

# Who's On First

A Presentation on Legal Authorities of County Planning Commissions  
to the  
2016 Central Ohio Planning And Zoning Workshop

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Presented By  
Licking County Planning Commission

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# This Presentation is Available Online

<http://www.lcounty.com/Planning/default.aspx>

# Types of Planning Commissions and Sources of Authority.

- Municipal Planning Commission, 713.01 & 713.02
- County Planning Commission, 713.22 & 713.23
- Regional Planning Commission, 713.21 & 713.23
- Joint Planning Councils, 713.231
- Interstate Regional Planning Commission, 713.30 & 713.33

Source: Lawriter. "Ohio Revised Code". §713 Web. 2 May 2016. <http://codes.ohio.gov/orc/713>

# County Planning Commission Authority

- Ohio Revised Code (ORC)
  - Section 713.22: County Planning Commission
    - County Board of Commissioners may, and on petition of the planning commissions of a majority of the municipal corporations in the county having those planning commissions shall, provide for the organization and maintenance of a county planning commission.

Source: Lawriter. "Ohio Revised Code". §713.22. Web. 10 October 2015. <http://codes.ohio.gov/orc/713.22>

# County Planning Commission Authority

## §713.22, ORC – Continued

### Membership of Planning Commission

A county planning commission shall consist of:

- Three members of the Board of Commissioners
- Eight members appointed by the Board of Commissioners.
  - Licking County qualifies for the requirements identified in Subsection (3), which states - *Except as provided for counties with two or less townships in division (B)(4) of this section, if a county does not contain the portion of any city with at least fifty per cent of the total population of the county and does not contain a limited home rule government township, the board of county commissioners shall appoint eight residents of the county selected at the discretion of the board.*

# County Planning Commission Authority

## §713.22, ORC – Continued

- Members are appointed for terms of 3 years.
- Members may be allowed their actual and necessary expenses and compensation that the board of commissioners determines to be appropriate.
- Members of the planning commission may hold any other public office and may serve as a member of a city, village, and regional planning commission, except as otherwise provided in the charter of any City or Village.

Source: Lawriter. "Ohio Revised Code". §713.22. Web. 10 October 2015. <http://codes.ohio.gov/orc/713.22>.

# County Planning Commission Authority

## §713.22, ORC – Continued

The planning commission board may:

- Employ engineers, accountants, consultants, and employees as are necessary.
- Make purchases as may be needed to the furtherance of its operation.
- Accept, receive, and expend funds, grants, and services from federal, state and local government.

*Source: Lawriter. "Ohio Revised Code". §713.22. Web. 10 October 2015. <http://codes.ohio.gov/orc/713.22>.*

# Other Forms of Planning Commissions Authority

- [§713.01: Municipal Planning Commissions](#)
- [§713.21: Regional Planning Commissions](#)
- [§ 713.30: Interstate Regional Planning Commissions](#)



# Regional or County Planning Commission Powers and Duties

## Section 713.23: Regional or County Planning Commission Powers and Duties

A county planning commission may:

- Prepare plans, including studies, maps, recommendations, and reports.
- Promote understanding of and recommending administrative and regulatory measures to implement the plans of the region.
- Collect, process and analyze social and economic data.

# Regional or County Planning Commission Powers and Duties

## § 713.23 - Continued

- Contract with and provide planning assistance to other units of local government, councils of government, planning commissions, and joint planning councils.
- Cooperate with state and federal governments in coordinating planning activities and programs in the region.
- Reviewing, evaluating, and making comments and recommendations on proposed and amended comprehensive land use plans, open space, transportation and public facilities plans, projects, and implementing measures of local units of government.

# Regional or County Planning Commission Powers and Duties

## § 713.23 - Continued

- Review, evaluate and make comments and recommendations on public facility projects within the region.
- Conduct experimental or demonstration projects found necessary in the development of plans for the county.

*Source: Lawriter. "Ohio Revised Code". §713.23. Web. 10 October 2015 <http://codes.ohio.gov/orc/713.23>.*

For a complete list of powers and duties, please reference Section 713.23 of the Ohio Revised Code.

