STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
MARC DANN, ATTORNEY GENERAL

Opinions Section
30 E. Broad St., 15th Floor
Columbus, OH 43215-3428
Telephone: (614) 752-6417
Facsimile: (614) 466-0013
www.ag.state.oh.us

June 12, 2007

OPINION NO. 2007-013

The Honorable Ken Egbert, Jr.
Seneca County Prosecuting Attorney
71 South Washington Street, Suite 1204
Tiffin, Ohio 44883

Dear Prosecutor Egbert:

You have requested an opinion concerning the authority of a county to regulate aspects of surface and subsurface drainage in the process of approving the plat of a subdivision of land within the county. Based upon information provided by a member of your staff, we have restated your questions as follows:

1. Does a board of county commissioners or any other county official have statutory authority to adopt a rule or rules that regulate surface or subsurface drainage and that may serve as a basis upon which a regional planning commission in that county may deny approval of a plat?[1]

2. If the answer to #1 above is yes, to what extent can such surface and/or subsurface drainage issues be regulated through rules adopted through the board of county commissioners or any other county official?

---

[1] You have not explained your use of the term "surface and subsurface drainage." It is not possible to provide a comprehensive review of every method by which the state or local governments may regulate matters that may also indirectly affect surface or subsurface drainage of property within the unincorporated areas of a county. *See generally, e.g.*, *Miesz v. Village of Mayfield Heights*, 92 Ohio App. 471, 111 N.E.2d 20 (Cuyahoga County 1952) (finding that a municipality's regulation of the stripping and removal of topsoil from vacant property is related to the public health, safety, morals or general welfare, due, in part, to the regulation's effect upon maintaining proper drainage of such properties). This opinion, therefore, will focus on those regulatory powers of counties that most directly address surface and subsurface drainage.

3. If the answer to question one is no, does a county or township possess statutory authority, outside the scope of subdivision regulations, to regulate surface or subsurface drainage issues in relation to commercial or industrial developments and construction on parcels located in unincorporated territory of the county?

For the reasons that follow, we conclude that:

1. In accordance with R.C. 303.02(A), a board of county commissioners may adopt zoning regulations for the purposes, and concerning the matters, set forth in R.C. 303.02(A), and, to the extent such regulations affect the drainage of surface or subsurface waters, such regulations may not conflict with rules adopted by the Chief of the Division of Soil and Water Conservation under R.C. 1511.02(E), rules adopted by the county under R.C. 307.79, any constitutional limitations, or any other state or federal laws.

2. If a board of county commissioners properly adopts zoning regulations under R.C. 303.02(A) that affect surface or subsurface drainage, such zoning regulations may serve as a basis for a regional planning commission's approval of a plat only if the regional planning commission of which the county is part adopts a rule under R.C. 711.10(C) that requires that plats submitted to it under R.C. 711.10 prove compliance with applicable county zoning regulations.

3. If a board of county commissioners adopts rules under R.C. 711.101 that call for their administration by a regional planning commission and that establish the conditions described in that statute as requirements for plat approval, in those instances in which a regional planning commission is the plat approving authority under R.C. 711.10, the regional planning commission may require compliance, not only with the rules it adopts under R.C. 711.10(C), but also with the conditions established by the board of county commissioners under R.C. 711.101, as bases for approval of plats within that county.

To answer your questions, let us begin with a brief discussion of the statutory scheme governing the platting of subdivisions.

Platting of Subdivisions in Accordance with R.C. Chapter 711

As provided by R.C. 711.01:

> Any person may lay out a village, or subdivision or addition to a municipal corporation, by causing the territory to be surveyed, and by having a

> plat of it made by a competent surveyor. The plat[2] shall particularly describe the streets, alleys, commons, or public grounds, and all in-lots, out-lots, fractional-lots, within or adjacent to such village. The description shall include the courses, boundaries, and extent. (Footnote added.)

R.C. Chapter 711 establishes various methods for the approval of such a plat prior to its recording by the county recorder. *See, e.g.*, R.C. 711.041 (approval by county commissioners of plats of lands in unincorporated areas; not applicable to plats subject to approval under R.C. 711.09 or R.C. 711.10); R.C. 711.09 (approval of plats of land within certain municipalities); R.C. 711.10 (approval of plats by county or regional planning commission that has adopted a plan for the county or region).[3] The entity or official with the authority to approve a plat varies, depending upon the nature of the entities established for that purpose. *See, e.g., id.*[4]

---

[2] For purposes of R.C. 711.01, "plat" means "a map of a tract or parcel of land." R.C. 711.001(A). The word "subdivision," as used in R.C. 711.01, means either:

> (1) The division of any parcel of land shown as a unit or as contiguous units on the last preceding general tax list and duplicate of real and public utility property, into two or more parcels, sites, or lots, any one of which is less than five acres for the purpose, whether immediate or future, of transfer of ownership, provided, however, that the following are exempt:
>
> (a) A division or partition of land into parcels of more than five acres not involving any new streets or easements of access;
>
> (b) The sale or exchange of parcels between adjoining lot owners, where that sale or exchange does not create additional building sites;
>
> (c) If the planning authority adopts a rule in accordance with section 711.133 of the Revised Code that exempts from division (B)(1) of this section any parcel of land that is four acres or more, parcels in the size range delineated in that rule.
>
> (2) The improvement of one or more parcels of land for residential, commercial, or industrial structures or groups of structures involving the division or allocation of land for the opening, widening, or extension of any public or private street or streets, except private streets serving industrial structures, or involving 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 or private sewer, water, storm drainage, or other similar facilities.

