

OPINION NO. 75-020

Syllabus:

1. The amended platting requirements as outlined in R.C. 711.02 (B) apply, by inference, to R.C. 711.10 concerning subdivisions in unincorporated areas.
2. The amended platting requirements as outlined in R.C. 711.02 (B) and 711.06 apply to those unincorporated areas within a three-mile radius of a municipal corporation.
- 3-4. The amended platting requirements as outlined in R.C. 711.02 (B) and 711.06 do not require a survey of the entire original parcels out of which a subdivision is created and require only that the boundaries of the lands of the dedicators within the new subdivision be marked by broken lines on the plat, together with the metes-and-bounds description of such lines.
5. The State Board of Registration for Professional Engineers and Surveyors has no authority under R.C. Chapter 4733. to adopt guidelines for implementation of the new amendments.

To: Daniel T. Spitler, Wood County Pros. Atty., Bowling Green, Ohio
By: William J. Brown, Attorney General, March 25, 1975

I have before me your request for my opinion which reads as follows:

"With respect to the questions listed below, our office would like your opinion on the following:

"With regard to Senate Bill No. 347 amending Section 711.02 and 711.06 of the Ohio Revised Code:

"(1) Though the act specifically purports to

amend Section 711.02 and 711.06 is it foreseeable that the requirements outlined in the act may also be applied, by inference, to Section 711.10 concerning, in particular, unincorporated areas?

"(2) As to Sections 711.02 and 711.06, does the act apply solely to those properties within the incorporated areas or does it apply as well to those areas within a three mile radius of such incorporated areas?

"(3) Does the act require a survey of the entire parcel or parcels out of which certain plat or plats are to be created or does the act simply require a survey of the plat or plats themselves?

"(4) Does the act require a full-scale drawing of the survey to be filed with the plat dedication or may a broken line boundary survey be indicated on the plat?

"(5) Should the guidelines for the implementation of this act, i.e. 'superimposed survey of lands,' be provided by the State Board of Registration, * * *?"

Senate Bill No. 347, to which you refer, became effective on September 30, 1974. With the amendments emphasized, it reads as follows:

"To amend sections 711.02 and 711.06 of the Revised Code relative to the superimposing of former acreage or lot boundaries upon new plats.

"Be it enacted by the General Assembly of the State of Ohio:

"Section 1. That sections 711.02 and 711.06 of the Revised Code be amended to read as follows:

"Sec. 711.02. (A) In-lots intended for sale shall be numbered in progressive numbers, or by the squares in which situated, and their precise length and width shall be stated on the plat provided for in section 711.01 of the Revised Code. Out-lots which do not exceed ten acres in size shall, in like manner, be surveyed and numbered, and their precise length and width stated on the plat, together with any streets, alleys, or roads which divide or border on them.

"(B) Every plat shall be superimposed on a survey of the lands of the dedicators from which such plat is drawn, and shall contain an accurate background drawing of any metes-and-bounds descriptions of the lands of the dedicators from which such plat is drawn.

"Sec. 711.06. A proprietor of lots or grounds in a municipal corporation, who subdivides or lays them

out for sale, shall make an accurate plat of such subdivision, describing with certainty all grounds laid out or granted for streets, alleys, ways, commons, or other public uses. The proprietor shall superimpose such plat upon the land from which such plat is drawn and shall make an accurate background drawing of any metes-and-bounds descriptions of the lands from which such plat is drawn. Lots sold or intended for sale shall be numbered by progressive numbers or described by the squares in which situated, and the precise length and width shall be given of each lot sold or intended for sale. Such plat shall be subscribed by the proprietor, or his agent duly authorized by writing, and acknowledged before an officer authorized to take the acknowledgement of deeds, who shall certify the acknowledgment of the instrument, and such plat shall be recorded in the office of the county recorder.

"Section 2. That existing sections 711.02 and 711.06 of the Revised Code are hereby repealed."

1. You ask whether these amendments to R.C. 711.02 and 711.06 also apply to R.C. 711.10, which provides for the subdividing and platting of unincorporated land in a county, with the exception of land which lies within three miles of an incorporated city or within one and a half miles of an incorporated village. Since the amendments to both sections are substantially identical in meaning, though slightly different in phraseology, it will suffice if either section is found to apply to the unincorporated land covered by R.C. 711.10. The language of R.C. 711.06 clearly shows that it deals only with incorporated municipalities. The other section, R.C. 711.02, makes no reference to either incorporated or unincorporated lands.