# Other Forms of Planning Commissions

## Powers and Duties

- [§ 713.02: Municipal Planning Commission.](#)
- [§ 713.33: Interstate Regional Planning Commission.](#)

# Sources of Regulatory Authorities For Counties

Regulation	Source of Authority Ohio Revised Code (ORC) Sections <sup>1</sup>	Government Entity to which the Ohio Revised Code Grants Authority
Subdivision and Platting	§711.10	Planning Commission <sup>2</sup>
Public Improvements	§711.101	Board of Commissioners <sup>3</sup>
Erosion and Sediment Control	§307.79	Board of Commissioners <sup>4</sup>
Access Management	§5552	Board of Commissioners <sup>4</sup>
Floodplain	§307.37,B,2	Board of Commissioners <sup>5</sup>

<sup>1</sup> Authority for cities and villages is provided by Section 711.09 of the Ohio Revised Code.

<sup>2</sup> Pursuant to Section 711.10, if a Regional Planning Commission is established said, authority shall be vested with the Regional Planning Commission. Where neither a regional or county planning commission exists, subdivision and platting authority is vested with the Board of Commissioners in accordance with Section 711.05 of the Ohio Revised Code.

<sup>3</sup> Section 711.101 states "Such rules may provide the administration thereof by the regulating body (Board of Commissioners) or by city, county, or regional planning commission having platting jurisdiction over the lands affected."

<sup>4</sup> Authority for municipalities is unknown. Please contact your legal council for a determination of legal authority if you represent a municipality.

<sup>5</sup> Authority to implement floodplain regulations is derived from Article XVIII, Section 3 of the Ohio Constitution, which grants municipalities the legal authority to adopt land use control measures for promoting the health, safety and general welfare of its citizens.

Regulatory Authority	Who's Authority?	Regulation Adoption & Amendments	Rules	Administration & Other	ORC Section
Subdivision & Platting	County Planning Commission (CPC) <sup>1</sup>	<ul style="list-style-type: none"> <li>Public Hearing by CPC</li> <li>Notice to all Townships 30 business days prior to hearing</li> <li>Public Hearing by CC and the CC must approve before rules become effective</li> </ul>	<ul style="list-style-type: none"> <li>Rules cover plats/subdivisions of land in regards to:               <ul style="list-style-type: none"> <li>Arrangement of streets</li> <li>Adequate/convenient open spaces for: Traffic, utilities, access of firefighting apparatus, recreation, light, air</li> <li>Avoidance of congestion of population</li> </ul> </li> <li>Can require compliance with Health Dept. and Zoning</li> <li>Can apply to §711.131 ORC Subdivisions without a Plat</li> </ul>	<ul style="list-style-type: none"> <li>CPC is administrative body</li> <li>Modifications to rules can be determined by CPC based on unusual topographical and other exceptional conditions</li> <li>Preliminary plan may be required</li> </ul>	711.10 CPC
Public Improvement	County Commissioners (CC) <sup>2</sup>	<ul style="list-style-type: none"> <li>Public Hearing by CC</li> <li>PC may adopt same rules after CC adoption</li> </ul>	<ul style="list-style-type: none"> <li>Rules may cover standards/specs for improvements shown on plats/plans required by 711.10: Streets, curbs, gutters, sidewalks, street lights, water mains, storm sewers, sanitary sewers, other utility mains/piping/facilities.</li> <li>May require security for construction of improvements.</li> </ul>	<ul style="list-style-type: none"> <li>Either the CPC or County Commissioners administer</li> <li>Modifications based upon unusual or exceptional factors.</li> <li>County &amp; Sanitary Engineer serve in advisory roles.</li> </ul>	711.101
Soil Erosion & Stormwater	County Commissioners (CC) <sup>2</sup>	<ul style="list-style-type: none"> <li>2 Public Hearings by CC</li> </ul>	<ul style="list-style-type: none"> <li>Purpose of rules are to:               <ul style="list-style-type: none"> <li>Abate wind/water erosion of soil;</li> <li>Abate degradation of waters of the state</li> <li>Implement Area 208 Plans (wastewater)</li> <li>Implement Phase II stormwater program of NPDES</li> </ul> </li> <li>Plans may be required when 1 acre is disturbed</li> </ul>	To administer CC may: <ul style="list-style-type: none"> <li>Employ personnel</li> <li>Delegate to existing employees</li> <li>Enter into agreement with political subdivision, county official, or govt. agency</li> </ul>	307.79
Access Management	County Commissioners (CC) <sup>2</sup>	<ul style="list-style-type: none"> <li>Initiated by CC, Engineer, or Twp Trustees</li> <li>CE drafts and Advisory Committee reviews draft</li> <li>2 Public Hearings by CC</li> </ul>	<ul style="list-style-type: none"> <li>Rules regulate the management of access onto county and township roads for the purposes of:               <ul style="list-style-type: none"> <li>Promoting traffic safety/efficiency; Maintaining proper traffic capacity/flow</li> </ul> </li> <li>Rules should be coordinated with township zoning.</li> </ul>	<ul style="list-style-type: none"> <li>Administration is offered 1<sup>st</sup> to the CE</li> <li>If Engineer declines then CC can appoint any person or a PC</li> <li>Board must be designated for appeals/variances</li> </ul>	5552.02
Floodplain	County Commissioners (CC) <sup>2</sup>	<ul style="list-style-type: none"> <li>2 Public Hearings by CC</li> </ul>	<ul style="list-style-type: none"> <li>Rules may involve the prohibition, location, erection, construction, redevelopment, and flood proofing of:               <ul style="list-style-type: none"> <li>All uses; new buildings/structures; improvements to existing buildings/structures; other development</li> </ul> </li> <li>Rules can only apply to 'flood hazard areas'</li> </ul>		307.37 (B,2)