R.C. 711.001(B).

[3] *See generally* R.C. 711.40 ("[u]nless required by rules and regulations adopted pursuant to the provisions of [R.C. 711.05, R.C. 711.09 and R.C. 711.10], the provisions of [R.C. 711.01-.39] shall not apply to the division of any parcel of land by an instrument of conveyance"); 1953

Establishment and Powers of Regional Planning Commissions

You have informed us that there is a regional planning commission in Seneca County. Your first question concerns the rule-making authority of a board of county commissioners or other county officials for use in the plat approval process by a regional planning commission that includes the commissioners' or other officials' county. Before examining the role of county officials in such process, we must understand the process dictated by R.C. 711.10, pursuant to which a regional planning commission approves or disapproves plats.

R.C. 713.21(A) provides for the creation of a regional planning commission, in part, as follows:

> The planning commission of any municipal corporation or group of municipal corporations, any board of township trustees, and the board of county commissioners of any county in which the municipal corporation or group of municipal corporations is located or of any adjoining county may cooperate in the creation of a regional planning commission, for *any region defined as agreed upon by the planning commissions and boards, exclusive of any territory within the limits of a municipal corporation not having a planning commission*. After creation of a regional planning commission, school districts, special districts, authorities, and any other units of local government may participate in the regional planning commission, upon terms agreed upon by the planning commissions and boards. (Emphasis added.)

A regional planning commission may thus comprise combinations of municipal planning commissions, boards of township trustees, and boards of county commissioners.[5] By agreement,

---

Op. Att'y Gen. No. 3285, p. 654 (syllabus, paragraph three) ("[t]he provisions of [R.C. Chapter 711] do not per se require the survey and platting of every 'subdivision,' however created, as such term is defined in [R.C. 711.001]; but such requirement may be established by rules and regulations promulgated under [R.C. 711.05, .09, or. 10] in designated local jurisdictions, by the several local authorities enumerated therein").

[4] You have not asked, and this opinion does not address the scope of a regional planning commission's authority to approve subdivisions without a plat, as provided for in R.C. 711.131 or R.C. 711.133.

[5] A regional planning commission established under R.C. 713.21(A) is a governmental entity apart from the subdivisions that join in its creation. 1993 Op. Att'y Gen. No. 93-001 at 2-5 ("[t]he provisions of R.C. 713.21 and R.C. 713.23 thus make clear that a regional planning commission . . . is a separate legal entity readily distinguishable from the various planning commissions, boards of township trustees, boards of county commissioners, special districts, and other units of local government that, pursuant to R.C. 713.21, participate in its formation or operation. *See* 1964 Op. Att'y Gen. No. 1207, p. 2-259, at 2-261 ('a regional planning

the creating entities may define the region, exclusive of any territory within a municipality not having a planning commission, to be served by the regional planning commission.

As described in R.C. 713.23, one of the primary functions of a regional planning commission is the adoption of a plan for the region, concerning, among other things, economic and social conditions, the general pattern and intensity of land use and open space, and "[l]ong-range programming and financing of capital projects and facilities," R.C. 713.23(B)(1)(g). Upon the adoption of such plan, a regional planning commission shall "certify a copy thereof to the planning commission of each municipal corporation of the region or county, the board of county commissioners and county or regional planning commission of each county or region or part thereof included in the plan." R.C. 713.24. A board of county commissioners may then adopt the plan for the unincorporated areas of the county. R.C. 713.25. "Thereafter no *public* building, roadway, bridge, viaduct, or other public improvement or utility, publicly or privately owned, whose construction or location would constitute a departure from the plan, shall be constructed or authorized by the board except by unanimous vote." *Id*. (emphasis added).

Plat Approval by A Regional Planning Commission

Once a regional planning commission has adopted a "plan for the major streets or highways of the . . . region":

> [N]o plat of a subdivision of land within the . . . region, other than land within a municipal corporation or land within three miles of a city or one and one-half miles of a village as provided in [R.C. 711.09], shall be recorded until it is *approved by the . . . regional planning commission* under division (C) of this section and the approval is endorsed in writing on the plat.

R.C. 711.10(A) (emphasis added). Thus, in addition to its general planning powers, a regional planning commission, after adopting its plan for the region, also possesses authority to approve subdivision plats under R.C. 711.10.

R.C. 711.10(C) establishes the procedure a regional planning commission must follow in approving a plat. For example, R.C. 711.10(C) establishes deadlines for action by the commission upon plats submitted for its approval and notice requirements for meetings at which the commission considers approval of plats, and empowers a planning commission to grant conditional or final approval of a plat.

