

**OPINION NO. 81-075**

**Syllabus:**

A county planning commission, in its review pursuant to R.C. 711.10 of a subdivision not exempt from platting by R.C. 711.131, does not have the authority to enforce township zoning.

---

**To: Craig S. Albert, Geauga County Pros. Atty., Chardon, Ohio**  
**By: William J. Brown, Attorney General, December 4, 1981**

I have before me your request for my opinion regarding the enforcement of township zoning by a county planning commission. You ask:

1. To what extent does a county planning commission in its review of a subdivision (not exempt from platting by Revised Code §711.131) have the authority, pursuant to Chapter 711, or any other sections of the Revised Code, to enforce township zoning, and if the same is possible, is non-conformity with township zoning a legitimate reason for denial of approval of a plat by a county planning commission?
2. If a county planning commission has the authority to enforce township zoning, are township zoning officials estopped from exercising further denial or approval of those elements of their township zoning reviewed and acted upon by the county planning commission?

I am aware of only two statutory grants of authority to a county planning commission regarding its review of subdivisions; they are R.C. 711.10 and 711.131. R.C. 711.10 provides in pertinent part:

Whenever a county planning commission or a regional planning commission adopts a plan for the major streets or highways of the county or region, then no plat of a subdivision of land within the county or 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 county or regional planning commission and the approval is endorsed in writing on the plat. . . .

Any such county or 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. The rules may provide for the modification thereof by the county or regional planning commission in specific cases where unusual topographical and other exceptional conditions require such modification. (Emphasis added.)

Under this provision, a county planning commission is authorized to adopt "a plan for the major streets or highways of the county" and "general rules, of uniform application, governing plats and subdivisions of land falling within its jurisdiction" for the enumerated reasons. Once adopted, such plan and rules, unless modified, must be complied with before a county planning commission will approve a plat of a subdivision falling within its jurisdiction. Without such approval, a plat of a subdivision may not be recorded.<sup>1</sup>

Although it may be argued that the grant of authority to adopt general rules authorizes a county planning commission to incorporate township zoning regulations

---

<sup>1</sup> note that, if such plat is recorded without approval of the county planning commission, the county recorder who records such plat will be subject to the forfeiture penalty as provided in R.C. 711.12. See 1949 Op. Att'y Gen. No. 717, p. 370. Further, R.C. 711.13 provides for a similar penalty against the owner or agent of the owner who "willfully transfers any lot, parcel, or tract of such land from or in accordance with a plat of a subdivision. . . before the plat has been recorded in the office of the county recorder."

as part of its rules, I do not find such an argument to be persuasive. R.C. 711.10 expressly provides that the general rules a county planning commission does adopt must be "of uniform application." Therefore, even if a county planning commission were authorized, pursuant to R.C. 711.10, to incorporate zoning regulations as part of its rules, such regulations would have to be applied uniformly to all townships within the county. A county planning commission could not incorporate one township's zoning regulations as part of its rules and apply those regulations to only that township. Compare R.C. 711.10 with R.C. 519.02 (township zoning regulations "shall be uniform for each class or kind of building or other structure or use throughout any district or zone, but the regulations in one district or zone may differ from those in other districts or zones").

In any event, it is my opinion that a county planning commission may not, pursuant to R.C. 711.10, incorporate a township's zoning regulations as part of its rules. It is a well-established principle that laws "which impose restrictions upon the use, management, control, or alienation of private property, will be strictly construed and their scope cannot be extended to include limitations not therein clearly prescribed. . . ." State ex rel. Moore Oil Co. v. Dauben, 99 Ohio St. 406, 124 N.E. 232 (1919) (paragraph one of the syllabus). See also State ex rel. Ice & Fuel Co. v. Kreuzweiser, 120 Ohio St. 352, 356, 166 N.E. 228, 230 (1929). Since R.C. 711.10 does not clearly prescribe the adoption of township zoning regulations as a means by which a county planning commission may regulate the platting of subdivisions, such authority should not be implied.

