

ZONING UPDATE AND HOT TOPICS

2018 Local Government Officials Conference

Peter N. Griggs
Brosius, Johnson & Griggs, LLC
1600 Dublin Road, Suite 100
Columbus, Ohio 43215
www.bjglaw.net
pgriggs@bjglaw.net
Phone: 614-464-3563
Fax: 614-224-6221

I. COMPREHENSIVE PLANS

A. ORC Section 519.02: "...the board of township trustees may regulate by resolution, in accordance with a comprehensive plan, ..."

B. What is a Comprehensive Plan from a legal perspective?

1. *Cassel v. Lexington Township Bd. Of Zoning Appeals* (1955), 163 Ohio St. 340: Under Revised Code Section 519.02, township zoning classifications must be based upon a comprehensive plan. This limitation requires, at the very least, a general plan to control and direct the use and development of property within the township by dividing the township into districts according to its present and potential use.
2. The purpose of requiring a comprehensive plan is to prevent "piecemeal" or "spot zoning." *Board of Township Trustees Ridgfield Township v. Ott* (January 21, 1994), Huron App. No. H-93-16. (Entire township zoned Agriculture. Although the zoning text established five districts, none were shown on zoning map. Court held there was no comprehensive plan.)

I. COMPREHENSIVE PLANS (continued)

B. What is a Comprehensive Plan from a legal perspective? (continued)

3. A township zoning resolution (i.e. text and map) can constitute a "comprehensive plan" within the meaning of statute. *Cent. Motors Corp. v. Pepper Pike* (1979), 63 Ohio App.2d 34; *Ryan v. Plain Township Board of Trustees* (December 11, 1990), Franklin App. No. 89AP-1447.
4. Stated differently, a township is not required to have a comprehensive plan which is separate and distinct from its zoning resolution. *Reese v. Copley Twp. Bd. of Trustees* (1998), 129 Ohio App.3d 9.
5. Unlike townships, municipalities are not required to enact zoning regulations in accordance with a comprehensive plan. *Columbia Oldsmobile, Inc. v. City of Montgomery* (1990), 56 Ohio St.3d 60.

I. **COMPREHENSIVE PLANS (continued)**

c. **Caselaw**

1. *B.J. Alan Company, et al. v. Congress Township Board of Zoning Appeals, et al.* (2009), 124 Ohio St.3d 1. Congress Township adopted a zoning resolution in 1994 which contained two (2) zoning districts, specifically "Agricultural District" and "Business/Industry District." However, no property within the Township was designated to be within the Business/Industry District. Phantom Fireworks sought a use variance to sell fireworks which was denied by the Board of Zoning Appeals. Upon appeal to the Common Pleas Court, the trial court overruled Phantom's appeal and affirmed the decision of the BZA. Upon appeal to the Court of Appeals, the appellate court found the Township's zoning resolution to be invalid, in that it did not regulate uses in accordance with a comprehensive plan.

I. **COMPREHENSIVE PLANS (continued)**

c. **Caselaw (cont.)**

Although the Township admittedly did not have its own stand-alone comprehensive plan, the testimony indicated that it relied on the Wayne County comprehensive plan when drafting its zoning resolution. The Supreme Court reversed the decision of the Court of Appeals and held that a county-wide comprehensive plan can (but does not automatically) qualify as a comprehensive plan under Ohio Revised Code Section 519.02 and that the Wayne County Comprehensive Plan does qualify as a comprehensive plan encompassing Congress Township. The Supreme Court did not, however, determine whether or not the Congress Township Zoning Resolution was "in accordance" with the Wayne County Comprehensive Plan and directed the Court of Appeals to consider that issue.

I. **COMPREHENSIVE PLANS (continued)**

c. **Caselaw (cont.)**

- The Supreme Court noted that Ohio Revised Code Section 519.02 does not require townships to create their own comprehensive plans. Instead, this statute only requires that a township's zoning resolution be in accordance with "a" comprehensive plan. In this case, that comprehensive plan was created by Wayne County. The primary points of the case are:
- a. Ohio Revised Code Section 519.02 requires that a township zoning resolution must be in accordance with "a" comprehensive plan.
 - b. The township need not be the author of the plan. However, the plan must apply to, encompass and demonstrate an intent to include the township within its purview.
 - c. The township zoning must be "in accordance with" the relied upon comprehensive plan.

