

OPINION NO. 73-040

Syllabus:

1. A regional planning commission has authority to recommend rules and regulations to control the development of subdivisions, but such rules and regulations must be adopted by the board of county commissioners. A regional planning commission has authority to approve the plats of proposed subdivisions which are in compliance with the rules and regulations, but it cannot grant a variance which is in conflict with the rules and regulations.

2. Only a board of county commissioners has the authority to adopt rules and regulations governing the development of subdivisions.

To: John O. Crouse, Highland County Pros. Atty., Hillsboro, Ohio
By: William J. Brown, Attorney General, May 3, 1973

Your request for my opinion reads in part as follows:

The Regional Development Commission (The Planning Commission for Highland County, Ohio) in considering the approval of a subdivision located within its jurisdiction, granted a variance in the specifications required concerning a private street in said subdivision. The variance granted allows the subdivider to construct the private street without compliance with the specifications set up by the County Commissioners and the County Engineer.

Would you please give me your opinion concerning the following questions:

1. Does a Regional Development Commission (Planning Commission) have the authority to grant a variance in the specifications of private streets in a subdivision, which variance is contrary to those specifications set up by the County Commissioners or County Engineer?

2. Is the sole authority to set up standards for private streets in a subdivision vested in the County Commissioners or the County Engineer?

I think it clear that the primary function of a planning commission is to make recommendations for public improvements, and that the power to act on those recommendations rests solely with the board of county commissioners. In State, ex rel. The Ohio Power Co. v. Franklin County Regional Planning Commission, 158 Ohio St. 496, 497-498 (1953), the Court said:

The powers and duties of the respondent [planning] commission are defined by Section 4366-15, General Code [R.C. 713.23], to be the making of "plans and maps of the region * * * showing the commission's recommendation for systems of transportation * * * and other public improvements which affect the development of the region." Section 4366-16, General Code R.C. 713.241, requires the commission, "after making the regional or county plan," to "certify a copy thereof to the * * * county commissioners." Section 4366-17, General Code R.C. 713.251, provides that "the county commissioners * * * may adopt such plan," and prescribes the effect of such adoption. It thus appears that the powers and duties of the commission are limited to the making of plans showing its recommendations, that such plans and recommendations are without legal effect until adopted by the county commissioners, and that the functions of the commission are purely ministerial. * * *

(Emphasis added.)

In a later action arising out of the same controversy, State, ex rel. Kearns v. Ohio Power Co., 163 Ohio St. 451 (1955), the syllabus of the Court's opinion contains the following:

4. Where, pursuant to Section 713.25, Revised Code, the plan of a lawfully created regional planning commission in a county or a portion thereof has been approved and adopted by the Board of County Commissioners, and a privately owned electric power company proposes and proposes to carry on its business in and through such planned territory in a manner constituting a departure from the plan, the utility must apply to the board for approval of the departure.

5. If the decision of the Board of County Commissioners on the application for the approval of the departure should be adverse to the utility, it may under the provisions of Section 307.56, Revised Code, appeal within 15 days from such decision to the Court of Common Pleas where it may present and have determined its claims challenging the lawfulness and reasonableness of the board's action. (Emphasis added.)

These decisions make it abundantly clear that the board of county commissioners, as the legislative body of the county, has plenary power to enact regional planning regulations in the unincorporated part of the county.

The planning commission does, however, have the authority to review the plats of proposed subdivisions, and to approve them if they are in accord with the regulations adopted by the board of county commissioners. In Opinion No. 72-020, Opinions of the Attorney General for 1972, after setting forth the pertinent sections of the Revised Code (R.C. 711.001, 711.10, 711.101, 711.102, 713.21 and 713.23), I said:

To summarize briefly the general purport of the above statutes, the owner of undeveloped land who wishes to develop it, either by subdividing it into lots to be sold to individual purchasers, or by improving the entire tract himself for residential, commercial or industrial purposes, must submit a plat of the subdivision showing the portions of the tract which are to be allocated for use as streets, easements, or common open spaces. Where a regional planning commission has been established, the authority to formulate rules and regulations governing the submission of plats in the region and the ultimate approval of such submitted plats has been delegated to the commission. The rules and regulations must provide for a proper arrangement of streets, for adequate open spaces for traffic, utilities, light and air, and for avoidance of congestion of population, and such rules must be approved by the boards of county commissioners in the region. If the regional planning commission refuses to approve a submitted plat, the person submitting it is allowed sixty days within which to petition the court of common pleas for a review of the board's action. (Emphasis added.)

I also said that the fact that only private streets were contemplated in the proposed subdivision was immaterial to the decision.

In your case, the planning commission has granted a variance which conflicts with the regulations adopted by the board of county commissioners. The planning commission has the authority to examine the plats of proposed subdivisions, and to approve them if they are in accord with the regulations. It has the authority to enforce the regulations. But it cannot grant a variance which is not in accord with the regulations. Only a change in the regulations by the board of county commissioners could justify such a variance.

The answer to your second question is already contained in what has just been said in response to the first question.

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

1. A regional planning commission has authority to recommend rules and regulations to control the development of subdivisions,

but such rules and regulations must be adopted by the board of county commissioners. A regional planning commission has authority to approve the plats of proposed subdivisions which are in compliance with the rules and regulations, but it cannot grant a variance which is in conflict with the rules and regulations.

2. Only a board of county commissioners has the authority to adopt rules and regulations governing the development of subdivisions.