

OPINION NO. 84-101

Syllabus:

1. A decision by a board of county commissioners to levy an assessment pursuant to R.C. 1515.24 for the costs of maintenance or repair of an improvement may be appealed in accordance with the provisions of R.C. Chapters 2505 and 2506.
2. Plans for improvements which are to be constructed pursuant to

R.C. Chapter 1515 need not include the specific erosion and sediment control measures that are required under R.C. 6131.14.

3. The provisions of R.C. 6137.08 which permit an owner who performs maintenance or repair work on a portion of an improvement to petition for a reduced maintenance assessment do not apply to improvements constructed under R.C. Chapter 1515.
4. Only those lands which were assessed for the costs of construction of an improvement undertaken pursuant to an agreement made in accordance with R.C. 6131.63 may be assessed for the costs of maintenance of such an improvement.
5. Pursuant to R.C. 6131.59, in order to undertake an improvement to a portion of a ditch that was established in accordance with R.C. 6131.63 more than seven years previously, an owner must file a petition as provided under R.C. 6131.04 through R.C. 6131.64, unless the improvement is limited to the installation of tile by extension or addition to his own laterals, or the expelling of water from such laterals into an open ditch on his own land.
6. The board of supervisors of a soil and water conservation district is not authorized to make plans for, or to approve plans that are submitted by, a landowner who proposes to undertake for himself the construction, reconstruction or alteration of all or part of an improvement on his own property when such improvement was originally constructed and is presently maintained in accordance with R.C. Chapter 1515.
7. When the board of supervisors of a soil and water conservation district determines that it is necessary to construct an improvement or to alter or repair an existing improvement, the board may undertake such activity in accordance with R.C. 1515.08(C) and (H), and may finance such activity through the proceeds of a levy authorized under R.C. 1515.10.
8. When the board of supervisors of a soil and water conservation district determines that it is necessary to construct an improvement for purposes of flood control or water disposal, determines a benefited project area, and certifies these factors together with a plan for the proposed improvement to the board of county commissioners, R.C. 1515.20, and the construction is approved by the commissioners, R.C. 1515.21, the costs of construction of the improvement may be paid through assessments levied in accordance with R.C. 1515.24.
9. When an improvement has been constructed and paid for in the manner set forth in R.C. 1515.20, R.C. 1515.21, and R.C. 1515.24, and it becomes necessary to undertake maintenance or repair work as provided in R.C. 1515.08 and R.C. 1515.29, the costs of such work may be paid from the proceeds of assessments levied under R.C. 1515.24.

To: Richard B. Hauser, Huron County Prosecuting Attorney, Norwalk, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 31, 1984

I have before me your request for an opinion in response to several questions concerning improvements which have been or are to be constructed and maintained pursuant to R.C. Chapters 1515, 6131, and 6137.

Your first series of questions asks whether certain procedures and requirements set forth under R.C. Chapters 6131 and 6137 may be applied to

improvements constructed and maintained under authority of R.C. Chapter 1515. Initially, I note that R.C. Chapter 6131 concerns a broad spectrum of improvements which may be constructed under the authority of a board of county commissioners, R.C. 6131.02, or through the voluntary cooperation of affected owners, as that term is defined under R.C. 6131.01(A), R.C. 6131.63. Improvements which may be undertaken pursuant to R.C. Chapter 6131 include, *inter alia*, construction or alteration of ditches, drains, watercourses and floodways; alteration of the course, location, or terminus of a river, creek or run; construction of structures to protect lands from the overflow from a body of water; removal of obstructions or debris from a ditch, drain, watercourse, floodway, river, creek, or run; and the vacating of a ditch or drain. R.C. 6131.01(C).

R.C. Chapter 6137 establishes procedures for the maintenance of improvements which are constructed pursuant to R.C. Chapter 6131. R.C. 6137.11 affords owners affected by an increase in the maintenance assessment base the right to appeal a final assessment order made by a board of county commissioners to the court of common pleas pursuant to the provisions of R.C. 6131.25 through R.C. 6131.36. You have asked whether the procedure for appeal of maintenance assessments, as set forth under R.C. 6137.11, may be applied to assessments levied for the maintenance of improvements constructed in accordance with R.C. Chapter 1515.

