

## OPINION NO. 86-074

**Syllabus:**

Pursuant to R.C. 5311.02, condominium property is exempt from any platting requirements that may be imposed under R.C. Chapter 711, and, as a result, a regional planning commission has no authority to review condominium plats.

**To: John A. Pfefferle, Erie County Prosecuting Attorney, Sandusky, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, September 30, 1986**

I have before me your request for an opinion concerning the authority of a regional planning commission to review condominium plats. Your request relates to language appearing in Article VII, Section 2, C of the Erie County Subdivision Regulations promulgated by the Erie Regional Planning Commission, as follows:

Any other land use which may either alter the existing street or road pattern or materially change or disrupt the existing street or road pattern or materially change or disrupt the existing flow of traffic shall be reviewed by the Commission and a plat may be required if the Commission is of the opinion such a plat should be recorded.

You have asked the following questions:

1. Does a Regional Planning Commission have the authority to review condominium plats under Article VII, Section 2, C of the Erie County Subdivision Regulations?
2. If it is determined that the Erie Regional Planning Commission has the authority to review the above, is this authority discretionary or mandatory?

It is my understanding that the county engineer has submitted these questions to you, see R.C. 713.26 (providing that the county engineer shall give assistance to a regional planning commission), and I find, therefore, that you have an interest in this matter upon which I am authorized to render advice. See R.C. 109.14; R.C. 309.09; cf. 1961 Op. Att'y Gen. No. 2383, p. 366 (finding that a regional planning commission is not a county board and is not eligible to receive the services of the prosecuting attorney as its legal adviser). See also 1972 Op. Att'y Gen. No. 72-020 (syllabus, paragraph two) ("[w]here court action is necessary to enforce the subdivision regulations of a regional planning commission, the county prosecutor shall institute the action for any violation occurring in the county...").

R.C. 713.21 authorizes the creation of a regional planning commission, and R.C. 713.23 sets forth the general powers and duties of such a commission. With respect to the approval of plats, R.C. 711.10 states:

Whenever...a regional planning commission adopts a plan for the major streets or highways of the...region, then no plat of a subdivision of land within the...region, other than land within a

municipal corporation or land within three miles of a city or one and one-half miles of a village as provided in section 711.09 of the Revised Code, shall be recorded until it is approved by the...regional planning commission and the approval is endorsed in writing on the plat....

Any such...regional planning commission shall adopt general rules, of uniform application, governing plats and subdivisions of land falling within its jurisdiction, to secure and provide for the proper arrangement of streets or other highways in relation to existing or planned streets or highways or to the county or regional plan, for adequate and convenient open spaces for traffic, utilities, access of fire fighting apparatus, recreation, light, air, and for the avoidance of congestion of population....

...After a county or regional street or highway plan has been adopted as provided in this section, the approval of plats and subdivisions provided for in this section shall be in lieu of any approvals provided for in other sections of the Revised Code, so far as the territory within the approving jurisdiction of the county or regional planning commission, as provided in this section, is concerned...Any such...regional planning commission and a city or village planning commission, or platting commissioner or legislative authority of a village, with subdivision regulation jurisdiction over unincorporated territory within the county or region may cooperate and agree by written agreement that the approval of a plat by the city or village planning commission, or platting commissioner or legislative authority of a village, as provided in section 711.09 of the Revised Code, shall be conditioned upon receiving advice from or approval by the...regional planning commission.

See also R.C. 711.101 (providing that, in certain circumstances, a regional planning commission may administer regulations relating to plat approval within a municipal corporation); R.C. 711.132 (providing that regulations of a regional planning commission do not become effective until they have been approved, after public hearing, by the board of county commissioners).

In the situation with which you are concerned, the Erie Regional Planning Commission has adopted regulations governing plat approval and has asked whether its authority to require and review plats includes the authority to review plats of condominium projects. The language of Article VII, Section 2, C, quoted above, is broad, and appears to permit the imposition of a plat review requirement with respect to any land use which may alter the street or road pattern or materially change the street or road pattern or traffic flow. That regulation was promulgated pursuant to R.C. 711.10, which provides that, once a regional planning commission has adopted a plan for major streets or highways, "no plat of a subdivision of land" within the region shall be recorded without approval. R.C. 711.001 contains the following definitions:

As used in sections 711.001 to 711.38, inclusive, of the Revised Code:

(A) "Plat" means a map of a tract or parcel of land.