<sup>1</sup> For incorporated areas it is the Municipal Planning Commission and for the unincorporated areas in addition to the County Planning Commission, the Regional Planning Commission (if formed) or if no planning commission exists, the Board of County Commissioners.

<sup>2</sup> Sources of municipal authority differ from those of County or Regional Planning Commissions. See Slide 13: Sources of Regulatory Authorities.

# State and County Agency Roles

Source of Regulatory Authority	Ohio Department of Transportation	County Board of Commissioners	County Planning Commission	County Engineer's Office	County Soil and Water Conservation District	County Prosecutor's Office	County Board of Health
Subdivision Regulations <sup>1</sup>	–	–	Authority/ Administration	Advisory (§713.26,ORC)	–	Legal Counsel	Planning Commission May Require Proof of Compliance from Board of Health
Public Improvement <sup>1</sup>	–	Authority/ Administration (§711.101,ORC)	Administration (§711.101,ORC)	Advisory (§713.26,ORC)	–	Legal Counsel	–
Erosion and Sediment Control <sup>1</sup>	–	Authority/ Administration (§307.79,ORC)	Delegated Administration (§307.79,ORC)	Delegated Administration (§307.79,ORC) or Advisory if not Administering (§713.26,ORC)	Delegated Administration (§307.79,ORC) or Advisory if not Administering (by Agreement)		
Access Management <sup>1</sup>	Authority on Interstate, US, and State Route Roadways	Authority on County and Township Roadways	Delegated Administration (§5552.10,ORC)	Administration (§5552.10,ORC) / Advisory (§713.26,ORC)	–	Legal Counsel	–
Floodplain <sup>1</sup>	–	Authority/ Administration (§307.79,ORC)	Delegated Administration (§307.79,ORC)	Delegated Administration or Advisory if not Administering (§713.26,ORC)	–	Legal Counsel	–

# Township Roles

Source of Regulatory Authority	Board of Trustees	Township Zoning Commission	Township Board of Zoning Appeals	Township Zoning Inspector
Subdivision Regulations	May need to consider a rezoning to allow for development to occur. Also the planning commission is required to provide notice of any text amendment to the subdivision regulations to the Board of Trustees 30 business days prior to any required public hearing.	May need to consider a rezoning to allow for development to occur.	May need to consider a variance from the township zoning resolution or a conditional use within the township zoning resolution to allow development to occur.	Provide proof of compliance with the township zoning resolution prior to any application for preliminary plan and/or final plat being approved.
Public Improvement	Roads within platted subdivisions are turned over to the Board of Trustees for maintenance by petition process in §5553.04 of the ORC.	–	–	–
Erosion and Sediment Control	–	–	–	–
Access Management	–	§5552.02 ORC Under specified circumstances provide townships the authority to implement Access Management on Township Roads.	–	–
Floodplain	–	–	–	– 16



# Licking County Planning Commission

## Case Study

The Licking County Planning Commission (LCPC) Currently Administers the Following Regulations for the Unincorporated Portions of Licking County.