R.C. 1515.03 creates soil and water conservation districts coextensive with the geographic area of each county of the state.¹ R.C. 1515.05 establishes a board of supervisors to administer each district. Each board is empowered, *inter alia*, to implement, repair, maintain and operate improvements. R.C. 1515.08(C), (L). The types of improvements which may be undertaken pursuant to R.C. Chapter 1515 are identified, generally, as "preventive and control measures and other works of improvement for natural resource conservation and development and flood prevention, and the conservation, development, utilization, and disposal of water within the district on . . . lands within the district," R.C. 1515.08(C), and "agriculture pollution abatement and urban sediment pollution abatement measures," R.C. 1515.08(L). Such an improvement may be constructed pursuant to R.C. 1515.08(C) and (H). Alternatively, when the board of supervisors of the district finds that an improvement will sufficiently benefit the affected lands, it may devise a plan for the improvement and certify such plan to the board of county commissioners. R.C. 1515.20. If the board of county commissioners approves the plan, it is empowered to undertake construction of the improvement pursuant to R.C. 1515.21 and R.C. 1515.08(C). The board of county commissioners may levy an assessment for the costs of construction of improvements undertaken pursuant to R.C. 1515.20 and R.C. 1515.21 upon property within the project area in accordance with R.C. 1515.24, which further provides as follows:

Any moneys collected in excess of the amount needed for construction of the improvement and the subsequent first year's maintenance may be maintained in a fund to be used for maintenance of the improvement. In any year subsequent to a year in which an assessment for construction of an improvement levied under this section has been collected, and upon determination by the board of county commissioners that funds are not otherwise available for maintenance or repair of the improvement, the board shall levy upon the property within the project area an assessment for maintenance at a uniform percentage of all construction costs based upon the assessment schedule used in determining the construction assessment. Such assessment is not subject to the provisions concerning notice and petition contained in section 1515.25 of the Revised Code. An assessment for maintenance shall not be levied in any year in which the unencumbered balance of funds available for maintenance of the improvements exceeds twenty per cent of the cost of construction of the improvement, except that the board may adjust the level of

¹ A municipal corporation may remove itself from or reinstate itself in the territory of a soil and water conservation district.

assessment within the twenty per cent limitation, or suspend temporarily the levying of an assessment, for maintenance purposes as maintenance funds are needed.

The board of county commissioners may issue bonds and notes as authorized by section 131.23 or 133.31 of the Revised Code.

Thus, R.C. 1515.24 provides for the levy of a maintenance assessment.

You have asked whether the procedure set forth under R.C. 6137.11 for an appeal from an assessment made thereunder may be construed to authorize an appeal from an assessment levied pursuant to R.C. 1515.24 for maintenance or repair of an improvement. There is no language in R.C. 6137.11, or in the provisions of R.C. 6131.25 through R.C. 6131.36, which would extend the applicability of these appeal procedures to assessments imposed under authority of R.C. Chapter 1515. Rather, R.C. 2506.01 provides, in pertinent part, that "[e]very final order, adjudication, or decision of any . . . board . . . of any political subdivision of the state may be reviewed by the common pleas court of the county in which the principal office of the political subdivision is located, as provided in . . . [R.C. 2505.01 to R.C. 2505.45], . . . and as such procedure is modified by . . . [R.C. 2506.01 to R.C. 2506.041]." Consequently, a decision by a board of county commissioners to levy an assessment pursuant to R.C. 1515.24 for the costs of maintenance or repair of an improvement may be appealed in accordance with the provisions of R.C. Chapters 2505 and 2506.

You have also noted that R.C. 6131.14 provides, in part, for erosion and sediment control when constructing an improvement, as follows:

The engineer shall prepare specifications for the construction of the improvement. The engineer shall specify a width of temporary easement for construction purposes. The specifications shall provide for spreading and leveling of spoil banks and shall provide for erosion and sediment control through the establishment of a sod or seeded strip not fewer than four feet nor more than fifteen feet wide, measured at right angles to the top of the ditch bank, on both sides of the ditch, except where suitable vegetative cover exists. The strip or other such controls shall be considered a part of the permanent improvement. Sod or seeded strips established and maintained in excess of four feet shall be compensated for by their removal from the taxable valuation of the property of which they are a part. (Emphasis added.)

Your query in this regard is whether the foregoing provision applies to improvements constructed in accordance with R.C. Chapter 1515. There is no language in R.C. 6131.14, or in any other statutory provision, which expresses a legislative intent that this sod or seeded strip requirement imposed under R.C. 6131.14 is to be applied to an improvement which is not undertaken pursuant to the preceding provisions of R.C. Chapter 6131. The stated purpose of such a strip is erosion and sediment control. These objectives are inherent purposes of improvements implemented by a board of supervisors of a soil and water conservation district or a board of county commissioners pursuant to R.C. Chapter 1515. R.C. 1515.08. One must therefore presume that improvements constructed pursuant to the provisions of R.C. Chapter 1515 will include measures for prevention of soil erosion and control of sediment pollution. Accordingly, it is my conclusion that plans for improvements which are to be constructed under authority of R.C. Chapter 1515 need not include the specific erosion and sediment control measures that are required under R.C. 6131.14.

