April 15, 1997

OPINION NO. 97-019

The Honorable John E. Meyers
Sandusky County Prosecuting Attorney
100 N. Park Avenue
Fremont, Ohio 45420

Dear Prosecutor Meyers:

I am in receipt of your letter which presents, by way of a series of examples, the following issue: When a landowner owns two properties, which are shown as adjacent parcels on the county auditor's tax roll and which were acquired from different sellers in unrelated transactions, does the conveyance of one of the properties to a different owner constitute a "subdivision," as defined at R.C. 711.001(B)(1), such that the local planning authority with jurisdiction over platting and subdivision may require the grantor-landowner to plat the subdivision or to seek approval without plat as provided in R.C. 711.131?[1]

Your letter illustrates the type of conveyance with which you are concerned by providing several scenarios in which the location, legal description, and use of the adjacent properties vary. The following facts are common to each scenario. Mr. A currently owns two adjacent pieces of property, each less than five acres in area. One property was purchased fifteen years ago, the other was purchased seven years ago. Each property was purchased from a different seller and the transactions were not related in any way. The two properties are carried on the county auditor's tax rolls as separate parcels, each with its own parcel number and tax valuation of the land and any buildings thereon. Mr. A now wishes to convey one of the properties by deed to a different owner. The new deed would use the same legal description of the property as was used when Mr. A purchased it.

Scenario 1: Each property is a full inlot in a platted subdivision of a municipal corporation.

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[1] You have not asked and we do not here consider whether in such a situation, the county auditor and county engineer have authority to require a boundary survey plat pursuant to the provisions of R.C. 315.251 and R.C. 319.203 as recently amended by Am. Sub. S.B. 262, 121st Gen. A. (1996) (eff. March 18, 1997) and Am. Sub. S.B. 287, 121st Gen. A. (1996) (eff. March 13, 1997).

The subdivision was platted years prior to Mr. A's purchase of either property. Prior to the time Mr. A purchased the second property, they had not been under common ownership. One property has a commercial building on it, the other has a residential building. Both buildings are over forty years old.

Scenario 2: The properties are in a previously platted subdivision of a municipal corporation, but each property is half of a single inlot, as designated on the plat. This inlot was divided by deed many years ago, and the half lots sold to predecessors of the sellers who sold to Mr. A.

Scenario 3: Same facts as 1 and 2, except one of the properties is bare land.

Scenario 4: Same facts as 1 and 2, except both properties are bare land.

Scenario 5: Same facts as 1 through 4, except that the properties are in a previously platted subdivision outside a municipal corporation.

Scenario 6: Same facts as 1 through 4, except that the properties are in unplatted territory outside a municipal corporation and have been described in instruments of conveyance by metes and bounds descriptions.

You wish to know whether, in any of these scenarios, the conveyance of one of the adjacent properties constitutes a subdivision under R.C. 711.001(B), that is either subject to local platting regulations or is subject to approval without plat pursuant to R.C. 711.131.

I note as an initial matter that the fact that a conveyance constitutes a subdivision under R.C. 711.001(B) does not in and of itself impose a requirement that it be platted. Except in circumstances not relevant to your request, the statutes themselves do not mandate platting.[2] Rather, various planning authorities have been given discretionary power to adopt rules governing the platting and subdivision of land within their own jurisdictions, in order to secure the coordination of streets, the proper amount of open spaces, and the avoidance of population congestion. *See* R.C. 711.05 (board of county commissioners); R.C. 711.09 (city and village planning commissions, or alternatively in villages, the platting commissioner or legislative authority);[3] R.C. 711.10 (county or regional planning commissions). *See generally* 1953 Op. Att'y Gen. No. 3285, p. 654. R.C. 711.40 further provides that the statutes governing the platting of subdivisions do not apply to the "division of any parcel of land by an instrument of conveyance," unless expressly required by local rules and

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[2] Platting is required by statute only in situations where the landowner "lays out" a municipal subdivision in the traditional, historical sense. *See* R.C. 711.01; R.C. 711.06; 1953 Op. Att'y Gen. No. 3285, p. 654, 660.