As part of its platting responsibilities, a regional planning commission "*shall* adopt general rules, *of uniform application*, governing plats and subdivisions of land falling within its

---

commission is established as a semi-autonomous entity having an existence apart and in a sense independent of the several subdivisions which joined in its creation'). Thus, neither the governing board nor the individual officers of such a regional, multi-county entity constitute a 'county board' or are 'county officers' for purposes of R.C. 309.09(A) or R.C. 305.14(A)").

jurisdiction, to secure and 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, for adequate and convenient open spaces for traffic, utilities, access of firefighting apparatus, recreation, light, and air, and for the avoidance of congestion of population." R.C. 711.10(C) (emphasis added).[6] As summarized in 1994 Op. Att'y Gen. No. 94-066 at 2-329, "[t]he rule-making authority conferred upon a regional planning commission by R.C. 711.10 is limited to rules concerning platting and subdivisions." *See* 1966 Op. Att'y Gen. No. 66-147 (syllabus, paragraph four) ("[a] Regional Planning Commission must adopt subdivision regulation for its entire area of jurisdiction").[7]

The significance of a regional planning commission's adoption of its own rules is illustrated by the following requirement established by R.C. 711.10(C):

> The ground of refusal of approval of any plat submitted under this division, including citation of or reference to the *rule violated by the plat*, shall be stated upon the record of the county or regional planning commission. . . .
>
> . . . .
>
> No county or regional planning commission shall require a person submitting a plat to alter the plat or any part of it as long as the plat is in accordance with the general *rules governing plats and subdivisions of land, adopted by the commission as provided in this section*, in effect at the time the plat is submitted. (Emphasis added.)

Thus, the rules adopted by a regional planning commission under R.C. 711.10 serve as the basis upon which the commission may approve or disapprove a subdivision plat. Absent adoption of its own rules, a regional planning commission has no authority to approve or disapprove plats of proposed subdivisions. *See* 1953 Op. Att'y Gen. No. 3343, p. 688 (syllabus, paragraph six) ("[w]here a board of county commissioners has failed to establish minimum standards for plats and subdivisions by the exercise of its rule-making power under the provisions of [R.C. 711.05],

---

[6] *See generally Dep't of Liquor Control v. Sons of Italy Lodge 0917*, 65 Ohio St. 3d 532, 534, 605 N.E.2d 368 (1992) ("when it is used in a statute, the word 'shall' denotes that compliance with the commands of that statute is *mandatory*," unless there appears a clear and unequivocal legislative intent that it receive a construction other than its ordinary usage).

[7] *See also* R.C. 711.132 (stating, in pertinent part, "[n]o rule or regulation of a planning commission adopted pursuant to this chapter . . . shall become effective until it has been approved, after public hearing, by . . . the board of county commissioners in the case of a regional or county planning commission"). *See generally* 1974 Op. Att'y Gen. No. 74-078 (syllabus, paragraph 2) ("[a] board of county commissioners has no authority to modify the plan or rules and regulations certified to it by a regional planning commission, pursuant to R.C. Chapters 711. and 713. However, if the board rejects the certified plan or rules and regulations, the commission may certify a modified plan or rules and regulations").

such board would be without authority to withhold its approval of any plats submitted for approval or rejection under the provisions of [R.C. 711.04 and R.C. 711.05]").[8]

Powers of County Commissioners and County Officials Regarding Plat Approval by A Regional Planning Commission

According to a member of your staff, your first question concerns the authority of a board of county commissioners or any other county official to adopt rules that regulate surface or subsurface drainage, and whether, based upon a violation of such rules, a regional planning commission may disapprove a plat submitted to it. We understand that the regional planning commission, in the current situation, has not adopted its own rules, as required by R.C. 711.10(C), but has, instead, based its approval of plats upon their compliance with rules promulgated by the county commissioners and other county officials. In addition, the regional planning commission has not adopted as its own the rules promulgated by the county commissioners or other county officials.[9]

We also note that, although your questions ask us to consider the extent of authority possessed by various county officials to adopt rules concerning surface and subsurface drainage, your questions narrow our concern to consideration of only those rules that county officials may adopt that a regional planning commission may use as a basis for approval or disapproval of a plat under R.C. 711.10. As summarized above, unless a regional planning commission adopts its own rules for the approval of subdivision plats, it has no authority to approve or disapprove plats, regardless of the rule-making authority of a county officer or entity.[10] The following discussion, therefore, addresses only those powers through which county officers may adopt surface and

---

[8] *See also Gates Mills Investment Co. v. Parks*, 25 Ohio St. 2d 16, 266 N.E.2d 552 (1971) (syllabus, paragraph 2) ("[a] village planning commission, which has not adopted a plan or rules and regulations governing plats and subdivisions of land, acts unreasonably and unlawfully in refusing to approve an application to record a plat for the reason that the plat does not conform to the provisions of a village ordinance").

[9] As provided by R.C. 713.23(C), "[w]herever a regional planning commission has been established within the area of the jurisdiction of a county planning commission, the regional planning commission or the county planning commission may, *by mutual agreement*, transfer or delegate to the other, all, or part, of the functions, powers, and duties which either may perform." (Emphasis added.) It is our understanding, however, that Seneca County has no county planning commission. We assume, therefore, that the regional planning commission in Seneca County is not acting under an agreement authorized by R.C. 713.23(C) to approve plats on the basis of the rules adopted by a county planning commission.

