



DELAWARE COUNTY REGIONAL PLANNING COMMISSION

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Philip C. Laurien, AICP, Executive Director

****SUBDIVISION REGULATION PUBLIC HEARING MINUTES****

Thursday, March 30, 2006 at 7:00 PM

Delaware Hayes Services Building,

140 N. Sandusky Street, Conference Room G-35, Delaware, Ohio 43015

I. ADMINISTRATIVE BUSINESS

- **Call to order**

Chairwoman Foust called the meeting to order at 7:00 p.m.

- **Roll Call**

Representatives: Rick Sedlacek, Robert Hedrick, Fred Fowler, Jim Ward, Kris Jordan, Gary Gunderman, David Andrian, Holly Foust, Charles Heimlich, Dick Gladman, Larry Crile, Bill Thurston, Marvin Miller, Lloyd Shoaf, Tom Brown, Linda Castner, Robert Jones, Bonnie Newland, Mike Datillo, Larry Starling. *Alternates:* Bob Carpenter, Gary Spanner, Dusty Gurney, Pat Blayney, Dan Basham, and Eric Fischer. *Staff:* Phil Laurien, Scott Sanders, Paul Deel, Joe Clase, Da-Wei Liou and Stephanie Matlack.

II. 2006 SUBDIVISION REGULATION DISCUSSION

Chairwoman Foust explained that this meeting was called to discuss the proposed changes to the Delaware County Subdivision Regulations. She stated that the meeting would follow Roberts Rules of Order. The Chairperson may limit repetitive debate. She asked that all cell phones and pagers be turned off or turned to silent.

(Please note the minutes are a summary, not a verbatim account.)

Mr. Philip Laurien, Delaware County Regional Planning Commission, Executive Director: For many of those in attendance this will be the fourth discussion of the Subdivision Regulations. We began in 1999 to do a series of updates that we thought were necessary. It has finally culminated in the set that the Commission has received tonight. There is a set of the proposed regulations and a two page summary table (see attachments) to look at the highlights and then look at the detailed information in the Subdivision Regulations themselves. The process that we went through was first to discuss among the County's Technical staff (including staff from the Health Dept., Co. Engineer, Soil & Water Conservation, Co. Sanitary Engineer), in addition there was a second committee (Advisory Committee) made up of our clients, surveyors, engineers and attorneys. Both Committees worked with the staff for the last 6-7 years. In April 2005, state legislature passed Senate Bill 115 which provided for amendments to subdivision regulations for counties and regional planning commissions that act as the platting authority. One of the changes was an allowance for the establishment of a date for an original tract. The state legislature only gave the counties 2 years to act on that. So if you (the RPC) wanted to establish a date when an un-subdivided piece of property would be considered an original tract, you only have 1 more year remaining to come to that decision. We have had in effect for many years the regulation that you could split out, without platting, up to four lots in any calendar year from an original

tract. We had an opinion from an Attorney General that said that for the purposes of the statute the original tract started over every January 1st. There are issues relating to access to backlands and connectivity of streets. It's the one power that a Regional Planning Commission has and that is to provide for the connectivity of existing and future streets. We are hindered in doing that if we are not in the platting process and so our attorneys have advised us that we would be smart to establish a date for an original tract after which you would only get 4 lots. That was very confusing, highly controversial and was taken out last month. The version before this board tonight allows the original tract to begin every January 1st.

No Plat Approval process changes include the approval requirement of the Soil & Water Conservation District and the extent of grading and clearing. Topography contours would need to be provided at a 1 foot interval in the extent of the grading and clearing where there is going to be the sewage disposal system. The third item is to show areas within the 100 year floodplain and floodway. The County is part of the National Flood Insurance program and it's only appropriate that we make sure no one is building in the 100 year floodplain.