[3] I note that pursuant to this statute it is possible for the jurisdiction of a municipal planning authority to extend beyond the municipal limits.

regulations adopted pursuant to R.C. 711.05, R.C. 711.09, or R.C. 711.10. *See* 1994 Op. Att'y Gen. No. 94-066 at 2-330. All of your scenarios involve a conveyance of land by deed. Thus, if they constitute a division of land, the only way any actual requirement for platting could arise would be from properly adopted local rules which are expressly applicable to divisions of land made by instruments of conveyance.

Such local platting and subdivision rules may be applied only to divisions of land that qualify as subdivisions, as defined at R.C. 711.001(B). 1986 Op. Att'y Gen. No. 86-093 at 2-530 and 2-531; 1985 Op. Att'y Gen. No. 85-004; 1963 Op. Att'y Gen. No. 358, p. 404. Additionally, the local rules may not conflict with R.C. 711.131. R.C. 711.131 creates a statutory exception from local platting regulations by providing that a landowner may submit certain kinds of divisions of land to the planning authority for approval without plat. Approval is mandatory for divisions that qualify. *See Boxell v. Planning Comm'n*, 10 Ohio App. 2d 25, 31, 225 N.E.2d 610, 616 (Lucas County 1967); 1985 Op. Att'y Gen. No. 85-004 at 2-11; 1953 Op. Att'y Gen. No. 3285 at 670. Because the purpose of R.C. 711.131 is to except certain divisions of land from local platting regulations and because such local platting regulations apply only to statutorily defined subdivisions, it follows that R.C. 711.131 also applies only when there has first been a conveyance that qualifies as a subdivision. 1963 Op. Att'y Gen. No. 358 at 408. Thus a local planning authority may not require either platting or approval without plat for any conveyance of land that does not constitute a subdivision under R.C. 711.001(B).

The question of whether the particular conveyances you have described are subdivisions, requires interpretation of that portion of the definition of subdivision at R.C. 711.001(B)(1) which states that a "subdivision" is "[t]he division of any parcel of land shown as a unit or as contiguous units on the last preceding tax roll, into two or more parcels, sites, or lots." In order to apply this language, it is necessary to examine how land becomes a parcel on the tax roll and under what circumstances a parcel might be shown as "contiguous units."

The term tax roll, although not defined, is construed to refer to the auditor's general tax list and treasurer's general duplicate of real and public utility property that is prepared by the county auditor pursuant to R.C. 319.28. *See* 1986 Op. Att'y Gen. No. 86-093 at 2-528. *See generally Black's Law Dictionary* 1462 (6th ed. 1990) (defining "tax roll" as "the official record maintained by cities and towns listing the names of taxpayers and the assessed property"). The general tax list and duplicate are to contain, *inter alia*, "the description of each tract, lot, or parcel of real estate [and] the value of each tract, lot, or parcel." R.C. 319.28. The terms tract, lot, and parcel are also undefined. In the context of tax listing statutes, parcel is often understood as a general term referring to a single, individually taxed area of land, while the term tract refers more specifically to a parcel described by metes and bounds, and the term lot to a parcel identified by lot numbers on a recorded plat. *See* 1991 Op. Att'y Gen. No. 91-020 at 2-102. Nonetheless, the terms are not used with great precision in the tax statutes, and the Ohio Supreme Court has recognized "the fact that the real property law uses the terms _tract,_ _lot,_ and _parcel_ interchangeably." *Park Ridge Co. v. Franklin County Bd. of Revision*, 29 Ohio St. 3d 12, 15, 504 N.E.2d 1116, 1120 (1987). Thus, the term parcel in R.C. 711.001(B)(1) includes lots and tracts, as well as parcels, as those terms are used to identify an area of land described and valued on the general tax list and duplicate under R.C. 319.28.