- *Licking County Subdivision Regulations*
- *Licking County Subdivision Improvement Regulations*
- *Licking County Soil Erosion and Stormwater Regulations*
- *Licking County Access Management Regulations*
- *Flood Damage Prevention Regulations for Licking County, Ohio*

# Licking County Planning Commission

## Case Study

### Separation of regulations based on legal authority.

*Went from these bodies of regulations prior to separation based on authority:*

- *Subdivision, Land Division, Development, and Congestion Prevention Regulations for Licking County, Ohio*
- *Licking County Access Management Regulations*
- *Flood Damage Prevention Regulations for Licking County, Ohio*

*To these bodies of regulations after separation based on authority:*

- *Licking County Subdivision Regulations*
- *Licking County Subdivision Improvement Regulations*
- *Licking County Soil Erosion and Stormwater Regulations*
- *Licking County Access Management Regulations*
- *Flood Damage Prevention Regulations for Licking County, Ohio*

# Licking County Case Study

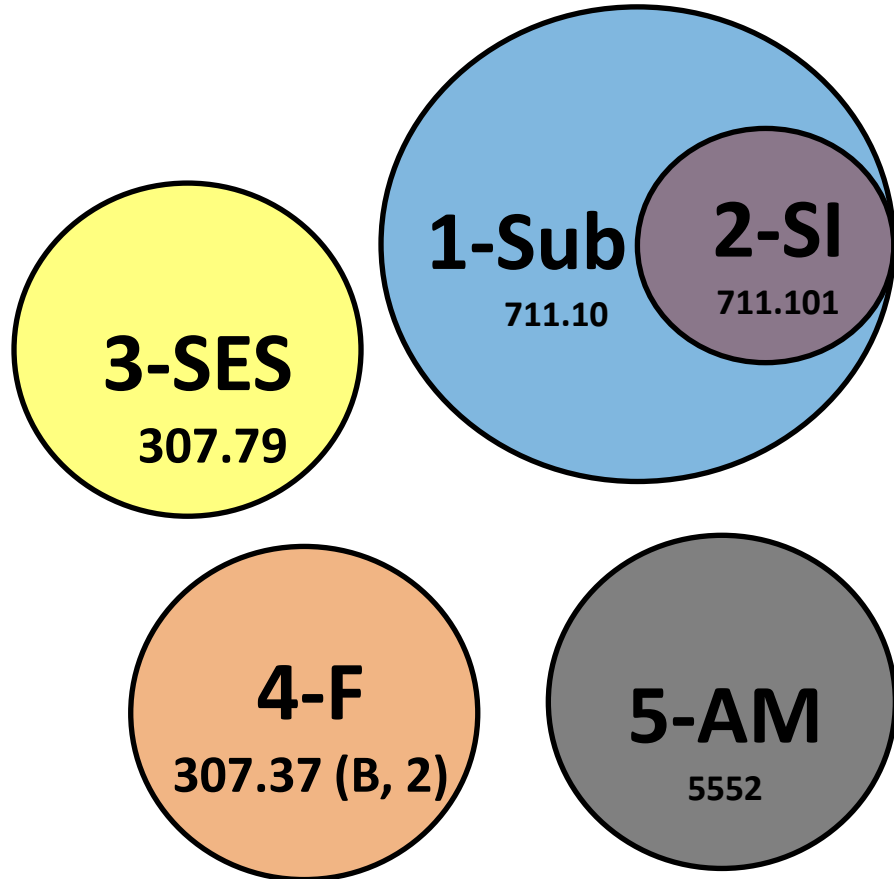
## State and County Agency Roles

Source of Regulatory Authority	Ohio Department of Transportation	Licking County Board of Commissioners	Licking County Planning Commission	Licking County Engineer's Office	Licking County Soil and Water Conservation District	Licking County Prosecutor's Office	Licking County Board of Health
Subdivision Regulations	–	–	Authority/ Administration	Advisory (§713.26,ORC)	–	Legal Counsel	Provide Proof of Compliance
Public Improvement	–	Authority	Delegated Administration	Advisory	–	Legal Counsel	–
Erosion and Sediment Control	–	Authority	Delegated Administration	Advisory (§713.26,ORC)	Advisory (by Agreement)		
Access Management	Authority on Interstate, US, and State Route Roadways	Authority on County and Township Roadways	Delegated Administration	Advisory (§713.26,ORC)	–	Legal Counsel	–
Floodplain	–	Authority	Delegated Administration	Advisory (§713.26,ORC)	–	Legal Counsel	–