It must, however, be read in conjunction with the immediately preceding section, R.C. 711.01, to which it specifically refers. An examination of the language of R.C. 711.01, together with the history of the two sections, provides ample evidence that they were intended to apply to unincorporated lands as well as to that which had already been incorporated.

The historical citations appended to the two sections in the Revised Code show that they have existed side by side at least since 1831. At present, R.C. 711.01 reads as follows:

"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 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."

Prior to 1852 the word "town" was used in the statute instead of "village", but this was changed as a result of the Towns and Cities Act of 1852. *Babin v. Ashland*, 160 Ohio St. 328, 333-334 (1953); *Peck v. Weddell*, 17 Ohio St. 271, 285 (1867); see also *Fosdick v. Village of Ferrysburg*, 14 Ohio St. 472, 482 (1863), and 38 O. Jur. 2d 353-355. At any rate, either term, "town" or "village", can be used to refer to a comparatively small collection

of dwellings, whether incorporated or unincorporated, and I am satisfied that the words were used in the latter sense here. In its present form, R.C. 711.01 implies that a single individual can create an unincorporated village by complying with the platting provisions of R.C. Chapter 711. But before a village can be incorporated, it must have an area of two square miles with a population of twelve hundred, and a majority of the freeholders must institute the proceedings by a petition to the board of county commissioners. R.C. 707.01, 707.02. In a case in the Common Pleas Court of Cuyahoga County the validity of a plat was challenged on the ground that it had covered unincorporated territory when originally filed. The court said, Walworth v. Village of Collinwood, 8 Ohio C.C.R. 477, 478 (1894);

" * * * It is said that this was not a town; that a town means a body corporate. It clearly appears by this act that there it does not mean a body corporate, because the act contemplates that any person may lay out a town, and no man can make a body corporate all by himself. When 'any person' wishes to lay out a town he can do so. The statute provides the manner in which the map or plat shall be made; that it shall be recorded, and says what effect shall be given to the plat without any provision whatever for the formation of the municipal body. There were other statutes provided for the formation of municipal bodies. But this statute operates completely by itself simply on the plat made by that one person or more, in due form of law, and recorded as provided.

(Emphasis added.)

It should be noted that the first section of the chapter of the Revised Code prescribing proceedings for the incorporation of municipalities formerly provided, "Villages may be created and incorporated in the manner provided in Sections 707.02 to 707.30, * * *" R.C. 707.01. In 1967 the General Assembly recognized the anomaly and eliminated the reference to "creation". 132 Ohio Laws, 353.

In view of the foregoing, I conclude that R.C. 711.02 applies to unincorporated territory and that the amendment in S.B. No. 347 applies to R.C. 711.10 also.

2. Your next question asks whether the newly enacted requirements of R.C. 711.02 and 711.06 apply to plats in those areas within a three-mile radius of incorporated areas. I direct your attention to R.C. 711.09. This Section provides in part that:

"Whenever a city planning commission adopts a plan for the major streets or thoroughfares and for the parks and other open public grounds of a city or any part thereof, or for the unincorporated territory within three miles of the corporate limits thereof or any part thereof, then no plat of a subdivision of land within such city or territory shall be recorded until it has been approved by the city planning commission and such approval indorsed in writing on the plat. If such land lies within three miles of more than one city, then this section shall apply

to the approval of the planning commission of the city whose boundary is nearest to the land."

Since the newly enacted requirements of R.C. 711.02 apply to plats of subdivisions in unincorporated areas, and since the legislature has given a municipality the authority to approve such plats within the three-mile unincorporated area surrounding its corporate limits, it follows that the amended requirements of R.C. 711.02 and 711.06 will also apply to those plats falling within the three-mile radius.

3. You next ask whether the new amendments require that a landowner, who desires to create a new village or subdivision, must, in preparation of the plat prescribed by Chapter 711 of the Revised Code, survey the entire tract or tracts out of which the new subdivision is to be created, or whether the amendments are satisfied by a survey of only such portions of the original tracts as are to be included within the new subdivision.

It seems clear that both of the amendments, though slightly different in language, were intended to have the same meaning. The meaning itself is, however, somewhat more difficult to divine. The two amendments may fairly be summarized and paraphrased as follows: a plat must be superimposed on a survey of the lands from which the plat is drawn; and the plat shall contain an accurate background drawing of the metes-and-bounds descriptions of the lands from which it is drawn.