Common Access Driveway Subdivisions (CAD's): The staff agrees that there is a need for backland development. The current CAD allows for 3 lots on a 12 foot wide, 10 inch deep gravel driveway with a by-pass every 350 feet. There are CAD's with poor quality of gravel, dumped on top of the clay soil that very quickly become damaged. What we are looking for is something that is going to be built to a standard that will last 20 years. We are continually asked for a variance to do more than 3 lots on a CAD. The current regulations allow you to do an additional 2 lots if they are at the entrance to the CAD and have their legal road frontage on a public road (total of 5). We are proposing to allow 8 lots on a CAD in return for which we would like a minimum design standard by a civil engineer that it will last 20 years. There is a suggested minimum for the engineer to begin with. The standard would include a base of geo-grid material (fabric), then 6 inches of 304 gravel, then 2 inches of 404 asphalt. This design standard has come from staff, County Engineer's office, and from reviewing standards for minor, private streets in other jurisdictions. We feel comfortable that it is a fair trade off. There is no question that this will increase the cost but it also increases the maximum number of lots (from 5 to 8 lots). It also requires the seller to provide a 1 year warranty. The by-pass has been eliminated and the minimum width is 14 feet for up to 3 lots and 15 feet for 4 or more lots. The maximum length is 1,500', which is the maximum length for a cul-de-sac street. If they are longer than 1,500 feet, there is a very good likelihood it should be a public or private street with a stub to the next property so we can then make a connection to a future or existing road. A sign would also be required at the entrance of the CAD indicating the addresses within and the words "private drive".

Plats: Senate Bill 115 does specifically allow a preliminary and final review process for subdivisions. In the past, we have always presumed, but it did not specifically say it. The new regulations gives you up to 2 years to file a final once the preliminary plan is approved, with up to an additional year extension available. Then you have 5 years to get the remaining phases approved. The proposed regulations would require final plat applications to have all the required signatures on the plat at the time of submission. With regards to disapproved, expired or amended final plats (prior to recording) there are really no changes. But if there are specific changes to the plan (moving a road, altering the drainage) the engineer would have to submit a revised preliminary plan. Mr. Laurien asked if there were any comments or questions on those amendments to the Subdivision Regulations.

Karen Fichtelman (Meredith State Rd.) asked what if you don't want 6 lots on a CAD. If you only want 2, do you still have to pave it? Mr. Laurien stated under the proposed regulations, yes. You could ask for a variance. Depending on the situation the Commission may agree.

Larry Cline (1592 Cline Rd., Waldo) – Asked what the road frontage requirement was for the 2 frontage lots on the CAD. Mr. Laurien stated whatever the local zoning required.

Tim Dickens (Home Rd.) – Questioned what happens when you have 6 or 8 lots on a paved drive and the cement trucks and block trucks destroy the driveway when they begin building the homes. The developer or the land owner has warranted the road for a year. It will have to be paved twice. Is there any provision to put in the gravel until the homes are constructed then come back in and pave it later? Mr. Laurien stated that the standard subdivisions require that the roads be built (paved) in advance of the homes being built. Different jurisdictions handle that issue differently. Some would say you put down the base course and not put the wear course until the homes are done. The Regional Planning Commission can not hold a bond. And the Regional Planning Commission is the only entity that reviews the CAD. It's a private driveway. It's not a public street (which the County Engineer holds the bond for). Mr. Dickens said to enforce the maintenance of a paved driveway on a CAD would be a nightmare.

Bill Cox (1580 Burnt Pond Rd.) – Asked why we need CAD driveways? Mr. Laurien explained that Townships like rural character. Most people seem to think that CAD's with large lots on a long driveway are rural character. The road frontage gets eaten up pretty quick through the road frontage lot splits. It is a matter of local choice. If the local zoning doesn't permit them, then we can't permit them through the subdivision process. Mr. Cox stated the way Delaware County assigns addresses is too confusing and if it were more uniform (odd on one side of the street and even on the other) then the emergency vehicles wouldn't have as much problems finding homes in need of assistance. Mr. Laurien stated that he thought Mr. Cox was referring to the long, multiple (side by side) flag lots. With the proposed CAD regulations, that confusion could be eliminated. Mr. Cox said he talked to a contractor that told him a 15' wide driveway built to the new regulations would cost \$50 per foot. (1,500' driveway would cost \$75,000.00). Mr. Cox asked how many lots would he have to give away in order to suit the requirements of the Commission? Mr. Laurien stated that if you don't want to do a CAD you don't have to. Do a road frontage lot split or build a public or private road to County Standards. The CAD is a less expensive "escape valve" for creating frontage to backland and preserving rural character. Because you are creating an easement of access, it's a subdivision. So by state law for the last 50 years, that has required a plat and a standard to be established. Edgewater Estates (5 lot CAD subdivision) was a prototype CAD with the proposed regulations along the Scioto River. The cost as reported to us, for last year's construction was \$29 per linear foot (including the geo-grid base fabric, 6" of aggregate and 2" of asphalt on top. The road is over a year old and is holding up well. The extra cost to the developer was \$10,000.00. Those lots sold in the rage of \$90,000 - \$100,000 per lot.