Your final question regarding the scope of applicability of statutory provisions extraneous to R.C. Chapter 1515 is whether a landowner may petition for lower assessments, pursuant to R.C. 6137.08, when such landowner proposes to perform maintenance or repair work on a portion of an improvement which was constructed under the provisions of R.C. Chapter 1515 and runs through such landowner's property. R.C. 6137.08 permits an owner, see R.C. 6131.01(A), to apply for a reduced assessment by filing a statement of the type of proposed work with

the county engineer, who will later inspect to determine whether such work has been performed. The county engineer must report and recommend to the board of county commissioners the percentage reduction to be granted the owner. The board may confirm or reject the engineer's recommendation, and certify the reduction, if any, to the county auditor who shall reduce the next annual maintenance assessment in the amount certified. R.C. 6137.08.

R.C. Chapter 1515 does not include a similar provision for the reduction of maintenance assessments. Rather, pursuant to R.C. 1515.29, responsibility for maintenance of improvements constructed pursuant to R.C. 1515.20 and R.C. 1515.21 rests solely with the board of county commissioners, although the commissioners may authorize the supervisors of a soil and water conservation district to perform maintenance work on such improvements. R.C. 1515.24 permits the board of county commissioners to levy maintenance assessments "[i]n any year subsequent to a year in which an assessment for construction of an improvement levied under this section has been collected, and upon determination by the board of county commissioners that funds are not otherwise available for maintenance or repair of the improvement." If a maintenance assessment is so levied within the project area of the improvement, see R.C. 1515.20, it must be "at a uniform percentage of all construction costs based upon the assessment schedule used in determining the construction assessment." R.C. 1515.24. There is no provision in R.C. Chapter 1515 for a landowner to undertake maintenance or repair work on the portion of an improvement which runs across his property, nor is there any provision for an individual owner to seek a reduced assessment based upon performance of such work. Furthermore, there is no language in R.C. Chapter 6137 from which one could deduce a legislative intent that R.C. 6137.08 may be applied to improvements constructed pursuant to R.C. Chapter 1515. Instead, the use of monies in the maintenance fund established under R.C. 6137.02, into which assessments levied under R.C. Chapter 6137 are paid, R.C. 6137.03, is limited to the repair, upkeep, and permanent maintenance of improvements constructed pursuant to R.C. Chapters 6131 and 6133. R.C. 6137.02. It is therefore my conclusion that the provisions of R.C. 6137.08 which permit an owner who performs maintenance or repair work on a portion of an improvement to petition for a reduced maintenance assessment do not apply to improvements constructed under R.C. Chapter 1515.

The next series of questions which you have posed involves improvements that may be constructed pursuant to R.C. 6131.63, which provides, in pertinent part, as follows:

Except when an owner whose land is used for agricultural purposes desires to install tile by extending or adding to his own laterals or desires to expel water therefrom into an open ditch on his own land in the same watershed, when one or more owners desire to join in the construction of an improvement that will benefit the land of the owners, and when the owners are willing to construct the improvement and pay the cost thereof, they may enter into a written agreement for the construction of the improvement, or they may enter into an agreement to construct such part of the improvement as a person mutually agreed upon apportions to each of them respectively. In the agreement the owners shall provide that the agreement and the plan and schedules of the proposed improvement shall be filed with the clerk of the board of county commissioners of the county in which the improvement is to be constructed. When the agreement and schedules are so signed, the plan is approved by a professional engineer registered in this state, and the agreement, schedules, and plan are filed with the clerk of the board of county commissioners, the clerk shall immediately refer the agreement, plan, and schedules to the county engineer for examination and review. The county engineer shall determine the adequacy of the plan and schedules and the effect of the proposed improvement on any other improvements and on any highways in the area affected. The county engineer shall also prepare a schedule of proposed assessments for the maintenance of the improvement according to an

estimate of benefits accruing to each owner and an estimate of maintenance costs including the engineer's costs in preparing the schedules. The board shall pay the engineer's costs out of the county general fund. The engineer shall file with the clerk of the board of county commissioners, within sixty days, a report of his review together with such recommendations for change, amendment, or alteration of the agreement, plan, and schedules as he may determine to be necessary in the public interest. When the agreement, plan, and schedules, as presented or as amended by the owners pursuant to the county engineer's recommendations, are approved by the county engineer, the engineer shall file, within sixty days, a certificate of approval with the clerk of the board of county commissioners. Failure to file a certificate of approval within sixty days constitutes a presumption of certification and the owners may proceed to construct.