# Licking County Case Study

## Statutory Authorities

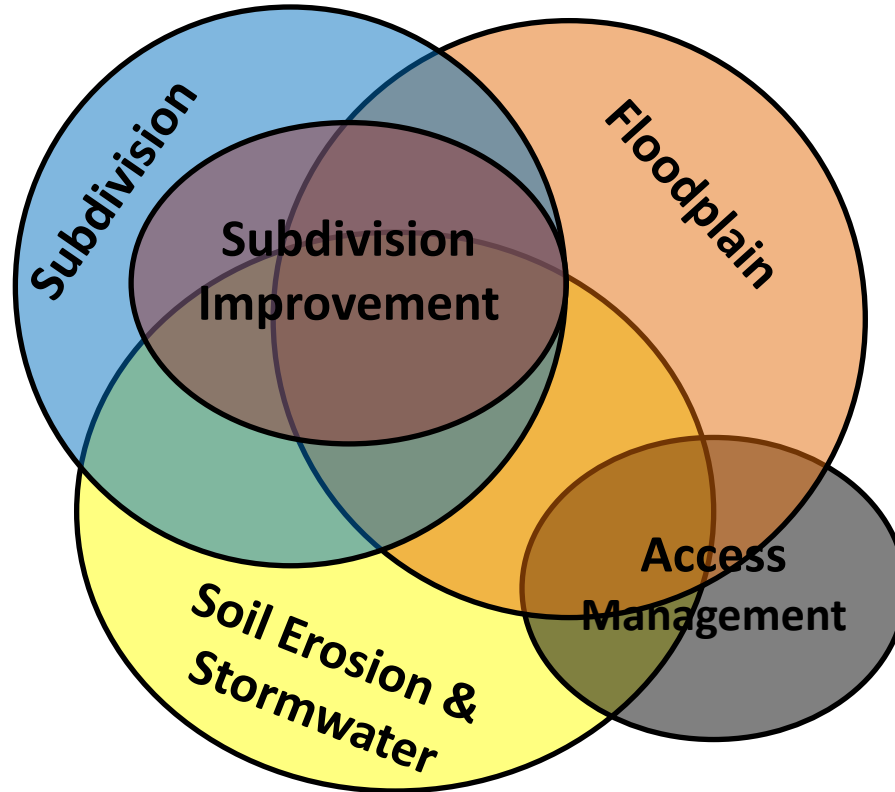
As listed by ORC



# Licking County Case Study

## Application

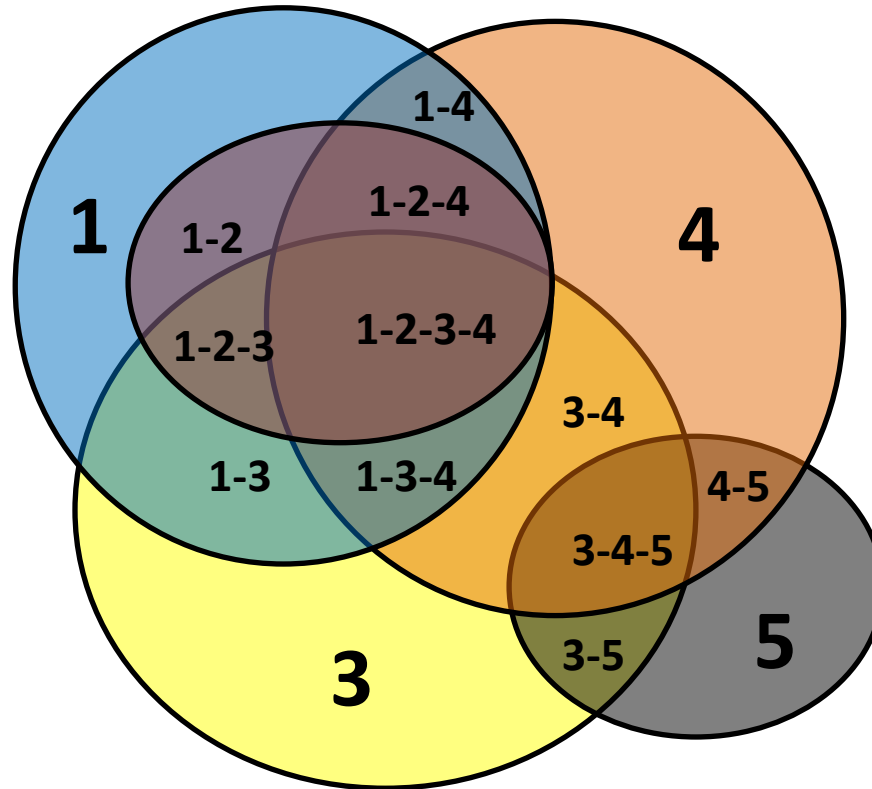
Overlapping of  
authorities on  
any one project