E.J. Miller (1000 Miller Paul Road, Galena): Vice President of the Delaware County Farm Bureau. The Farm Bureau board asked him to come to this meeting on their behalf. For at least 20 years, Delaware County Farm Bureau has had a policy that there should be some mechanism to regulate 5 acre tracts. In other words, that they be pre-approved before they are subdivided, so many 5-20 acre lots were being sold that were not suitable building sites. Then because of so-called hardships they got built on. He urged the Commission to have the opportunity to look at a proposal for a building site. Anything less than 20 acres, you have to consider is probably a building site. He doesn't believe there is any organization that is stronger for private ownership of land than the Farm Bureau. He doesn't see any other costs being put into the process, just in a different order, which is before it gets sold. Too often the unsuitable lots get sold first because they are cheapest.

Gordon Williams (2157 SR 257 South, Ostrander): stated that he talked to John Kilbury of Edgewater Estates and he re-figured the cost at \$37/linear foot and not \$28. There is another subdivision called Willow Creek that was built to the same specifications and their driveway cost over \$65/linear foot. They used a generic type of fabric base. Neither subdivision has had houses built on them yet. It will be a test to see how the driveway gets repaired after the houses are built. He also stated his concern over the wording "unrestricted discretion" in the allowance of a CAD.

Mr. Laurien presented a power point presentation on large lot no plat applications. *(See attached.)*

Mr. Laurien said that he has been asked by several people, what is it going to cost. The costs for the application fees are shifting from the buyer to the seller. We estimate those fees as of today at \$680.00 per lot for lot sizes greater than 5 acres. \$205 for Regional Planning, \$200 to the County Engineer, \$200 Board of Health and \$75 (up to \$100) to Soil & Water Conservation District. This review adds value back to the seller.

Robert Jones (Sunbury Representative) asked if a property owner can currently get pre-approval from all the offices prior to the sale of the property without the new. Mr. Laurien said yes they could.

Chip Carpenter (Creek Rd., Sunbury) stated that he thought the Commission should table the vote on the Regulations in order to allow the new Director time to review the proposed amendments. He also asked if there has been a meeting held with all the Township Trustees and zoning officials to have the opportunity to review these rules. Mr. Laurien stated that there has not been a meeting with each and every one of the Township Trustees. The Township Trustees have no authority in this area. Typically the Township Zoning inspector is the Township Representative. Almost all the representatives from the Townships are either the Zoning Officer or a Trustee. The expectation is that the Representatives will carry back the message and discuss it with their Trustees. The only thing that has changed in the last 30 days is dropping the original tract and that was done at a public meeting.

Mr. Scott Sanders stated that he will be the Interim Director. There are three planners on staff. Paul Deel has been on staff for 9 years. I have for 4 ½ and Joe Clase has been for 7 years. We have been involved in these numerous meetings with all the subcommittees. He appreciated Mr. Carpenter giving him the opportunity to review the regulations, but at this point with all the review that has gone on he would agree with everything that is being presented.

Mr. David Shade (5165 David Rd., Delaware) stated that he has been in law practice for 33 years. He does a lot of real estate practice. He is concerned about his clients in the northern Townships. This document is not ready for adoption. The extent that the Commission is going to regulate the large lots should be done in a minimalist way. There is a concern about the process. He believes that the press release had misrepresentations concerning CAUV. The press release stated that local attorneys, developers, surveyors, real estate professionals were involved as an advisory committee. He was concerned at how recently have they been involved. Mr. Shade stated page 14, Section 207.01 General, the language needs to be revised to be clear as to what the intent is. The original tract definition on page 27 should read more clearly. There are two appendices (A & B), but the only references to the appendices are in the table of contents. Mr. Shade stated that Section 102.07 deals with making a change to an existing subdivision and doesn't know what statute of authority the RPC has. Mr. Shade pointed out two mis-numbered Sections including Section 102.07 which references Section 205.07 in error. Also, Section 200.01 there is an incorrect reference to Section 270. Section 210.01 incorrectly lists Ohio Revised Code 711.110 (B) (1). What is the correct reference? Mr. Shade agreed that the wording "unrestricted discretion" is inappropriate. He offered suggestions of "reasonable" or "sound" discretion. He believes that the provisions dealing with large lot splits should be discussed with the County Engineer's office. Limit the regulation to what you need to protect the innocent buyer.