Upon the filing with the clerk of the board of county commissioners of the schedule of maintenance assessments prepared by the county engineer as provided by this section, together with his certificate of approval, the board shall proceed to set a hearing date on the proposed maintenance assessments not less than twenty-five nor more than ninety days thereafter and shall notify all persons whose names appear in the engineer's schedule of maintenance assessments in accordance with section 6131.16 of the Revised Code. At the hearing on the proposed assessments the board of county commissioners shall hear any evidence offered for or against the assessments proposed to be levied against any owner as shown by the schedule of assessments filed by the county engineer and shall hear any competent evidence on the question of benefits. The board, from the evidence offered, may amend and correct the assessments, and the assessments so amended or corrected shall be approved by the board and the approval entered on its journal. Once the assessments have been approved, all further proceedings in connection with the maintenance of the improvement shall be in accordance with Chapter 6137, of the Revised Code. The clerk shall record the agreement, plan, and schedules in the drainage records of the county, and the agreement shall locate and establish the improvement as a public watercourse. The improvement shall then be constructed by the owner in accordance with the approved plans. (Emphasis added.)

Thus, two or more owners may enter into an agreement to construct an improvement, and to pay for the costs of construction. The owners participating in such agreement must then submit a plan and schedules for the proposed improvement to the county engineer. When the county engineer approves a plan for a proposed improvement, this plan, and a schedule of proposed assessments for the maintenance of the improvement, are to be filed with the clerk of the board of county commissioners. The board must thereafter notify all persons whose names appear on the engineer's proposed maintenance assessment schedule, and conduct a public hearing concerning the proposed assessments. Following this hearing, the board is to enter an approved maintenance assessment schedule on its journal.

Your first query concerning voluntary group improvement projects constructed in accordance with R.C. 6131.63 is whether owners who are not parties to an agreement regarding construction of an improvement may be assessed for a part of the costs of maintaining the improvement. Pursuant to R.C. 6131.63, the county engineer must "prepare a schedule of proposed assessments for the maintenance of the improvement according to an estimate of benefits accruing to each owner." There is no indication apparent on the face of this statute that the foregoing provision is to encompass anyone except the "one or more owners [who] desire to join in the construction of an improvement that will benefit the land of the owners, . . . [who] are willing to construct the improvement and pay the cost thereof, . . . and [who] . . . enter into a written agreement for the construction of the improvement." R.C. 6131.63. This statute is intended to provide a procedure through which persons willing to pay all construction and maintenance costs may undertake construction of an improvement.

If an owner or a group of owners does not wish to assume the entire construction and maintenance costs of an improvement which will benefit his or their property, then R.C. Chapter 6131 provides an alternative procedure by which an owner may seek construction of an improvement. An owner may file a petition for construction of an improvement with the clerk of the board of county commissioners pursuant to R.C. 6131.04. Owners who have not participated in the petition may file applications requesting approval of the petition, or may file remonstrances against the granting of the requested improvement, R.C. 6131.08. If a petition is approved, then all owners of land believed to be benefited by the proposed improvement may be assessed for the costs of construction of the improvement in accordance with R.C. 6131.15 through R.C. 6131.36.

Thus, the legislature has provided two different methods by which an owner may achieve construction of a desired improvement. The owner may enter into an agreement with other owners willing to pay the costs of construction of the proposed improvement, R.C. 6131.63. Alternatively, an owner may petition the board of county commissioners for construction of the desired improvement, R.C. 6131.04. If the latter method is pursued, then all owners of land believed to be benefited by the proposed improvement may be assessed for the costs of construction of such improvement, R.C. 6131.15. Had the legislature intended the costs of construction of an improvement undertaken pursuant to R.C. 6131.63 to be apportioned among all owners of land which is believed to be benefited by such an improvement, it could have expressed that intention clearly. *Cf. In re Hesse*, 93 Ohio St. 230, 235, 12 N.E. 511, 512 (1915) (it must be assumed that the body which drafted a statutory provision was cognizant of the surrounding circumstances and other provisions of law relating to the same subject, and had it intended a particular effect "it would have been easy, in unequivocal language, to make that provision plain"). The responsibility for construction costs is pertinent because the schedule for assessment of construction costs, R.C. 6131.15 through R.C. 6131.36 and R.C. 6131.63, becomes the basis for the determination of maintenance assessments.

An improvement constructed under either of the methods described above is to be maintained in accordance with R.C. Chapter 6137. R.C. 6131.63; R.C. 6137.02. The fund established under R.C. 6137.02 for the repair, upkeep, and permanent maintenance of the improvements is to be financed "by an assessment levied not more often than once annually upon the benefited owners, as defined in . . . [R.C. 6131.01], apportioned on the basis of the estimated benefits for construction of the improvement." R.C. 6137.03. Further, R.C. 6137.11 provides, in part:

The original schedule of benefit assessments upon owners for the construction of any improvement shall be maintained by the county auditor as the permanent base for maintenance assessments. The maintenance assessments shall be levied by the county auditor in such percentage of the permanent base as is authorized by the board of county commissioners. (Emphasis added.)