[10] 1993 Op. Att'y Gen. No. 93-001, *see* note 5, *supra*, concluded that a county prosecuting attorney has no legal authority to act as legal advisor to a regional planning commission. Accordingly, the Attorney General has declined to advise county prosecuting attorneys concerning the powers and duties of regional planning commissions.

subsurface drainage rules that a regional planning commission may use as a basis for approval of subdivision plats under R.C. 711.10.[11]

We first note that, R.C. 711.10(C) authorizes a regional planning commission to address common planning issues, such as the proper arrangement of streets, adequate and convenient open spaces, and the avoidance of congestion of population. In addition, R.C. 711.10(C) states that such rules may "require the board of health to review and comment on a plat before the

---

[11] Boards of county commissioners are granted a variety of regulatory powers that may have an impact upon the drainage of property. In most instances, however, a regional planning commission is without authority to use such county regulations as a basis for approving or disapproving plats under R.C. 711.10. For example, according to R.C. 307.37(B)(3), since its amendment in Sub. H.B. 25, 125th Gen. A. (2003) (eff. Oct. 29, 2003), a board of county commissioners may adopt "regulations that provide for a review of the specific effects of a proposed new construction on existing surface or subsurface drainage" as part of its local building code for one-family, two-family, or three-family dwelling houses and incidental accessory structures. As further provided by R.C. 307.37(B)(3), however, such rules "*shall not apply to any property that a platting authority has approved* under section 711.05, 711.09, or *711.10* of the Revised Code and shall not govern the same subject matter as the state residential or nonresidential building codes adopted pursuant to section 3781.10 of the Revised Code." (Emphasis added.) In contrast, when a subdivision is submitted for approval without plat under R.C. 711.131, the reviewing authority may require proof of compliance with rules adopted under R.C. 307.37(B)(3). It appears, therefore, that the General Assembly intended that a board of county commissioners have authority to adopt regulations under R.C. 307.37(B)(3) whether or not property subject to the regulations is subject to plat approval by the county or other plat approving authority. *See generally Howland Township Bd. of Trustees v. Dray*, 2006-Ohio-3402 (Ct. App. Trumbull County 2006) (explaining the difference between a building code, which is to control the construction of buildings and to ensure their safety and sanitation, and township zoning, which is to control growth and development within the township).

Additional authority is conferred upon a board of county commissioners by R.C. 307.79(A), part of which authorizes a board of county commissioners to adopt reasonable standards to abate wind or water erosion of the soil or to abate the degradation of the waters of the state by soil sediment in conjunction with certain soil disturbing activities. Such rules may require one to file plans and to obtain a permit prior to grading, excavating, filling, or performing other soil disturbing activities on certain properties. R.C. 307.79(A). Although R.C. 307.79(C) authorizes a board of county commissioners to enter into agreements with, among others, political subdivisions, including regional planning commissions, "in order to obtain reviews and comments on plans governing erosion control, sediment control, and water management or to obtain other services for the administration of the rules adopted under this section," neither R.C. 307.79 nor R.C. 711.10 authorizes a regional planning commission to include in its rules a requirement that a plat prove compliance with rules adopted by a board of county commissioners under R.C. 307.79(A).

commission acts upon it," and, "as a basis for approval of a plat," "require proof of compliance with any *applicable zoning* resolutions," (emphasis added), and "with household sewage treatment rules adopted under [R.C. 3718.02]." Of the additional requirements a regional planning commission may include in its rules as a basis for approval of a plat, the only subject that relates to authority exercised by a county entity is zoning. *See generally* R.C. 3718.02 (authorizing the Public Health Council and boards of health to adopt household sewage treatment rules); 1997 Op. Att'y Gen. No. 97-029 at 2-174 ("health districts are created as divisions of the state and are considered to be separate political subdivisions"); note eleven, *supra*.

County Zoning

The scope of a board of county commissioners' authority to enact zoning regulations is prescribed by R.C. 303.02(A), part of which authorizes a board of county commissioners, in the interest of the public health and safety or "in the interest of the public convenience, comfort, prosperity, or general welfare," to regulate, among other things, land use in the unincorporated areas of the county and to establish reasonable landscaping standards. As determined by 1994 Op. Att'y Gen. No. 94-098, a local zoning authority's power to adopt zoning regulations includes, in the absence of an express statutory prohibition against the inclusion of such matters in its zoning plan and with certain limitations, the authority to regulate the uses of land in such a manner as to control the drainage of surface water from residential subdivisions.[12]

Although the 1994 opinion addressed the zoning authority of a board of township trustees under R.C. Chapter 519, the opinion suggests that a board of county commissioners, too, may adopt zoning regulations that have an impact upon the drainage of surface and subsurface waters. The zoning authority vested in a board of county commissioners by R.C. 303.02[13] is

---

[12] 1994 Op. Att'y Gen. No. 94-098 (syllabus, paragraph 1) ("[p]ursuant to R.C. Chapter 519, a board of township trustees may, for the purpose of promoting the public health, safety, and morals and in accordance with a comprehensive plan, enact zoning regulations that regulate land use in such a manner as to control the drainage of surface water from residential subdivisions, provided the regulations conform to constitutional limitations and do not conflict with rules adopted by the Chief of the Division of Soil and Water Conservation under R.C. 1511.02(E), with rules pertaining to urban sediment control that are adopted by a county under R.C. 307.79, or with other state or federal laws").