(B) "Subdivision" means:

(1) The 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, any one of which is less than five acres for the purpose, whether immediate or future, of transfer of ownership, provided, however, that the division or partition of land into parcels of more than five acres not involving any new streets or easements of access, and the sale or exchange of parcels between adjoining lot owners, where such sale or exchange does not create additional building sites, shall be exempted; or

(2) The improvement of one or more parcels of land for residential, commercial or industrial structures or groups of structures involving the division or allocation of land for the opening, widening or extension of any street or streets, except private streets serving industrial structures; the division or allocation of land as open spaces for common use by owners, occupants or lease holders or as easements for the extension and maintenance of public sewer, water, storm drainage or other public facilities. (Emphasis added.)

Again, the language is broad. The term "subdivision" includes the improvement of land for residential structures, where streets are opened or extended, and the division or allocation of land as open space for common use by owners. It appears that this definition might include the development of condominium property. See generally Op. No. 72-020 (concluding that, pursuant to R.C. 711.001 and related provisions, a regional planning commission may require plat approval for the development of a mobile home park, a planned dwelling group, or a planned shopping center, involving only private streets).

In order to answer your first question, it is, however, necessary to look also at the statutory provisions dealing directly with the development of condominium property. See R.C. Chapter 5311. R.C. 5311.02 states expressly:

Chapter 5311. of the Revised Code applies only to property that is specifically submitted to its provisions by the execution and filing for record of a declaration by the owner, as provided in this chapter. In every instance, any property so submitted shall be either a fee simple estate or a ninety-nine year leasehold, renewable forever. Neither the submission of property to the provisions of this chapter, nor the conveyance or transfer of a condominium ownership interest constitutes a subdivision within the meaning of, or is subject to, Chapter 711. of the Revised Code. (Emphasis added.)

Pursuant to the plain language of R.C. 5311.02, neither the submission of property to the condominium provisions of R.C. Chapter 5311, nor the conveyance or transfer of a condominium ownership interest, constitutes a subdivision within the meaning of R.C. Chapter 711, or is subject to R.C. Chapter 711. Based upon this language, I conclude that condominium property is not subject to platting requirements that may be imposed by any body authorized to review plats under R.C. Chapter 711, including a regional planning commission. See generally R.C. 1.42 ("[w]ords and phrases shall be read in context and construed according to the rules of grammar and

common usage"); Wachendorf v. Shaver, 149 Ohio St. 231, 78 N.E.2d 370 (1948) (syllabus, paragraph five) (if legislative intent is clearly expressed in a statute, the statute may not be restricted or enlarged; if words used in a statute are not defined, they are to be given their ordinary meaning). I reach this conclusion notwithstanding the fact that the language of R.C. Chapter 711 and of regulations promulgated thereunder might, in the absence of R.C. 5311.02, be broad enough to encompass condominium property. See generally R.C. 1.47; State ex rel. Pratt v. Weygandt, 164 Ohio St. 463, 132 N.E.2d 191 (1956) (syllabus, paragraph two) ("[s]tatutes relating to the same matter or subject...should be read together to ascertain and effectuate if possible the legislative intent"). I find this conclusion to be consistent with the following language appearing in 1986 Op. Att'y Gen. No. 86-039 at 2-201: "R.C. 5311.02 specifically exempts transactions made under R.C. Chapter 5311 from the provisions of R.C. Chapter 711....Thus, the conveyance or transfer of property which is properly subject to R.C. Chapter 5311 is not subject to the provisions of R.C. Chapter 711." See also 1971 Op. Att'y Gen. No. 71-031.

I conclude, therefore, in response to your first question, that a regional planning commission has no authority to review condominium plats. In light of this conclusion, it is unnecessary to address your second question.

It is, thus, my opinion, and you are hereby advised, that, pursuant to R.C. 5311.02, condominium property is exempt from any platting requirements that may be imposed under R.C. Chapter 711, and, as a result, a regional planning commission has no authority to review condominium plats.