Accordingly, only those owners who appeared on the original schedule of benefit assessments for the construction of an improvement become part of the permanent base for maintenance assessments. As previously discussed, when owners agree to join in the construction of an improvement that will benefit their land, only those owners participating in the agreement pay the costs of construction, R.C. 6131.63. Consequently, only those lands which were assessed for the costs of construction of an improvement undertaken pursuant to an agreement made in accordance with R.C. 6131.63² may be assessed for the costs of maintenance of such an improvement.

Your next question concerns a situation in which a voluntary group project, consisting of an open channel or ditch, has been constructed pursuant to R.C. 6131.63. The owner of one parcel of land through which such improvement runs

² Assessments are levied against the parcel of land rather than personally against the owner of a parcel of land. See R.C. 6131.43.

wishes to replace the open channel with subsurface tile and an overflow channel. It is my understanding that the present open channel is a relatively deep ditch. The desired improvement would consist of subsurface tile which would be intended to accept most of the flow of water which drains from the adjacent lands. This tile would be covered with soil or other fill in order to create a relatively shallow ditch which could then be used for agricultural purposes by the owner. However, in the event of extraordinarily heavy rains or other flooding, this shallow ditch would become a channel for the drainage of the overflow that could not be accepted by the subsurface tile. Your query is whether an individual owner may install subsurface tile and create an overflow channel to replace an improvement which is currently being maintained in accordance with R.C. 6131.63 and R.C. Chapter 6137.

R.C. 6131.63 permits "an owner whose land is used for agricultural purposes. . .to install tile by extending or adding to his own laterals or. . .to expel water therefrom into an open ditch on his own land in the same watershed. . . ." It is my understanding that the term "laterals," as used in R.C. 6131.63, refers to smaller ditches often set at ninety degree angles from a main ditch into which the smaller ditches drain. The improvements contemplated by the owner in the situation you have posed do not appear to be extensions or additions to such lateral ditches. Further, it does not appear to be the intent of the owner to expel water into an open ditch on his own land. Rather, water would be expelled into subsurface tile, and thereafter into an improvement which was constructed in cooperation with a group of owners and must therefore be presumed to run across several owners' lands. Thus, the proposed improvement may not be constructed under authority of R.C. 6131.63.

It may also be noted that R.C. 6137.08 recognizes that individual owners may perform work on a public ditch, watercourse or other improvement. R.C. 6137.08 states, in part:

Any owner may make application for reduction in his maintenance assessment due to work he proposes on any portion of a public ditch, watercourse, or other improvement. The application shall be filed with the county engineer on or before the first day of May in any year and shall state the nature of the work to be done, such as clearing brush, removing silt or debris, repair of structure, or other work necessary to preserve the improvement. The county engineer, in making inspections of the drainage improvements, shall note the extent to which any owner has carried out such repair and maintenance work. In making the annual report and estimate to the board of county commissioners, the engineer shall include a schedule containing the name of each owner who has applied for reduction of maintenance assessment due to performance of repair and maintenance work and the percentage reduction, if any, that the engineer recommends be granted each owner. (Emphasis added.)

Thus, this provision acknowledges authority for an owner to perform repair and maintenance work, or other work necessary to preserve an improvement. The work proposed by the owner in the situation that you describe consists of reconstruction, tiling, filling, or alteration of an improvement, activities which are clearly different from mere measures undertaken to repair, maintain or preserve the existing improvement. This provision is, therefore, not applicable to the work that the owner in question proposes to undertake.

Based upon conversations with the office of the county engineer, I understand that the existing ditch has probably been in use for more than seven years. Thus, the following provision is pertinent:

When an improvement consisting of a ditch, drain, or watercourse has been established and constructed or used for seven years or more, it shall be considered to be a public watercourse notwithstanding any error, defect, or irregularity in the location, establishment, or construction thereof, and the public shall have and possess in and to any such watercourse that has thus been constructed

or used for seven years the rights and privileges that relate to and pertain to natural watercourses, but the same shall be subject to any improvement upon petition, as provided in sections 6131.01 to 6131.64 of the Revised Code. (Emphasis added.)

R.C. 6131.59. As set forth under R.C. 6131.01(C)(1), "[t]he location, construction, reconstruction, reconditioning, widening, deepening, straightening, altering, boxing, tiling, filling, walling, arching, or any change in the course, location, or terminus of any ditch, drain, watercourse, or floodway" constitutes an "improvement" as that term is used in R.C. 6131.01 through R.C. 6131.64. The work which the owner in question proposes to undertake clearly falls within the statutory definition of an improvement. I therefore conclude that, pursuant to R.C. 6131.59, in order to undertake an improvement to a portion of a ditch which was established in accordance with R.C. 6131.63 more than seven years previously, an owner must file a petition as provided under R.C. 6131.01 through R.C. 6131.64, unless the improvement is limited to the installation of tile by extension or addition to his own laterals, or the expelling of water from such laterals into an open ditch on his own land.