[13] R.C. 303.02 defines the extent of the zoning powers of boards of county commissioners, in part, as follows:

> (A) Except as otherwise provided in this section, in the interest of the *public health and safety*, the board of county commissioners may regulate by resolution, in accordance with a comprehensive plan, the location, height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, and trailer coaches, percentages of lot areas that may be occupied, set back building lines, sizes of yards, courts, and other open spaces, the density of

substantially similar to that granted to townships by R.C. 519.02, as discussed in 1994 Op. Att'y Gen. No. 94-098. We recognize that neither R.C. 303.02 nor R.C. 519.02 expressly authorizes a county or township to address surface and subsurface drainage in its zoning regulations. There are, however, various matters that may have an impact on the drainage of property, *e.g.*, uses of land, landscaping standards, that are subject to regulation under the county commissioners' zoning authority prescribed by R.C. 303.02.[14] *See* note thirteen, *supra*. We find, therefore, that

---

> population, the uses of buildings and other structures, including tents, cabins, and trailer coaches, and the *uses of land* for trade, industry, residence, recreation, or other purposes in the unincorporated territory of the county. Except as otherwise provided in this section, in the interest of the *public convenience, comfort, prosperity, or general welfare*, the board, by resolution, in accordance with a comprehensive plan, may regulate the location of, set back lines for, and the uses of buildings and other structures, including tents, cabins, and trailer coaches, and the *uses of land* for trade, industry, residence, recreation, or other purposes in the unincorporated territory of the county, and may establish *reasonable landscaping standards* and architectural standards excluding exterior building materials in the unincorporated territory of the county. Except as otherwise provided in this section, in the interest of the public convenience, comfort, prosperity, or general welfare, the board may regulate by resolution, in accordance with a comprehensive plan, for nonresidential property only, the height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, and trailer coaches, percentages of lot areas that may be occupied, sizes of yards, courts, and other open spaces, and the density of population in the unincorporated territory of the county. For all these purposes, the board may divide all or any part of the unincorporated territory of the county into districts or zones of such number, shape, and area as the board determines. All such regulations shall be uniform for each class or kind of building or other structure or use throughout any district or zone, but the regulations in one district or zone may differ from those in other districts or zones.
>
> For any activities permitted and regulated under [R.C. Chapter 1513 (surface mining) or R.C. Chapter 1514 (other mining)] and any related processing activities, the board of county commissioners may regulate under the authority conferred by this section only in the interest of public health or safety. (Emphasis added.)

[14] Of course, in the adoption of zoning regulations pertaining to the drainage of surface or subsurface waters, a board of county commissioners is subject to the same limitations applicable to boards of township trustees. As concluded in 1994 Op. Att'y Gen. No. 94-098, such limitations include not only rules adopted by the Chief of the Division of Soil and Water Conservation under R.C. 1511.02(E) and rules adopted by a county under R.C. 307.79, but also constitutional limitations and other state or federal laws. *See generally, e.g.*, R.C. 6111.03 (water pollution control powers of director of environmental protection); R.C. 6117.012 (county

a county may adopt zoning regulations, in accordance with R.C. 303.02(A), for the purposes, and concerning the matters, set forth in R.C. 303.02(A), and, to the extent such regulations affect the drainage of surface or subsurface waters, such regulations may not conflict with rules adopted by the Chief of the Division of Soil and Water Conservation under R.C. 1511.02(E),[15] rules adopted

---

commissioners' authority over property owners within a county sewer district "whose property is served by a connection to sewers maintained and operated by the board or to sewers that are connected to interceptor sewers maintained and operated by the board"); R.C. 6131.03 (stating, in part, "[b]oards of county commissioners in their respective counties, or in co-operation with any conservancy district which includes all or part of the lands of the county, or in co-operation with the proper authorities of the state or the proper authorities of the United States, may formulate, create, and construct a complete or co-ordinating system of water conservation and flood control, subject to the approval of the proper authority of the state, with full power to maintain and carry the same forward").

[15] R.C. 1511.02(E) imposes upon the Chief of the Division of Soil and Water Conservation a duty to adopt rules, in part, as follows:

> Subject to the approval of the Ohio soil and water conservation commission, adopt, amend, or rescind rules pursuant to Chapter 119. of the Revised Code. Rules adopted pursuant to this section:
>
> . . . .
>
> (2) Shall establish technically feasible and economically reasonable standards to achieve a level of management and conservation practices that will abate wind or water erosion of the soil or abate the degradation of the waters of the state by soil sediment in conjunction with land grading, excavating, filling, or other soil-disturbing activities on land used or being developed for nonfarm commercial, industrial, residential, or other nonfarm purposes, and establish criteria for determination of the acceptability of such management and conservation practices. The standards shall be designed to implement applicable areawide waste treatment management plans prepared under section 208 of the "Federal Water Pollution Control Act," 86 Stat. 816 (1972), 33 U.S.C.A. 1288, as amended. *The standards and criteria shall not apply in any* municipal corporation or *county that adopts ordinances or rules pertaining to sediment control*, nor to lands being used in a strip mine operation as defined in section 1513.01 of the Revised Code, nor to lands being used in a surface mining operation as defined in section 1514.01 of the Revised Code.
>
> (3) May recommend criteria and procedures for the approval of urban sediment pollution abatement plans and issuance of permits prior to any grading, excavating, filling, or other whole or partial disturbance of five or more contiguous acres of land owned by one person or operated as one development unit and require implementation of such a plan. Areas of less than five

by the county under R.C. 307.79, *see* note eleven, *supra*, any constitutional limitations, or any other state or federal laws. Thereafter, such zoning regulations may serve as a basis for a regional planning commission's approval of a plat only if the regional planning commission of which the county is part adopts a rule under R.C. 711.10(C) that requires that plats submitted to it under R.C. 711.10 prove compliance with applicable county zoning regulations.[16]