The essential terms in the amendments may be defined as follows: a "plat" is a map of a subdivision, R.C. 711.001 (A); a "subdivision" is a division of a unit of land, or of contiguous units, into lots, any one of which is less than five acres, for the purpose of transfer of ownership, or for the purpose of improvement by erection of residential, commercial or industrial buildings and dedication of streets, R.C. 711.011 (B); a "survey" is the measurement of a portion of the earth's surface, and particularly the lengths and directions of its bounding lines, for the purpose of conveyancing, recording and plotting of lands and subdivisions, R.C. 4733.01 (D); a "metes-and-bounds description", usually the result of a survey, gives the boundaries of a tract of land by reference to natural or artificial monuments, or by beginning at a fixed starting point and running therefrom by stated compass courses and distances, Black's Law Dictionary, 4th ed. (1957), p. 1142, 7 O. Jur. 2d, Boundaries, Secs. 3-11, 17 O. Jur. 2d, Deeds, Secs. 95-105, Brumbaugh v. Chapman, 45 Ohio St. 368 (1887).

Your question seems to revolve upon the interpretation of the phrase, "lands of the dedicators from which such plat is drawn", and more particularly upon the use of the word "drawn." That word has, of course, many meanings. Thus, the phrase may be read to mean the original tracts from which the subdivision has been excised. Or it may mean only the tracts from which the map of the subdivision has been delineated. I think it clear that this latter is the correct interpretation of the language of the amendments. Under that language it is the "plat" which is "drawn", not the "lands of the dedicators." The first interpretation would alter the amendment to read, "survey of the lands of the dedicators from which such subdivision is drawn." I conclude that the survey need not go beyond the limits of the new subdivision.

In the absence of any meaningful legislative history, except perhaps for the fact that S.B. No. 347 went through both houses of the Assembly in a very short time without amendment and without a dissenting vote (Bulletin, 110th General Assembly, p. 1973), recourse must be had to ordinary rules of statutory interpretation. One of these, R.C. 1.47, reads in part:

"In enacting a statute it is presumed that:

"* * * * *"

"(B) The entire statute is intended to be effective;

"(C) A just and reasonable result is intended;

"(D) A result feasible of execution is intended."

We must, therefore, seek such an interpretation of the language of the amendments as is both reasonable and workable. Curry v. Lybarger, 133 Ohio St. 55, 60 (1937). The object of the amendments must have been to simplify title examinations in cases where a single subdivision has been assembled from numerous smaller, separately owned, parcels of land. With the lines of "the survey of the lands of the dedicators" showing on the plat, together with the metes-and-bounds description of those lines, a lot owner can tell from the plat alone the derivation of his title. No further survey of the lands of the dedicators beyond the confines of the new subdivision is necessary. In my opinion, this interpretation is both reasonable and workable.

4. Your fourth question asks whether the amendments require a full-scale drawing of the survey to be filed with the plat dedication or whether a broken line boundary of the lands of the dedicators may be indicated on the plat. Given my conclusion in question three above, a broken line boundary, together with the metes-and-bounds description of such lines, is sufficient. The amended portions of R.C. 711.02 and 711.06 require only those lines necessary to establish accurately the lands of the dedicators within the limits of the plat in question.

5. You also ask whether the State Board of Registration for Professional Engineers and Surveyors may adopt guidelines for implementation of the new amendments. I can find nothing in the provisions of R.C. Chapter 4733, which would give the Board any such authority.

In specific answer to your questions it is my opinion, and you are so advised, that:

1. The amended platting requirements as outlined in R.C. 711.02 (B) apply, by inference, to R.C. 711.10 concerning subdivisions in unincorporated areas.

2. The amended platting requirements as outlined in R.C. 711.02 (B) and 711.06 apply to those unincorporated areas within a three-mile radius of a municipal corporation.

3-4. The amended platting requirements as outlined in R.C. 711.02 (B) and 711.06 do not require a survey of the entire

original parcels out of which a subdivision is created and require only that the boundaries of the lands of the dedicators within the new subdivision be marked by broken lines on the plat, together with the metes-and-bounds description of such lines.

5. The State Board of Registration for Professional Engineers and Surveyors has no authority under R.C. Chapter 4733. to adopt guidelines for implementation of the new amendments.