The final questions posed in your letter of request concern improvements which have been constructed and are maintained in accordance with R.C. Chapter 1515. The facts underlying these questions as set forth in your letter of request, and as elicited during conversations with the office of the soil and water conservation district, are as follows:

A landowner desired to put subsurface tile in place of an open ditch improved and maintained under R.C. Chapter 1515. The county soil and water conservation district provided the landowner with a plan which would not cause negative effects to the other landowners and which included a plan for tile plus an erosion control structure. The landowner did not follow the plan and installed subsurface tile with only a partial erosion control structure. His land is now flooded. Neighboring owners' lands are thus far unaffected.

Your first question regarding the foregoing situation is whether the board of supervisors of a soil and water conservation district may provide or approve plans for an improvement which a landowner³ proposes to construct on his own land, or plans for the alteration or reconstruction of a portion of an improvement which was constructed and is maintained⁴ pursuant to R.C. Chapter 1515, and which runs across the landowner's property. It is axiomatic that the board of supervisors of a soil and water conservation district is a statutory creation, R.C. 1515.05, and, as such, the board has only those powers which are expressly conferred by statute, or which are necessarily implied from an express power. Cf. State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947). No provision of R.C. Chapter 1515 empowers the board of supervisors of a soil and water conservation district to approve plans for the construction, implementation, or alteration of an improvement when that activity is to be undertaken by a landowner, nor is this authority implicit in any express power conferred upon the board. This apparent lack of statutory authority may be contrasted with the express provisions of R.C. 6131.63, under which owners, upon approval of plans by

³ As used in R.C. Chapter 1515, "[l]andowner" . . . means an owner of record as shown by the records in the office of the county recorder." R.C. 1515.01(C).

⁴ The board of supervisors of a soil and water conservation district is authorized to maintain works of improvement pursuant to R.C. 1515.08(C). This authorization is extended to the board of county commissioners pursuant to R.C. 1515.21. In addition, pursuant to R.C. 1515.29, the board of county commissioners must maintain the works of improvement constructed by such board for a soil and water conservation district, see R.C. 1515.20 and R.C. 1515.21, although the commissioners may contract with or authorize the district board of supervisors to perform maintenance work.

the county engineer and the board of county commissioners, may construct an improvement. I therefore conclude that the board of supervisors of a soil and water conservation district is not authorized to make plans for, or to approve plans that are submitted by, a landowner who proposes to undertake for himself the construction, reconstruction, or alteration of all or part of an improvement on his own property, when such improvement was originally constructed and is presently maintained in accordance with R.C. Chapter 1515.

You have also asked what action the board of supervisors may take when one landowner has improperly constructed or altered an improvement in such a manner that the landowner's property is now flooded, or the property of other landowners may be negatively affected. The powers of a board of supervisors of a soil and water conservation district are set forth under R.C. 1515.08, which provides, in relevant part:

The supervisors of a soil and water conservation district have the following powers in addition to their other powers:

....
(B) To develop plans for the conservation of soil resources and for the control and prevention of soil erosion and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district, and to publish such plans and information;

(C) To implement, construct, repair, maintain, and operate preventive and control measures and other works of improvement for natural resource conservation and development and flood prevention, and the conservation, development, utilization, and disposal of water within the district on lands owned or controlled by this state or any of its agencies and on any other lands within the district, which works may include any facilities authorized under state or federal programs, and to acquire, by purchase or gift, and to hold, encumber, or dispose of real and personal property or interests therein for such purposes. . .

....
(H) To make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers under Chapter 1515. of the Revised Code, provided that:

(1) When the cost under any such contract or agreement, other than compensation for personal services or rental of office space, involves an expenditure of more than two thousand dollars, the supervisors shall make a written contract with the lowest and best bidder after advertisement for not less than two nor more than four consecutive weeks preceding the day of the opening of bids in a newspaper of general circulation within the district and in such other publications as the supervisors determine, which notice shall state the general character of the work and materials to be furnished, the place where plans and specifications therefor may be examined, and the time and place of receiving bids.

(2) Each bid for a contract for the construction, demolition, alteration, repair, or reconstruction of an improvement shall contain the full name of every person interested in it and shall meet the requirements of section 153.54 of the Revised Code.

(3) Each bid for a contract except as provided in division (H)(2) of this section shall contain the full name of every person interested in it and shall be accompanied by a bond or certified check on a solvent bank in an amount not to exceed five per cent of the bid, conditioned that if the bid is accepted a contract shall be entered into and the performance thereof secured.