# Licking County Case Study

## Application

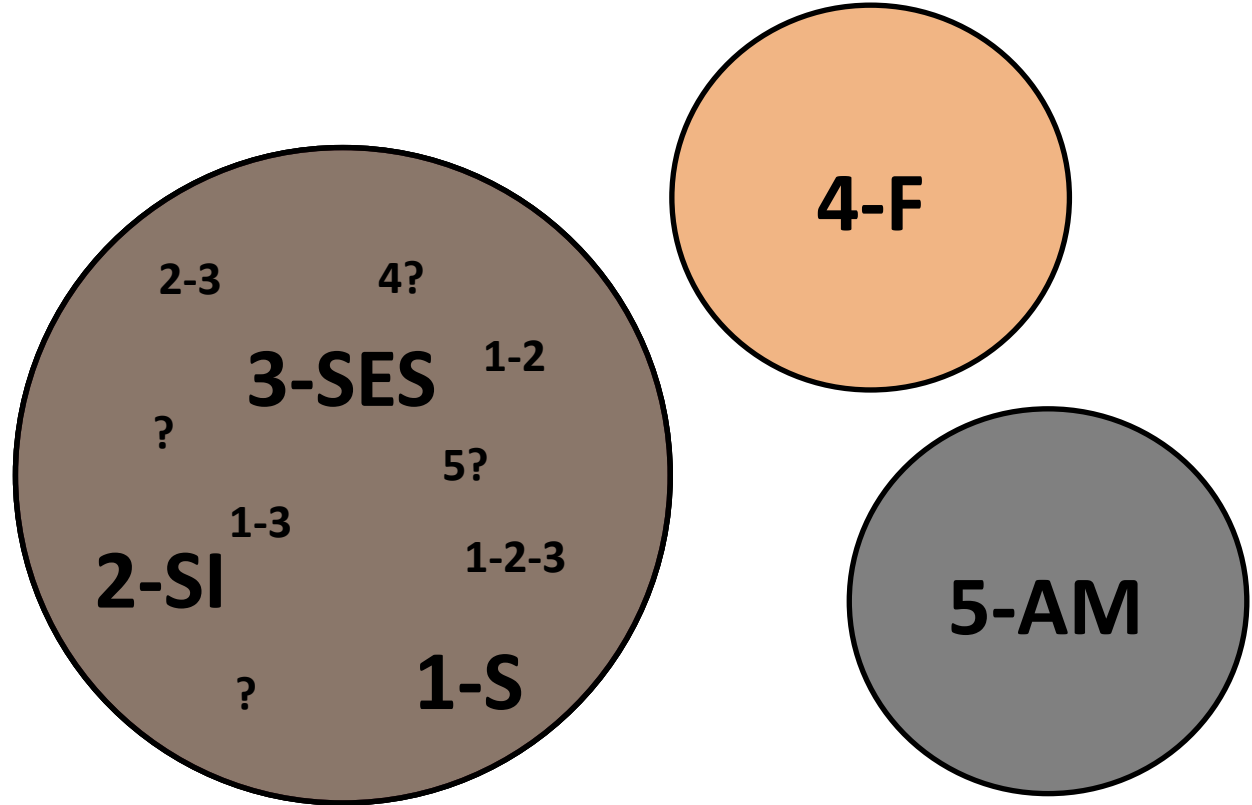
15 Different  
Possible  
Scenarios for any  
1 proposed  
development



