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PLANNING COMMISSION—AUTHORITY—COUNTY OR REGIONAL PLANNING COMMISSION—ADOPTED PLAN FOR MAJOR STREETS OR HIGHWAYS OF COUNTY OR REGION—SECTION 3586-2 G. C.—CAN NOT COMPEL COMPLIANCE WITH RULES AND REGULATIONS—INDIVIDUALS AFFECTED BY SECTION 3586-2 ET SEQ., G. C. MAY BE PENALIZED FOR FAILURE TO COMPLY WITH RULES AND REGULATIONS OF COMMISSION.

SYLLABUS:

A county or regional planning commission that has adopted a plan for major streets or highways of the county or region under authority of Section 3586-2, Ohio General Code, cannot compel compliance with its rules and regulations. However, individuals affected by Section 3586-2 et seq., General Code, may be penalized for failure to comply with the rules and regulations of such commission.

Columbus, Ohio, July 11, 1949

Hon. Mathias H. Heck, Prosecuting Attorney
Montgomery County, Dayton, Ohio

Dear Sir:

I am in receipt of your communication requesting my opinion, which reads as follows:

“There is a difference of opinion between the County Auditor, County Recorder and the Montgomery County Planning Commission concerning their duties.

FIRST

“Is it within the authority delegated to a County or Regional Planning Commission to compel the compliance with its rules and regulations of any division of any parcel of land under its jurisdiction, including frontage along an existing street or highway, of ten acres or less;

“If divided by the owner into two or more lots;

“For the purpose of transfer of ownership or for building purposes?

SECOND

“Is it necessary for the County Auditor acting under the terms of Sections 2573 and 5556 to 5561 both inclusive General Code, to submit his plats, and division sheets executed under these sections, to the County Planning Commission for its approval?

“Acting under the authority vested in it under Section 4366-14, General Code the County Commissioners of Montgomery County by resolution provided for the organization and maintenance of a county planning commission.

“The powers and duties of this county planning commission are enumerated in Section 4366-15, General Code.

I.

“To make plans and maps of the region or county respectively, showing the commission’s recommendation.

a.

“For systems of transportation, highways, park and recreational facilities.

b.

“The water supply, sewerage and sewage disposal, garbage disposal.

c.

“Civic centers and other public improvements which affect the development of the region or county respectively as a whole or more than one political unit within the region or county and which do not begin and terminate within the boundaries of any single municipality.

“Section 4366-17, General Code provides: ‘The county commissioners of any county may adopt such plan so far as it relates to non-municipal territory. Thereafter no public building, road-

way, bridge or viaduct or other public improvement or utility (whether publicly or privately owned), whose construction or location would constitute a departure from the plan, shall be constructed or authorized by the County Commissioners, except by unanimous vote. Municipal territory is land within any incorporated municipality, and land within a city, and within three miles of its corporate limits, if the city has a planning commission.' Sec. 3586-1, Sec. 4346, Sec. 3586 and Sec. 3723.

"Section 3586-2 authorizes such county planning commission to 'adopt general rules and regulations of uniform application governing plats and subdivisions of land falling within its jurisdiction.'

"This section enumerates the subject matters to be governed by these rules and regulations. Section 3587, General Code penalizes the county recorder who records a map or plat contrary to the provisions of Chapter 4 entitled plats Sections 3580 to 3614 both inclusive.

"Section 3588 penalizes the owner or agent who transfers any lot, parcel or tract of said land from or in accordance with a plat or map of the subdivision, etc., before such plat or map has been recorded in the office of the County Recorder.

"Section 3586-2, General Code provides that: Whenever a county planning commission . . . shall have adopted a plan for the major streets or highways of the county . . . , then no plat of a subdivision of land within said county . . . (other than land within three miles of a city as provided in Section 3586-1 of the General Code) shall be recorded until it shall have been approved by such county planning commission and such approval be endorsed in writing on the plat. The approval of the planning commission required by this section or the refusal to approve shall take place within thirty days from and after the submission of the plat for final approval; otherwise said plat shall be deemed to have been approved.

"Acting under the authority conferred on it by Section 3586-2, General Code the Montgomery County Planning Commission adopted rules and regulations.

"Page One of Regulations

"No person, firm or corporation, proposing to make or have made a subdivision within the territorial limits of these regulations, shall make any contract for the sale of, or shall offer to sell said subdivision or any part thereof, or shall proceed with any construction work on the proposed subdivision, including grading, which may affect the arrangement of streets—until he or it has obtained from the Commission the tentative approval of the preliminary plat of the proposed subdivision and has met the other requirements, herein set forth.