(4) The supervisors may reject any and all bids.

(5) A bond with good and sufficient surety, approved by the authority and issued by a bonding company licensed to do business in this state, shall be required of every contractor awarded a contract except as provided in division (H)(2) of this section in the full amount

of the contract price, conditioned upon faithful performance of the contract.

....
(M) To do all acts necessary or proper to carry out the powers granted in Chapter 1515. of the Revised Code.

Thus, a board of supervisors may determine that it is necessary to construct an improvement, or to alter or repair an improvement which was previously constructed. I note that R.C. 1515.08(C) makes no reference to the possible causes of flooding which may lead to construction or repair of an improvement. Further, the statute does not include language which would limit the authority of a board to undertake repair work to situations in which the improvement to be repaired was constructed by the board. Pursuant to R.C. 1515.08(C) and (H), the board is authorized to contract for the performance of construction, alteration, or repair work. Such work may be financed through the proceeds of a levy authorized under R.C. 1515.10. The board of supervisors may, therefore, repair the improvement in question, or construct a proper erosion control improvement, in the manner provided under R.C. 1515.08(C) and (H).

Alternatively, when the board determines that an improvement should be constructed pursuant to R.C. 1515.08, then R.C. 1515.20 is applicable. R.C. 1515.20 provides as follows:

When the supervisors of a soil and water conservation district find, after due notice and public hearing, that the construction of an improvement authorized by section 1515.08 of the Revised Code will improve water management and development in the county in which the district is located to the benefit of the lands therein, that the cost of the proposed improvement will be less than the benefits, and that the improvement will benefit the lands in the area by promoting the economical, industrial, and social development of the area, they shall determine the watershed or other areas benefited by the proposed improvement and shall certify such finding and determination to the board of county commissioners of each county containing any of the territory included in the benefited area. The certification shall be accompanied by a plan of the improvement and a map of the watershed and other areas determined to be benefited by the proposed improvement in detail sufficient to implement sections 1515.24 to 1515.28 of the Revised Code.

Thus, pursuant to R.C. 1515.08 and R.C. 1515.20, when land within the district is flooded, and a board of supervisors finds that construction of an improvement is necessary and that benefits to lands within the area will exceed the costs of the proposed improvement, then the board may determine a benefited project area, and may certify such information to the board of county commissioners. The board of county commissioners may then approve such construction and proceed in the manner provided under R.C. 1515.08(C) and R.C. 1515.21 to construct the improvement.

When improvements are constructed through this process of certification to the board of county commissioners, the means to pay the costs of the improvements are as set forth in R.C. 1515.24, which states:

Upon receipt of a certification made by the supervisors of a soil and water conservation district pursuant to section 1515.20 of the Revised Code, the board of county commissioners may levy upon the property within the project area an assessment at a uniform or varied rate based upon the benefit to the area certified by the supervisors, as necessary to pay the cost of construction of the improvement not otherwise funded and to repay advances made for purposes of the improvement from the fund created by section 1515.15 of the Revised Code. The assessment shall be certified to the county auditor, and by him to the county treasurer. The collection of such assessment shall conform in all matters to Chapter 323. of the Revised Code.

If the assessment is to be made at a varied rate, the board shall give notice by first class mail to every person whose property is subject to assessment, at the tax mailing or other known address of such person. Such notice shall contain a statement of the amount to be assessed against the property of the addressee and a statement that he may file an objection in writing at the office of the board of county commissioners within thirty days after the mailing of notice. If the residence of any owner cannot be ascertained, or if any mailed notice is returned undelivered, the board shall publish such notice to all such owners in a newspaper of general circulation within the project area, at least once each week for three weeks, which notice shall include the information contained in the mailed notice, but it shall state that the owner may file an objection in writing at the office of the board of county commissioners within thirty days after the last publication of such notice.

Upon receipt of objections as provided in this section, the board shall proceed within thirty days to hold a final hearing upon the objections by fixing a date and giving notice by first class mail to the objectors at such address as provided in filing his objection. If any mailed notice is returned undelivered, the board shall give due notice to such objectors in a newspaper of general circulation in the project area, stating the time, place, and purpose of the hearing. Upon hearing the objectors the board may amend and shall approve the final schedule of assessments by journal entry.

Any person whose objection is not allowed may appeal within thirty days to the court of common pleas of the county in which the property is located.