> contiguous acres are not exempt from compliance with other provisions of this chapter and rules adopted under them.
>
> (4) Shall establish procedures for administration of rules for agricultural pollution abatement and urban sediment pollution abatement and for enforcement of rules for agricultural pollution abatement;
>
> . . . .
>
> (12) Shall not conflict with air or water quality standards adopted pursuant to section 3704.03 or 6111.041 of the Revised Code. Compliance with rules adopted pursuant to this section does not affect liability for noncompliance with air or water quality standards adopted pursuant to section 3704.03 or 6111.041 of the Revised Code. The application of a level of management and conservation practices recommended under this section to control windblown soil from farming operations creates a presumption of compliance with section 3704.03 of the Revised Code as that section applies to windblown soil.
>
> (13) *Insofar as the rules relate to urban sediment pollution, shall not be applicable in a* municipal corporation or *county that adopts ordinances or rules for urban sediment control, except* that a municipal corporation or county that adopts such ordinances or rules may receive moneys for urban sediment control that are disbursed by the board of supervisors of the applicable soil and water conservation district under division (R) of section 1515.08 of the Revised Code. The rules shall not exempt any person from compliance with municipal ordinances enacted pursuant to Section 3 of Article XVIII, Ohio Constitution. (Emphasis added.)

[16] *See generally Ketchel v. Bainbridge Township*, 52 Ohio St. 3d 239, 242, 557 N.E.2d 779 (1990) (finding that, although a board of county commissioners, when acting as the plat approval authority under R.C. 711.05, may regulate lot sizes, a township may also regulate lot sizes through its zoning powers, and stating, "[t]he statutes in R.C. Chapter 711 govern the recording of plats. Plats are recorded, not as a means of regulating land use, but as a part of the process of subdividing and conveying land. The platting process is initiated by the actions of landowners and not by local government. The platting statutes are not a substitute for zoning" (various citations omitted)); *Emerald Lakes, Inc. v. South Russell Planning Comm'n*, 74 Ohio App. 3d 74, 76, 598 N.E.2d 60 (Geauga County 1991) ("a planning commission is to be concerned with the 'mechanical' or engineering aspects of subdivisions and plats, rather than their usage").

County Commissioners' Rule-making Authority under R.C. 711.101

In addition, we note that a board of county commissioners possesses certain rule-making authority under R.C. 711.101, which states, in part:

> As to land falling within *its* jurisdiction or the jurisdiction of *its planning commission*, the legislative authority of a municipal corporation, or the *board of county commissioners*, may adopt general rules setting *standards and requiring and securing the construction of improvements shown on the plats and plans required by* sections 711.05, 711.09, and *711.10* of the Revised Code.[17]
>
> . . . .
>
> The board of county commissioners may prepare such specifications and make such orders, inspections, examinations, and certificates as are necessary to carry out the provisions of this section. The *county engineer* and the *county sanitary engineer* shall act in an advisory capacity to the board in preparing such specifications, orders, inspections, examinations, and certificates.
>
> Before the adoption or amendment of rules pursuant to this section, a public hearing shall be held thereon by the legislative authority of the municipal corporation or the board of county commissioners, as the case may be. (Emphasis and footnote added.)

R.C. 711.101 thus describes the purposes to be served by these rules as setting standards for, and securing construction of, improvements shown on plats and plans required by, among other sections, R.C. 711.10. *See generally, e.g.*, 1979 Op. Att'y Gen. No. 79-068 (finding that R.C. 711.101 authorizes a board of county commissioners to adopt rules with respect to only those matters enumerated in the statute).

The circumstances in which the rules adopted by a board of county commissioners under R.C. 711.101 may be enforced by an entity with plat approval authority, other than a board of county commissioners or a county planning commission, is not clearly defined by R.C. 711.101.

---

[17] As provided, in part, by R.C. 711.041: "No plat certifying lands outside a municipal corporation may be recorded without the approval thereon of the board of county commissioners of the county wherein such lands are situated." *See generally* R.C. 711.05 (method of plat approval by board of county commissioners). As further provided by R.C. 711.041, however, a board of county commissioners has no authority to approve any plat that is, under R.C. 711.09 (in part, describing the circumstances in which a city planning commission, village planning commission, village platting authority, or village legislative authority possesses the power to approve subdivision plats prior to their recording) or R.C. 711.10 (plat approval by a county planning commission or regional planning commission), subject to approval by a planning commission or other local authority. Because there is a regional planning commission in Seneca County, the board of county commissioners has no authority to exercise plat approval authority under R.C. 711.041 or R.C. 711.05.

The first sentence of R.C. 711.101 authorizes the legislative authority of a municipality or a board of county commissioners to adopt rules for land falling within "its" jurisdiction or the jurisdiction of "its" planning commission. *See generally Merriam-Webster's Collegiate Dictionary* 666 (11th ed. 2005) (defining the adjective "its" as meaning, "of or relating to it or itself esp. as possessor, agent, or object of an action").