“Subdivision Page 24 Defining Subdivision.

“The division of any parcel of land, including frontage along an existing street or highway, into two or more lots for the purpose, whether immediate or future, of transfer of ownership or for building development, including all changes in street or lot lines, provided however, that divisions of land for agricultural purposes, in parcels of more than ten acres, not involving any new streets, or easements of access, shall be exempted.’

LOT

“‘A portion of a subdivision or other parcel of land intended for transfer of ownership or for building development.’

“Under these rules and regulations all tracts of land of ten acres and under are included in the term subdivision. For purposes of taxation the legislature has defined the word subdivision, also for election purposes, but not for platting purposes.

“The definition of the word subdivision formulated by the board is intended to bring under the penalties of sections 3587 and 3588 those persons owning tracts of farm land of ten acres and less.

I.

“Do the terms of the Code herein quoted delegate such authority to the Board?

2.

“The legislature does authorize various boards to make rules and regulations for the benefit of the health and welfare of the public; and make their violation a misdemeanor; but are these rules and regulations governing acts under the board’s definition of the word subdivision, under this classification?

SECOND

“The duties of the county auditor in the transfer of property to name of purchaser is set forth in Section 2573, General Code, Chapter 10, Title One. Sections 5548 to 5577 both inclusive, General Code, relate to the subject of Assessing Real Estate.

“Under the provisions of Section 2573, General Code the duties of the county auditor concerning the transfer of title are mandatory. His duties to prepare a division sheet where part of the land is transferred are mandatory. His authority and duties concerning plats and records of land are defined in Sections 5556 to 5561 both inclusive.

“These duties are not general, but arise only when: ‘When an original survey, section, tract, or lot has become divided into such small parcels, or fractions, as to render the descriptions of the several parts thereof indefinite and doubtful, the county auditor when appraising any such survey, and section, tract, or lot,

or part thereof, so divided, shall cause the said section, or parts thereof as may be necessary, to be accurately platted and laid out into such subdivisions, as the different titles to the land therein may require, and number the said fractions or subdivisions as fractions or subdivisions of said section, tract, or lot or part thereof, or such parts thereof as may be subdivided, and deliver the plat so numbered to the recorder of the county who shall accurately record it.

“From and after such record has been made, the numbers so given to said subdivisions or fractions shall be sufficient description of land so platted, numbered, and recorded for all purposes of taxation and conveyancing.’

“The duty and authority of the auditor relates to the indefiniteness of the situation and the land must be platted ‘as the different titles of the land therein may require.’

“The sections following provide for situations where the assessor has neglected to plat, or the owner neglects or refuses to produce the proper title papers.

“These plats so made by the auditor shall be recorded upon the record of deeds of the county. Section 5559.

“Are the duties of the county auditor and the county recorder under these sections subject to the control of the County Planning Commission?”

For purposes of clarity, the various questions propounded by your communication will be answered separately:

Your first question, briefly stated, is:

“Does a county or regional planning commission have the authority to ‘compel’ compliance with its rules and regulations?”

In attempting to answer this question, I must first determine what authority is granted to the county or regional planning commission.

Section 3586-2 of the Ohio General Code provides, among other things:

“Whenever a county planning commission or a regional planning commission shall have adopted a plan for the major streets or highways of the county or region, then no plat of a subdivision of land within said county or region (other than land within a municipal corporation or land within three miles of a city as provided in Section 3586-1 of the General Code,) shall be recorded until it shall have been approved by such county or regional planning commission * * *.”

The language of the statute is clear.

“No plat of a *subdivision* of land * * * shall be recorded until * * * approved by * * * such * * * commission.”

What is the meaning of the word “subdivision” in the above quoted sentence? The statute does not define it but under the Section 3586-2, the commission is empowered to :

“* * * adopt general rules and regulations of uniform application, governing plats and subdivisions of land falling within its jurisdiction * * *”

To day it is a well established principle of law that the legislature may confer by statute on an administrative agency, the authority to make rules and regulations for the governing of such agency or for the administration of the statute with which the agency is concerned, 8 O. Jur. 317. In our present case, the statute, 3586-2, provides for the adoption of rules by the commission and provides for the method of adoption. Such rules have been adopted and it is conceded that they were adopted in conformity with the statute. One such rule is a definition of the word “Subdivision.” On page 24 of “Subdivision Regulations for Montgomery County,” adopted by the Montgomery County Planning Commission, June 10, 1947, the following definition of subdivision is given :

“The division of any parcel of land, including frontage along an existing street or highway, into two or more lots for the purpose, whether immediate or future, of transfer of ownership or for building development, including all changes in street or lot lines, provided, however, that divisions of land for agricultural purposes, in parcels of more than 10 acres, not involving any new streets or easements of access, shall be exempted.”