Any moneys collected in excess of the amount needed for construction of the improvement and the subsequent first year's maintenance may be maintained in a fund to be used for maintenance of the improvement. In any year subsequent to a year in which an assessment for construction of an improvement levied under this section has been collected, and upon determination by the board of county commissioners that funds are not otherwise available for maintenance or repair of the improvement, the board shall levy upon the property within the project area an assessment for maintenance at a uniform percentage of all construction costs based upon the assessment schedule used in determining the construction assessment. Such assessment is not subject to the provisions concerning notice and petition contained in section 1515.25 of the Revised Code. An assessment for maintenance shall not be levied in any year in which the unencumbered balance of funds available for maintenance of the improvements exceeds twenty per cent of the cost of construction of the improvement, except that the board may adjust the level of assessment within the twenty per cent limitation, or suspend temporarily the levying of an assessment, for maintenance purposes as maintenance funds are needed.

The board of county commissioners may issue bonds and notes as authorized by section 131.23 or 133.31 of the Revised Code. (Emphasis added.)

Thus, pursuant to R.C. 1515.08 and R.C. 1515.21, a board of county commissioners may construct an improvement to control flooding on lands within the district without regard to the cause of such flooding, and may levy assessments upon benefited lands in the project area to pay the costs of such construction. I note, however, that assessments for maintenance and repair work may only be made when the costs of construction of the affected improvement were levied and collected under authority of R.C. 1515.24. I therefore conclude that, when a board of supervisors of a soil and water conservation district determines that it is necessary to construct an improvement for purposes of flood control or water disposal, determines a benefited project area, and certifies these factors together with a plan for the proposed improvement to the board of county commissioners, R.C. 1515.20, and the construction is approved by the commissioners, R.C. 1515.21,

the costs of construction of the improvement may be paid through assessments levied in accordance with R.C. 1515.24. Furthermore, when an improvement has been constructed and paid for in this manner, if it becomes necessary to undertake maintenance or repair work, see R.C. 1515.08 and R.C. 1515.29, the costs of such work may be paid from the proceeds of assessments levied under R.C. 1515.24. Thus, if the board of supervisors determines that construction of an appropriate erosion control improvement meets the criteria set forth under R.C. 1515.20, the board may certify the necessary information to the board of county commissioners which may decide whether to undertake construction. If the original improvement was constructed in the manner provided under R.C. 1515.20, R.C. 1515.21 and R.C. 1515.24, the board of commissioners may undertake repair of the improvement pursuant to R.C. 1515.24 and R.C. 1515.29.

In summary, it is my opinion and you are advised, that:

1. A decision by a board of county commissioners to levy an assessment pursuant to R.C. 1515.24 for the costs of maintenance or repair of an improvement may be appealed in accordance with the provisions of R.C. Chapters 2505 and 2506.
2. Plans for improvements which are to be constructed pursuant to R.C. Chapter 1515 need not include the specific erosion and sediment control measures that are required under R.C. 613L14.
3. The provisions of R.C. 6137.08 which permit an owner who performs maintenance or repair work on a portion of an improvement to petition for a reduced maintenance assessment do not apply to improvements constructed under R.C. Chapter 1515.
4. Only those lands which were assessed for the costs of construction of an improvement undertaken pursuant to an agreement made in accordance with R.C. 613L63 may be assessed for the costs of maintenance of such an improvement.
5. Pursuant to R.C. 613L59, in order to undertake an improvement to a portion of a ditch that was established in accordance with R.C. 613L63 more than seven years previously, an owner must file a petition as provided under R.C. 613L04 through R.C. 613L64, unless the improvement is limited to the installation of tile by extension or addition to his own laterals, or the expelling of water from such laterals into an open ditch on his own land.
6. The board of supervisors of a soil and water conservation district is not authorized to make plans for, or to approve plans that are submitted by, a landowner who proposes to undertake for himself the construction, reconstruction or alteration of all or part of an improvement on his own property when such improvement was originally constructed and is presently maintained in accordance with R.C. Chapter 1515.
7. When the board of supervisors of a soil and water conservation district determines that it is necessary to construct an improvement or to alter or repair an existing improvement, the board may undertake such activity in accordance with R.C. 1515.08(C) and (H), and may finance such activity through the proceeds of a levy authorized under R.C. 1515.10.
8. When the board of supervisors of a soil and water conservation district determines that it is necessary to construct an improvement for purposes of flood control or water disposal, determines a benefited project area, and certifies these factors together with a plan for the proposed improvement to the board of county commissioners, R.C. 1515.20, and the construction is

approved by the commissioners, R.C. 1515.21, the costs of construction of the improvement may be paid through assessments levied in accordance with R.C. 1515.24.

9. When an improvement has been constructed and paid for in the manner set forth in R.C. 1515.20, R.C. 1515.21, and R.C. 1515.24, and it becomes necessary to undertake maintenance or repair work as provided in R.C. 1515.08 and R.C. 1515.29, the costs of such work may be paid from the proceeds of assessments levied under R.C. 1515.24.