In Morgan v. Geauga County Planning Commission, No. 80 M 106 (C.P. Geauga County Feb. 9, 1981), the Geauga County Court of Common Pleas questioned the validity of Sec. 524 of the subdivision regulations of the Geauga County Planning Commission, which stated: "In all cases, lots shall comply with local zoning, plus all other County requirements." The court noted: "The rules and regulations of the planning commission must be properly adopted and be rules and regulations permitted by R.C. 711.10." (Citations omitted; emphasis in original.) The court went on to state:

Though Section 524 does not require any prior approval of township officials before the planning commission can process a plat, it does require a decision to be made upon local zoning by the planning commission. Though the quoted sentence in Sec. 524 seems logical and salutary, the effect of that decision is to establish another enforcing body or authority in township zoning.

R.C. 519.24 provides in part: "In case. . . any land is proposed to be used in violation. . . of any regulation. . . of township trustees. . . , such board, the prosecuting attorney of the county, the township zoning inspector, or any adjacent or neighboring property owner. . . may institute. . . any. . . appropriate action. . . ."

4 Anderson, American Law of Zoning 2d 92 states that subdivision regulations commonly include compliance with the zoning regulations as a standard of plat approval. The cases cited in support of this statement do not disclose the enabling legislation; two of them seem of doubtful relevance, one seems to preserve the separateness of function of a planning commission and a zoning enforcement official; and the other case quite simply said a planning body cannot grant a zoning variance.

Though this court agrees that the paucity of cases may prove the propriety of such a provision as Sec. 524, in an area of law as limited as Ohio township zoning, the validity of such a provision is questioned. It is the conclusion of this court that the second paragraph of R.C. 711.10 refers to county zoning situations and cannot be permitted to "boot-strap" the planning commission into a local

zoning, enforcement authority. R.C. 711.131 is the "no-plat" situation in which the legislature has unambiguously extended the planning commission's authority to local zoning; it is irrelevant here.

R.C. 711.131, referenced by the Geauga County Court, expressly grants authority to a county planning commission to consider applicable zoning regulations in determining whether to approve, without plat, a proposed division of a parcel of land that is within its jurisdiction under R.C. 711.10. R.C. 711.131 provides:

Notwithstanding the provisions of sections 711.001 to 711.13, inclusive, of the Revised Code, a proposed division of a parcel of land along an existing public street, not involving the opening, widening or extension of any street or road, and involving no more than five lots after the original tract has been completely subdivided, may be submitted to the authority having approving jurisdiction of plats under the provisions of section 711.05, 711.09 or 711.10 of the Revised Code for approval without plat. If such authority acting through a properly designated representative thereof is satisfied that such proposed division is not contrary to applicable platting, subdividing, or zoning regulations it shall within seven working days after submission approve such proposed division and, on presentation of a conveyance of said parcel, shall stamp the same "approved by (planning authority); no plat required" and have it signed by its clerk, secretary, or other official as may be designated by it. Such planning authority may require the submission of a sketch and such other information as is pertinent to its determination hereunder. (Emphasis added.)

This provision's application is limited to review of divisions of parcels of land without plat. Therefore, it is not applicable to your request, since your question concerns a county planning commission's review of subdivisions "not exempt from platting by R.C. 711.131." However, it is helpful in determining whether the legislature intended R.C. 711.10 to authorize a county planning commission to incorporate zoning regulations as part of its general rules.

In enacting R.C. 711.131, 1953 Ohio Laws 448, 455 (Am. Sub. H.B. No. 629, eff. Oct. 19, 1953), the legislature expressly granted to the authority having approving jurisdiction of plats (in this case a county planning commission under R.C. 711.10) authorization to consider zoning regulations in determining whether to approve a proposed division of parcel without plat. By not amending R.C. 711.10 to also grant such authority, the legislature chose to give different formulations to R.C. 711.10 and 711.131. Thus, it may be concluded that the legislature intended differing interpretations of such sections. See Metropolitan Securities Co. v. Warren State Bank, 117 Ohio St. 69, 158 N.E. 81 (1927); Kiefer v. State, 106 Ohio St. 285, 139 N.E. 852 (1922). Based upon the analysis of the court in Morgan v. Geauga County Planning Commission, and upon a comparison of R.C. 711.10 and 711.131, it is my opinion that the legislature did not intend to authorize a county planning commission to become an enforcer of township zoning when reviewing plats of subdivisions under R.C. 711.10.

In light of my analysis of your first question, there is no need to address your other concerns.

Based on the foregoing, it is my opinion, and you are so advised, that a county planning commission, in its review pursuant to R.C. 711.10 of a subdivision not exempt from platting by R.C. 711.131, does not have the authority to enforce township zoning.