Compare this definition with the definition contained in Webster’s International Dictionary, 2nd Edition, 1944, which defines “subdivision” as meaning :

“An unimproved tract of land surveyed and divided into lots for purposes of sale.”

The two definitions seem wholly compatible and in the absence of any showing that such definition is arbitrary, unlawful or discriminatory, the rule of the Commission is a valid exercise of its authority granted under the statute.

Assuming, therefore, that the definition of "subdivision" contained in the rules of the Commission is valid, may the Commission "compel" compliance with these rules?

Section 3586-2, of the Ohio General Code, provides no method of enforcement of the decisions of the county or regional planning commission, other than the statement:

"No plat of a subdivision of land within said county or region * * * shall be recorded until it shall have been approved by such * * * planning commission."

Obviously, there is not the slightest hint of compulsion in the above statement.

Section 3587, of the Ohio General Code, provides:

"A county recorder who records such map or plat contrary to the provisions of this chapter, shall forfeit and pay not less than one hundred dollars nor more than five hundred dollars to be recovered with costs in a civil action by the prosecuting attorney in the name and for the use of the county."

Further, Section 3588 provides for a similar penalty to be assessed against any:

"* * * owner, or agent of the owner of land within or without a municipal corporation (who), transfers any lot, parcel or tract of said land from or in accordance with a plat or map of the subdivision * * * before such plat or map has been recorded in the office of the county recorder * * *"

Therefore, the county planning commission does not have, in the affirmative sense of the word, authority to compel compliance with its rules and regulations. In answer to your first question, it is my opinion that the county or regional planning commission does not have authority to "compel" compliance with its rules and regulations, but if an individual included in the provision of the statute fails to abide by the provision of the statute, he may be penalized for such failure.

Your second question reads as follows:

"Is it necessary for the County Auditor acting under the terms of Sections 2573 and 5556 to 5561, both inclusive, General Code, to submit his plats and division sheets, executed under these sections, to the County Planning Commission for its approval?"

Section 2573, of the Ohio General Code, reads as follows :

“On application and presentation of title, with the affidavits required by law, or the proper order of a court, the county auditor shall transfer any land or town lot or part thereof or minerals therein or mineral rights thereto, charged with taxes on the tax list from the name in which it stands into the name of the owner, when rendered necessary by a conveyance, partition, devise, descent or otherwise. If by reason of the conveyance or otherwise, a part only of a tract or lot, or minerals therein or mineral rights thereto, as charged in the tax list is to be transferred, the person desiring the transfer shall make satisfactory proof of the value of such part compared with the value of the whole, as charged on the tax list, before the transfer is made. The auditor shall indorse on the deed or other evidences of title presented to him that the proper transfer of the real estate therein described has been made in his office or that it is not entered for taxation, and sign his name thereto.”

Sections 5556-5560, inclusive, of the Ohio General Code, deal with the appraising, by the county auditor, of certain lands of indefinite description.

Section 3586-2, Ohio General Code, provides :

“From and after the time when a county or regional street or highway plan shall have been adopted, the approval of plats and subdivisions provided for herein shall be in lieu of any approvals provided for in other section or sections of the General Code, so far as the territory within the approving jurisdiction of the county or regional planning commission, as provided in this section, is concerned.”

The above section expressly states that this provision of the Code shall be in lieu of any approvals provided for in other section or sections of the General Code. Such a statement can only mean that the provisions of Section 3586-2, General Code, shall govern all other sections of the General Code pertaining to the platting of land. Assuming this to be true, the county auditor still has no affirmative duty under Section 3586-2, General Code, because the statute provides for no affirmative acts on his part. However, if the county auditor attempts to record in the office of the county recorder, a plat of land which has not been approved by the County Planning Commission, the county recorder may refuse to record such land.

Therefore, in answer to your question, it is not necessary for the county auditor acting under the terms of Section 2573 and 5556-5560, both inclusive, General Code, to submit his plats in division sheets executed under these sections for the County Planning Commission, for its approval. But failure to do so may result in a refusal by the county recorder to record such plats until such approval has been given and thereby defeat the objective of the county auditor.

Respectfully,

HERBERT S. DUFFY,
Attorney General.