# Licking County Case Study

## What Happened

- 3 Authorities were merged into 1 document
- A 4<sup>th</sup> was sprinkled in
- Blurred/Hidden lines
- How does it apply to Projects
- Amendment/Process Confusion



# Licking County Case Study

## The Work

- Understand legal authorities
- Pour over regulations to identify correct authorities
- Reformat into new stand-alone documents
- Complex Cut & Paste

Article 7 for the amount of the estimated construction cost of the ultimate installation of the required improvements.

### Section 3.58 Phasing

A subdivision may be developed in phases provided that:

1. The preliminary plan shows the phases of development and the requirements of these Regulations that will be satisfied in each phase is approved as part of the preliminary plan;
2. The number of lots and amount of any required open space in the phase and any previously approved phases is at least proportional to the portion of the subdivision site area within the phase(s). This requirement can be satisfied with a bond or hold in escrow (see Section 4.72 #8) the amount required for each phase, and
3. The degree and extent of road, water supply, sewage disposal, stormwater management, erosion and sedimentation control, and other required improvements in the phase and previously approved phases is sufficient to serve or handle all development within the phase(s).

### Section 3.6 Development Review

#### Section 3.60 Development Review Process/Requirements

Any development occurring on one or more existing lots is subject to certain sections of the Licking County Subdivision Regulations when it involves one of the following (excluding a single family residence):

1. The development of the tract involves the opening, widening, alteration, or extension of any easement of access or driveway.
2. The development will increase the traffic flow to and from the site onto a public roadway.
3. The development will increase the impermeable surface area of the site by 20% or one-acre whichever is less and/or will require a National Pollutant Discharge Elimination System (NPDES) permit from the Ohio Environmental Protection Agency (OEPA).
  - a. In accordance with Section 3745-33-02-Ohio NPDES Permit Required (individual permit) & 3745-33-02-Ohio NPDES Permit Required (general permit) of the Ohio Administrative Code (OAC) a NPDES permit is required when the following occurs:
    - i. Discharge of wastewater to waters of the state (streams, rivers, lakes, ponds, marshes, watercourses, waterways, wells and springs)
    - ii. Discharge wastewater to a local wastewater treatment plant.
    - iii. Wastewater treatment operations will be established.
    - iv. Construction activities that will disturb one or more acres of land.
    - v. Stormwater associated with industrial activity at the facility enters into the sewers or drain to surface water.

vi. Relocate a stream or excavate in an area containing wetlands.

Please note: This list is not exhaustive and is provided here only as a guide. The O.E.P.A. shall have final determination as to when a NPDES Permit is required. A copy of their permit or a letter from the OEPA shall be required prior to any Development Permit being issued by the Licking County Planning Commission. Amended September 24, 2012 by LCPC Resolution 92012-018.

The review procedure follows this outline:

1. Sketch Plan approval, as per Section 3.33
2. Preliminary Plan approval consisting of only the Article 4, Article 6 and Article 8 requirements
3. Final approval by the LCPC staff and TRC before Building Code permits are issued.

This review process does not go before the LCPC for formal approval. Only in situations of an appeal of a LCPC staff decision or requirement shall such a proposal go before the LCPC for final review and approval.

When an authorized representative of the LCPC is satisfied that the proposed development, drainage, and access meet the requirements of these Regulations, he or she shall issue a Development Permit and sign and date the Construction Plans. This approval is required before the Licking County Building Code Department will act on any permits.

### Section 3.61 Violation of Development Review

If a building permit is obtained or if development takes place for a site which is undergoing, or is yet to undergo development review, it will be considered a violation of these Regulations that may be subject to penalties outlined in Section 9.3 of these Regulations.