As a general rule, the jurisdiction of a municipal legislative authority extends only throughout that municipality. Similarly, the jurisdiction of a board of county commissioners is generally limited to matters within the county. *See generally, e.g., Minnesota v. Karp*, 84 Ohio App. 51, 56-57, 84 N.E.2d 76 (Hamilton County 1948) ("jurisdictions of all governments are geographical or territorial. Any attempt to exercise extraterritorial jurisdiction constitutes an invasion of another sovereignty. . . . The jurisdiction of a state . . . must be confined to persons, property and activities within its boundaries"). Because a regional planning commission may encompass land within more than one county, *see* R.C. 713.21(A), it is not clear that a regional planning commission is the planning commission "of or relating to" a particular county.[18]

We note, however, that R.C. 711.101 authorizes a board of county commissioners to provide in its rules "for the administration thereof by the regulating body or by a city, county, or *regional planning commission having platting jurisdiction over the land affected* and may provide for the modification thereof in specific cases, where unusual or exceptional factors or conditions require such modifications, by such body or commission." (Emphasis added.) That a board of county commissioners may delegate the administration of the rules it adopts under R.C. 711.101 to a regional planning commission "having platting jurisdiction over the land affected" indicates that such board may adopt rules thereunder, not only in situations in which it or a county planning commission has plat approval authority, but also when a regional planning commission has plat approval authority over the land affected by the rules.[19] Thus, if the rules

---

[18] *Compare* R.C. 713.01 (establishment of municipal planning commission by municipal legislative authority; plat approval authority, as granted by R.C. 711.09, of land within municipality, and, in certain instances, land in unincorporated territory within three miles of such municipality) *and* R.C. R.C. 711.05 (plat approval by board of county commissioners of land within unincorporated territory of county, unless, in accordance with R.C. 711.041, plat approval is within jurisdiction of municipal authorities under R.C. 711.09 or county or regional planning commission under R.C. 711.10) *with* R.C. 713.21(A) (establishment of regional planning commissions by various combinations of municipal planning commissions, boards of township trustees, and boards of county commissioners; plat approval authority under R.C. 711.10 within region).

[19] *See generally* 1988 Op. Att'y Gen. No. 88-054 (finding that a board of county commissioners has no authority to enforce a representation on a plat that had been approved by the county engineer, regional planning commission, and board of county commissioners, *unless* the representation violates a rule adopted by the board of county commissioners under R.C. 711.101).

adopted by a board of county commissioners under R.C. 711.101 provide for their administration by a regional planning commission, the regional planning commission may administer those rules.[20]

R.C. 711.101 describes the matters that a board of county commissioners may address in its rules, as follows:

> Such rules may establish standards and specifications for the construction of streets, curbs, *gutters*, sidewalks, street lights, water mains, *storm sewers*, sanitary sewers, and other utility mains, piping, and other facilities, may require complete or partial installation of such improvements, and may make such installation a condition precedent to the sale or lease of lots in a subdivision or the issuance of a building permit for the improvement of a lot, and may require in lieu of actual construction a performance agreement and the furnishing of a performance bond or other guarantee or security for the purpose of assuring the installation of such improvements deemed necessary or appropriate in the public interest. (Emphasis added.)

Thus, R.C. 711.101 authorizes a board of county commissioners to adopt rules that establish standards and specifications for the construction of, among other things, streets, curbs, gutters, storm sewers, piping, and other facilities, all of which may affect the drainage of surface or subsurface water from land subject to those rules.

As further provided by R.C. 711.101:

> Such rules may require the *submission of plans and specifications* for the improvements set forth in this section *for approval* as a *condition precedent to the*

---

[20] In the event that a regional planning commission's region includes more than one county, it appears that the rules adopted by one of the region's board of county commissioners apply to only those portions of the region of the county whose commissioners adopted such rules. At first blush, this conclusion may appear to be inconsistent with the command in R.C. 711.10(C) that a regional planning commission "adopt general rules, *of uniform application*, governing plats and subdivisions of land falling within its jurisdiction" (emphasis added). *See, e.g.*, 1981 Op. Att'y Gen. No. 81-075 (finding that, prior to the amendment of R.C. 711.10 to authorize a county or regional planning commission to require proof of compliance with applicable zoning, a county planning commission was without authority to incorporate a township's zoning regulations into its rules, because the rule would not have uniform application within the county, being applicable to only one township in the county). We believe, however, that a regional planning commission's express authority elsewhere in R.C. 711.10(C) to adopt a rule requiring "proof of compliance with any *applicable* zoning resolutions" (emphasis added), accommodates the uniformity requirement, regardless of any differences in zoning applicable to different areas within the region, so long as all property in the region must prove compliance with zoning applicable to that property.

> *approval of a plat required by* sections 711.05, 711.09, and *711.10* of the Revised Code, and may require the *actual construction or agreement or assurance of such construction* as a *condition precedent to the approval required under those sections*. The rules shall not require the alteration of plans and specifications for improvements, as long as the plans and specifications are in accordance with the rules provided for in this section in effect at the time the plat was submitted. (Emphasis added.)

R.C. 711.101 thus authorizes a board of county commissioners to adopt rules that require, as a condition precedent to approval of a plat under R.C. 711.10, the submission of plans and specifications for those improvements described in R.C. 711.101 and the construction of such improvements in accordance with the submitted plans or specifications. Such rules may not, however, require alteration of submitted plans and specifications, so long as the plans and specifications are in compliance with the rules adopted under R.C. 711.101 as in effect when the plans and specifications are submitted.

As discussed above, R.C. 711.10(C) expressly prohibits a regional planning commission from requiring the alteration of a plat, "as long as the plat is in accordance with the general rules governing plats and subdivisions of land, *adopted by the commission as provided in this section*, in effect at the time the plat is submitted." (Emphasis added.) R.C. 711.10(C) does not, however, mention compliance with rules adopted by a board of county commissioners under R.C. 711.101 as a basis for a regional planning commission's approval of a plat under R.C. 711.10. Thus, there appears to be a conflict between the plat approval criteria described in R.C. 711.101 and those described in R.C. 711.10(C).

