division or allocation of land as open spaces for common use by owners, occupants, or leaseholders or as easements for the extension and maintenance of public sewer, water, storm drainage, or other public facilities.

Ohio law requires the preparation and recording of a plat whenever a subdivision is laid out. Local authorities may adopt rules governing the approval of plats for property under their jurisdiction. (Secs. 711.001 and 711.01.)

Changes proposed by the bill

The bill retains the three elements of the definition of "subdivision" explained above except that (a) it applies the Subdivision Law to divisions of land into two or more parcels, any one of which is less than *twenty* (instead of *five*) acres, and (b) it provides that the Subdivision Law would apply to divisions or allocations of land for the opening, widening, or extension of any *public or private* street (except, as under existing law, private streets serving industrial structures) or as easements for the extension and maintenance of *private* (as well as public) sewer, water, storm drainage, or other similar facilities (sec. 711.001).

Plat approval by county or regional planning commissions

Existing law

One local authority having plat approval authority is a county planning commission or regional planning commission. Whenever a county or regional planning commission adopts a plan for the major streets or highways of the county or region, no plat of a subdivision of land under its jurisdiction generally can be



recorded until it is approved and written approval of the commission is endorsed on the plat. Under existing law, within five days after the submission of a plat for approval, the commission must schedule a meeting to consider the plat. The meeting must occur within 30 days after submission of the plat, but at least seven days must pass after written notice of the meeting is sent to the appropriate board of township trustees before the meeting can be held. The approval of the commission or its refusal to approve generally must be endorsed on the plat within 30 days after submission of the plat for approval. (Sec. 711.10.)

A county or regional planning commission is not permitted to require a person submitting the plat to alter the plat or any part of it as a condition for approval. If approval is refused, the ground of refusal, including citation of or reference to the rule violated by the plat, must be stated on the record of the commission. Within 60 days after a refusal of approval, the person submitting the plat may petition the court of common pleas and subsequently may appeal the court's decision on questions of law as in other civil cases. (Sec. 711.10.)

Changes proposed by the bill

The bill changes the approval procedure of county or regional planning commissions by authorizing those commissions to require the submission of a *preliminary* plan for each plat sought to be recorded. If a commission requires this submission, it must provide for a review process for the preliminary plan. Under the review process, the commission must give its approval, its approval with conditions, or its disapproval of each preliminary plan. The commission's decision must be in writing, must be under the signature of the secretary of the commission, and must be issued within 35 business days after submission of the preliminary plan to the commission.¹ The disapproval of a preliminary plan must state the reasons for the disapproval. A decision of the commission under this provision of the bill is preliminary to and separate from the commission's decision to approve, conditionally approve, or refuse to approve a plat after a final review process. (Sec. 711.10(B).)

Under the bill, within five calendar days after the submission of a plat for *final review*, a meeting to consider the plat must be scheduled to take place within 30 calendar days after submission of the plat. The bill authorizes a commission to give conditional approval as well as approval or refusal of a plat and requires it to endorse its decision on the plat within 30 calendar days after its submission. The bill authorizes a commission to grant conditional approval by requiring a person submitting the plat to alter the plat or any part of it within a specified period after

¹ The bill defines "business day" as a day of the week excluding Saturday, Sunday, or a legal holiday specified in state law (sec. 711.10(D)).



the end of the 30 calendar days as a condition for final approval. Once all the conditions have been met within the specified period, the commission must cause its final approval to be endorsed on the plat. No plat can be recorded until it is endorsed with the commission's final or unconditional approval under the provision for final review. (Sec. 711.10(C).)

Exemption from platting requirement

Existing law

Under existing law, even if the division of land meets the criteria described above for being subject to the Subdivision Law, an exemption is made for divisions of land into fewer than six lots under certain circumstances (see the following paragraph). The local subdivision authority must approve a conveyance of the land without a plat if it finds that the exemption conditions are met and that the division is not contrary to applicable platting, subdivision, zoning, or access management regulations or regulations pertaining to existing surface or subsurface drainage, although it may require submission of a sketch or other pertinent information. (Sec. 711.131.)