David Brehm (37 Letts Ave., Sunbury) attorney for 12 years. When you affect property rights, you should do it in the least intrusive way possible. What is the rush to adopt these regulations? He stated that he has not had problems with unbuildable lots. He has had problems with maintenance agreement disputes. To the extent that this is justified by consumer protection, he would like to see empirical data.

Mike Forman (12090 Monkey Hollow Rd.) stated that he supports minimal review. He said that this review will take a land owner 3-6 months to obtain all the required approvals.

Larry Cline (1592 Cline Rd., Waldo) agreed the regulations should be the least restrictive. One thing farmers have been forced to do in tough times is sell off land for operating expenses. 2006 is going to be a challenge for farmers with 400% increase in the cost of nitrogen over the last few years. He asked if the March meeting in Marlboro Twp. was advertised because he was not aware of it. Mr. Laurien stated that he was asked to come to talk about the aspects of the subdivision regulations and about how the staff does comprehensive plans, if sometime in the future Marlboro, Radnor and Thompson Twp.'s, which have County zoning chose to do a joint comprehensive plan. What it would cost and how we would work it? The comprehensive plan

discussion was informal then we answered questions about the subdivision regulations. It would have been the Trustees' obligation to advertise their meeting.

Tim Dickens (Home Road) asked if the Health Department and Soil & Water Conservation issues were the only reason for the changes in the regulations then why not draft legislation that includes Soil & Water and the Health Dept. in approving 5 acre lots. He feels the regulations are too hard on the northern Townships.

Martin Forman (Sunbury) understands that it is not good to have multiple flag lots. He asked how many northern Townships allow multiple flag lots (more than 2) side by side. Mr. Laurien stated that those Townships that have County zoning allow for one flag lot then one frontage lot and so on. They do not allow side by side flag lots anymore. There are some Townships that do allow them (Scioto, Harlem). Mr. Forman agreed with Mr. Brehm that most of these problems can be solved within the Townships themselves with Zoning Regulation amendments. He also agreed with the elimination of the term "unrestricted" discretion.

Bill Cox (1580 Burnt Pond Rd.) read a passage from an encyclopedia regarding democracy.

Tom Divonovich (3186 Mt. View Rd.) disagrees with the term "unrestricted" discretion. He asked (at the last meeting) about the cost for a ditch set back if you have to do them. Mr. Blayney stated that the question asked at the March meeting was not the cost of the ditch setback but if the ditch set backs would be required on the large lot splits as they are on the current lot splits. That was answered on the screen in Mr. Laurien's presentation. Mr. Divonovich asked what the economic impact would be on the northern townships with regards to these large lot regulations.

Mr. Laurien stated that he respects attorney Shade's comments. He has pointed out certain typographical errors or incorrect references. He agreed the document should be looked at more carefully for errors and the ones pointed out tonight need to be corrected. He stated that members on both Committees and the County Prosecutor's office have reviewed this document. He said at the same time of correcting the typographical errors the term "unrestricted" discretion should be modified. If there are people that are interested in assisting, he suggested they contact the Regional Planning Commission and ask that they be part of a subsequent Sub Committee. He stated that there have been hundreds of hours spent on this document by the folks on the Advisory Committee, Technical Review Committee, Executive Committee and staff. When you are writing law you have to get it right, not only the intent but certainly the language.

Mr. Starling stated that he personally has a concern with the timing of the paving on the CAD. He agrees that part of the regulation needs to be further looked at.

Mr. Ward stated that there have been good points brought up and agrees that the regulations need to be further reviewed. He invited individuals who were interested to contact the Commission office to be included in the Sub-Advisory Committee.

Mr. Ward made a motion to adjourn the hearing. Mr. Andrian seconded the motion. VOTE: Unanimously For, 0 Opposed. Motion carried.

Hearing adjourned at 9:25 p.m.

Kolly Foust, Chairperson

Stephanie Mallack, Executive Administrative Assistant