While there is no statute setting out precisely what constitutes a parcel, a review of the general statutory scheme governing the general tax list and duplicate shows that the auditor is consistently directed to refer to transfers of title and recorded plats and surveys for purposes of maintaining accurate parcel descriptions and valuations. For example, when there is a conveyance of part of an existing tract or lot, the auditor is required to transfer the land so conveyed on the tax list and to determine separate tax values for the new and remaining parts. R.C. 319.20. *See also Ratajczak v. Carney*, 102 Ohio App. 183, 135 N.E.2d 64 (Cuyahoga County 1956) (holding that when land that previously constituted two parcels on the tax list was transferred by a warranty deed describing the land as a united and inseparable parcel, the auditor must show it on the tax list as a single parcel). When anyone presents a plat for recording, the auditor is required to assess the value of each of the newly created lots or parcels and enter them on the tax list. R.C. 5713.18. The auditor is required to make abstracts from books of his office containing descriptions of real property, platbooks, and lists of transfers of title. R.C. 5713.01(D). When an original survey, section, tract, or lot has become so divided that the description of the parts is indefinite and doubtful, the auditor may cause it to be accurately platted "as the different titles to the land therein require," R.C. 5713.13, and may require the owner to produce the "title papers and surveys" necessary for such platting, R.C. 5713.14. It appears, therefore, that initially, a parcel on the tax list is an area of land whose boundaries are established by the pertinent title documents, whether by metes and bounds description or by reference to recorded plats and surveys.

In order to determine whether the conveyances you have described constitute subdivisions under R.C. 711.001(B)(1), it is also necessary to consider under what circumstances such a parcel might be considered "shown as contiguous units" on the tax list. One such circumstance is the practice known as "split-listing." Pursuant to R.C. 5713.04, if a separate parcel of improved or unimproved property under single ownership is used in such a way that part of it is taxable but part of it would be exempt if it were a separate entity, the parts are listed for tax purposes as two separate entities, one tax-exempt and one not. The other circumstance is the practice, recognized in case law, of combining multiple parcels under common ownership into one large "parcel" for tax valuation purposes when the highest and best use of the multiple parcels is as a single economic unit. *Park Ridge Co. v. Franklin County Bd. of Revision* (syllabus, paragraph two).

None of the scenarios presented in your request, however, involve the above practices. In each of your scenarios, the two adjacent properties are defined by separate legal descriptions and shown as separate parcels on the tax list. Their identity as parcels on the tax list does not result from split-listing, nor has the auditor valued them together as a single economic unit, thus rendering them units of a larger parcel. We have found no authority for the auditor to combine adjacent parcels on the tax list solely on the basis of common ownership. Thus, the parcels described in your scenarios cannot be construed as contiguous units of any larger parcel on the tax list. They are separate parcels in their own right.

Under the provisions of R.C. 711.001(B)(1) pertinent to your inquiry, a subdivision requires "division of any parcel of land shown as a unit or as contiguous units on the last preceding tax roll." In each of your scenarios, although the parcels themselves are contiguous, they are not shown on the

tax roll as contiguous units of any legally recognized larger parcel. Thus the conveyance of one of these parcels does not constitute the division of a parcel and, by definition, does not constitute a subdivision. Because local platting regulations and the procedures for approval without plat under R.C. 711.131 apply only to subdivisions, the sale of one such parcel cannot be subject to platting regulations or to approval without plat.

It is, therefore, my opinion, and you are hereby advised that when a landowner owns two adjacent properties, each with its own legal description as shown in recorded conveyances or plats, and when these two properties are shown on the general tax list and duplicate provided under R.C. 319.28 as separate parcels that are not identified by the auditor as units of any larger legally recognized parcel, the conveyance of one of the properties to a different owner does not constitute a "subdivision," as defined at R.C. 711.001(B)(1), and the local planning authority with jurisdiction over platting and subdivision may not require the grantor-landowner to plat the conveyance or to seek approval without plat pursuant to R.C. 711.131.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

April 15, 1997

The Honorable John E. Meyers
Sandusky County Prosecuting Attorney
100 N. Park Avenue
Fremont, Ohio 43420

SYLLABUS: 97-019

When a landowner owns two adjacent properties, each with its own legal description as shown in recorded conveyances or plats, and when these two properties are shown on the general tax list and duplicate provided under R.C. 319.28 as separate parcels that are not identified by the auditor as units of any larger legally recognized parcel, the conveyance of one of the properties to a different owner does not constitute a "subdivision," as defined at R.C. 711.001(B), and the local planning authority with jurisdiction over platting and subdivision may not require the grantor-landowner to plat the conveyance or to seek approval without plat pursuant to R.C. 711.131.