The exemption is for any proposed division of a *parcel* of land along an existing public street that (1) does not involve the opening, widening, or extension of any street or road and (2) involves no more than five lots after the *original tract* has been *completely subdivided*. The Revised Code gives little guidance in interpreting the terms used in this exemption. The Attorney General has defined some terms in order to interpret this law. An Attorney General opinion has defined "tract" as "a contiguous quantity of land (regardless of size) undivided by lot lines"; "original" tract as "a tract which has not been divided under its present ownership"; and "completely subdivided" as "a tract that is divided into as many lots as the subdivider intends for the tract." 1984 Op. Att'y Gen. No. 73. Thus, under this opinion, even though not all of the divisions occur at the same time, if the same owner or owners divide a tract of property into more than five lots, at that time when more than five lots result from the original tract, the entire original tract must be platted, even if some lots have been previously transferred.

Changes proposed by the bill

Under the bill, the exemption may be used to approve no more than five lots from an "original tract" *during any calendar year* unless the planning authority amends its general rules within the one-year period after the bill's effective date to limit its approval authority to no more than five lots from an original tract as that original tract exists on the effective date of the amendment to the general rules. If the planning authority so amends its rules, it must make the required findings and approve a proposed division in generally the same manner as



under existing law, and it cannot approve divisions on a calendar-year basis. (Sec. 711.131(A) and (B).)

Thus, in the case of amended rules, the "original tract" would be determined on the effective date of the amended rules, and thereafter that tract could be divided without a plat into no more than five lots. If a planning authority does not choose to amend its rules in this way, it may approve without a plat no more than five lots from an original tract each calendar year.

Under the calendar-year approach, the permissible number of lots that could be approved without a plat could increase exponentially. For example, assuming all divisions occur before the annual tax list and duplicate is prepared, in year one a tract is divided into five lots without a plat. In year two, each of those five lots is, under the bill's definition, an "original tract" that can be further divided into no more than five lots during any calendar year. So, in year two a maximum of 25 lots may be approved without a plat, and in year three a maximum of 125 lots may be approved without a plat, and so on for the one tract originally divided after the bill's effective date. Thus, because the bill defines an "original tract" as a tract, lot, or parcel of real estate as shown on the last preceding general tax list and duplicate prepared annually under current law, the five-lot exemption could apply to many more tracts, lots, or parcels. (Sec. 711.131(C)(2).)

In addition to current law's requirement that the planning authority find a proposed division is not contrary to applicable platting, subdivision, zoning, or access management regulations or regulations pertaining to existing surface or subsurface drainage, the bill requires the planning authority to find it is not contrary to health and sanitary regulations, including, but not limited to, rules governing household sewage disposal systems (see below). If the planning authority makes these findings, it must approve the proposed division within seven business days after its submission.² (Sec. 711.131(A).)

The bill defines "household sewage disposal system" as any sewage disposal or treatment system for a one-, two-, or three-family dwelling (sec. 711.131(C)(1) by cross-reference to sec. 3709.091, not in the bill).

Compensation to members of county or regional planning commissions

County planning commissions

Under current law, county planning commissions consist of the board of county commissioners (or their alternates) and eight citizen members appointed by

² "Business day," in this context, has the same meaning as in Footnote 1 (sec. 711.131(C)(3)).



the board of county commissioners (or their alternates). Appointive members serve for three-year terms without compensation. The bill provides that the appointive members of a county planning commission may be allowed their actual and necessary expenses and the compensation that the board of county commissioners determines to be appropriate. (Sec. 713.22.)

Regional planning commission

Under current law, the planning commissions of one or more municipal corporations, any board of township trustees, and the board of county commissioners of any county in which the municipal corporations are located or of any adjoining county may cooperate in the creation of a regional planning commission for any region defined as agreed upon by them, exclusive of any territory within the limits of a municipal corporation not having a planning commission. After the regional planning commission's creation, school districts and other units of local government may participate in it, upon the terms agreed upon by the planning commissions and boards. The number of members of a regional planning commission, their method of appointment, and the proportions of the *costs* of regional planning to be borne respectively by the various municipal corporations, townships, and counties in the region and by other participating units of local government must be determined by a majority of the planning commissions and boards. (Sec. 713.21.)

The bill specifies that costs of regional planning may include, but are not limited to, the compensation of and the actual and necessary expenses incurred by the appointive members of the regional planning commission who are not also holding another public office to which they were elected (sec. 713.21).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	07-31-03	p. 942
Reported, S. State & Local Gov't & Veterans Affairs	02-05-04	p. 1515
Passed Senate (33-0)	02-18-04	pp. 1559-1560

S0115-PS-125.doc/jc