Because R.C. 711.101 authorizes a board of county commissioners to adopt rules that provide for their administration by a regional planning commission, and because such rules may impose certain requirements as conditions precedent to the approval of a plat under R.C. 711.10, we believe that the plat approval provisions of R.C. 711.101 may be reconciled with those described in R.C. 711.10 by reading the provisions together. Thus, if a board of county commissioners adopts rules under R.C. 711.101 that call for their administration by a regional planning commission and that establish the conditions described in that statute as requirements for plat approval, in those instances in which a regional planning commission is the plat approving authority under R.C. 711.10, the regional planning commission may require compliance, not only with the rules it adopts under R.C. 711.10(C), but also with the conditions established by the board of county commissioners under R.C. 711.101, as bases for approval of plats within that county.

Other County Officers' Powers and Duties

With respect to the participation of other county officers or entities in the process of a regional planning commission's plat approval process, we note that, the county engineer and the county sanitary engineer have been given certain duties. *See, e.g.*, R.C. 711.101 (in part, requiring the county engineer and the county sanitary engineer to advise the county

commissioners in the preparation of specifications, orders, inspections, examinations, and certificates thereunder); R.C. 713.26 (stating, "[t]he county engineer of any county for which a regional or county planning commission has been organized, *shall* give such assistance to the commission, within the scope of his resources and without interference with his regular duties, as is requested by it" (emphasis added)). Neither of these county officers, however, is empowered to adopt rules to be used by a regional planning commission in the process of approving or disapproving plats under R.C. 711.10.

We have found no other statutes that expressly direct county officers or entities to adopt rules concerning surface or subsurface drainage that a regional planning commission may or must enforce through the commission's plat approval process under R.C. 711.10. Thus, in answer to your first question, we conclude that, if a board of county commissioners properly adopts zoning regulations under R.C. 303.02(A) that affect surface or subsurface drainage, such zoning regulations may serve as a basis for a regional planning commission's approval of a plat submitted to it under R.C. 711.10, only if the regional planning commission of which the county is part adopts a rule that requires that plats submitted to it under R.C. 711.10 prove compliance with applicable county zoning regulations. In addition, if a board of county commissioners adopts rules under R.C. 711.101 that call for their administration by a regional planning commission and that establish the conditions described in that statute as requirements for plat approval, in those instances in which a regional planning commission is the plat approving authority under R.C. 711.10, the regional planning commission may require compliance with the conditions established by the board of county commissioners under R.C. 711.101 as a basis for approval of plats within that county.

Because our answer to your first question includes a full discussion of the scope of authority of the various county officials concerned, we need not separately address your second question. In addition, our affirmative response to your first question renders consideration of your third question unnecessary.

Conclusion

Based upon the foregoing, it is my opinion, and you are hereby advised that:

1. In accordance with R.C. 303.02(A), a board of county commissioners may adopt zoning regulations for the purposes, and concerning the matters, set forth in R.C. 303.02(A), and, to the extent such regulations affect the drainage of surface or subsurface waters, such regulations may not conflict with rules adopted by the Chief of the Division of Soil and Water Conservation under R.C. 1511.02(E), rules adopted by the county under R.C. 307.79, any constitutional limitations, or any other state or federal laws.

2. If a board of county commissioners properly adopts zoning regulations under R.C. 303.02(A) that affect surface or subsurface drainage, such zoning regulations may serve as a basis for a regional planning

commission's approval of a plat only if the regional planning commission of which the county is part adopts a rule under R.C. 711.10(C) that requires that plats submitted to it under R.C. 711.10 prove compliance with applicable county zoning regulations.

3. If a board of county commissioners adopts rules under R.C. 711.101 that call for their administration by a regional planning commission and that establish the conditions described in that statute as requirements for plat approval, in those instances in which a regional planning commission is the plat approving authority under R.C. 711.10, the regional planning commission may require compliance, not only with the rules it adopts under R.C. 711.10(C), but also with the conditions established by the board of county commissioners under R.C. 711.101, as bases for approval of plats within that county.

Respectfully,

MARC DANN
Attorney General

June 12, 2007

The Honorable Ken Egbert, Jr.
Seneca County Prosecuting Attorney
71 South Washington Street, Suite 1204
Tiffin, Ohio 44883

SYLLABUS: 2007-013

1. In accordance with R.C. 303.02(A), a board of county commissioners may adopt zoning regulations for the purposes, and concerning the matters, set forth in R.C. 303.02(A), and, to the extent such regulations affect the drainage of surface or subsurface waters, such regulations may not conflict with rules adopted by the Chief of the Division of Soil and Water Conservation under R.C. 1511.02(E), rules adopted by the county under R.C. 307.79, any constitutional limitations, or any other state or federal laws.

2. If a board of county commissioners properly adopts zoning regulations under R.C. 303.02(A) that affect surface or subsurface drainage, such zoning regulations may serve as a basis for a regional planning commission's approval of a plat only if the regional planning commission of which the county is part adopts a rule under R.C. 711.10(C) that requires that plats submitted to it under R.C. 711.10 prove compliance with applicable county zoning regulations.

3. If a board of county commissioners adopts rules under R.C. 711.101 that call for their administration by a regional planning commission and that establish the conditions described in that statute as requirements for plat approval, in those instances in which a regional planning commission is the plat approving authority under R.C. 711.10, the regional planning commission may require compliance, not only with the rules it adopts under R.C. 711.10(C), but also with the conditions established by the board of county commissioners under R.C. 711.101, as bases for approval of plats within that county.