### Section 3.7 Replat

If a person(s) wishes to replat (i.e. make alterations to existing lot lines or other conditions) all or part of an existing platted subdivision, the applicant must submit a completed application consisting of the following:

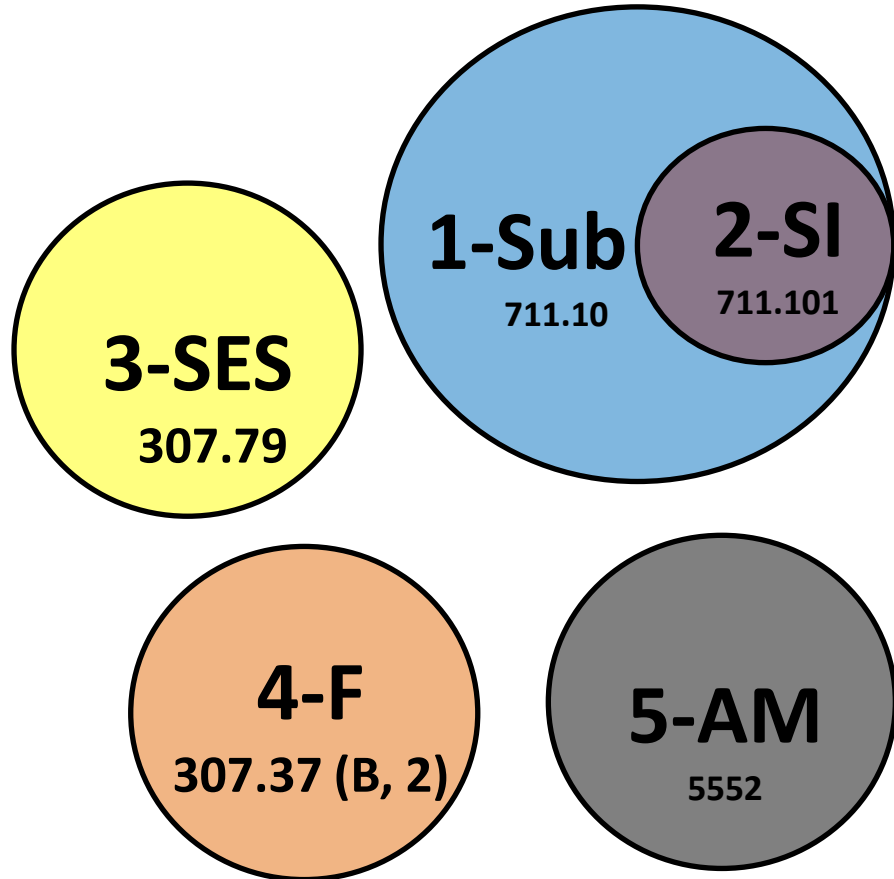
1. An application form provided by the LCPC and the proper filing fee (see Appendix IX).
2. A final plat (Replat) submitted on an 18 inch by 24 inch sheet of paper or mylar with:
  - a. The surveyor's name and signature.
  - b. The property owner's notarized signature.
  - c. The notary public's signature and stamp.



# Licking County Case Study

## The Fix

- Authority Identified
- Consistent Applicability
- Roles Understood
- Amendment/Process Clear



# Licking County Case Study

## Sharing Tid-Bits

Did you know....

- Planning Com. has no authority with Public Improvement Regulations, unless...
- 'Public Improvement/Infrastructure' phrases
- Application of Public Improvement Regs; only plans/plats
- Twp/Health Dept. 'notification of plat'
- Subdivision Regulations only effective if...
- Adoption of Thoroughfare Plan prior to...
- Street Trees not listed
- Access Management: No to platted subdivisions; Yes to minor land divisions
- Access Management Permit timeframes
- Soil Erosion & Stormwater 1 acre rule

# Case Law & Legislation

The following are recent case laws and legislation that have been made or introduced. Although they do not directly impact planning commissions, it is important information to be aware of as the planning commission assists other government entities within their jurisdiction.

## Case Law

- B.J. Alan Company, et al. v. Congress Township Board of Zoning Appeals, et al., 124 Ohio St.3d 1 (2009). *A county comprehensive plan may be the basis for township zoning.*
- Apple Group, Ltd. v. Granger Twp. Board of Zoning Appeals, 2015-Ohio-2343, 144 Ohio St. 3d 188 (2015), reconsideration denied, 2015-Ohio 3427, 143 Ohio St. 3d 1448 (2015). *The zoning text and zoning map may be the comprehensive plan.*

## Legislation

- Senate Bill 75 – Agritourism

# Question and Answer Segment