I. **COMPREHENSIVE PLANS (continued)**

c. **Caselaw (cont.)**

2. *White Oak Prop. Dev., LLC v. Washington Twp.*, (February 6, 2012), 2012-Ohio-425 (Ohio App. 12 Dist.). A condominium developer sued Washington Township claiming that its zoning resolution and the accompanying zoning map were invalid under the Ohio Revised Code Section 519.02. The Common Pleas Court found in favor of the Township, and the Developer appealed. Upon appeal, the Developer claimed that the zoning resolution was unenforceable because it did not zone in accordance with a comprehensive plan. The appellate court found in favor of the Township and held that the zoning resolution and map constituted a comprehensive plan pursuant to Section 519.02. The zoning resolution and map not only set forth a comprehensive zoning plan, but the Township also applied the plan in a manner consistent with its goals.

I. **COMPREHENSIVE PLANS (continued)**

c. **Caselaw (cont.)**

The resolution reflected the current, primarily agricultural, use of the land, it allowed for change, and was neither rigid nor unchangeable. Further, the zoning plan contained clearly defined districts and promoted public health and safety. Also, the map did not leave the "vast majority" of the Township "unzoned." The map identified district boundaries and promoted the uniform classification of land so as to preserve its principle use, agriculture. Accordingly, the map, when read in conjunction with the resolution, zoned in accordance with the overall plan.

I. **COMPREHENSIVE PLANS (continued)**

c. **Caselaw (cont.)**

3. *Apple Group Ltd. V. Granger Twp. Bd. Of Zoning Appeals*, 144 Ohio St.3d 188, 2015-Ohio-2343. Apple Group Limited, (the "Developer") owned approximately eighty-eight (88) acres of property within Granger Township. The property was zoned R-1, which required each residential lot to be at least two acres. For the purpose of maximizing space, the Developer sought to concentrate 44 houses on one part of the property, and surround the houses with undeveloped open space. Under this proposed plan, each of the 44 housing lots would be an average of 5/6 of an acre. The Developer submitted an application to the Township's Board of Zoning Appeals (the "BZA") seeking 176 variances, four for each of its 44 proposed lots for variances to the lot acreage minimum, minimum street frontage, minimum continuous front yard width, and side-yard setback requirement.

I. **COMPREHENSIVE PLANS (continued)**

c. **Caselaw (cont.)**

The Developer also sought to rezone the property. The BZA denied the Developer's application for variances, and the Zoning Commission denied the Developer's request to rezone the property. The Developer filed suit against the BZA and the Township, appealing the BZA's decision, and seeking a declaratory judgment that it was unconstitutional for the Township to apply its zoning resolution to the Developer's property. The trial court entered its judgment in favor of the Township and the BZA, and the Developer appealed to the Ninth District Court of Appeals. The Developer argued that the Township's zoning resolution was invalid, as the Township did not have a comprehensive plan separate from its zoning resolution.

I. **COMPREHENSIVE PLANS (continued)**

c. **Caselaw (cont.)**

The Ninth District Court of Appeals held that Granger Township's failure to enact a separate comprehensive plan did not mean that the township lacked the authority to adopt a zoning resolution under Ohio Revised Code Section 519.02. *Apple Group, Ltd.* Appealed this decision to the Supreme Court of Ohio, asking the Court to determine whether Ohio Revised Code Section 519.02 requires a township to adopt a "comprehensive plan" separate from its zoning resolution. The Court held that a comprehensive plan may be included within a township's zoning resolution and does not need to be a separate and distinct document.

I. **COMPREHENSIVE PLANS (continued)**

c. **Caselaw (cont.)**

In answering this question, the Court looked at prior case law related to comprehensive plans, explaining that in *Cassell* the Court determined that the purpose of a comprehensive plan is to protect against arbitrary enforcement of a zoning resolution, and that under *B.J. Alan*, a township need not adopt its own comprehensive plan, so long as its zoning resolution is enacted in accordance with a comprehensive plan. The Court explained that zoning regulations should be adopted in a manner that is comprehensive, or "all-encompassing," in that the resolution "addresses the specific goals or objectives for the entire township.

I. COMPREHENSIVE PLANS (continued)

c. Caselaw (cont.)

The Court adopted the standard set forth in *White Oak*, and held a zoning resolution is enacted in accordance with a comprehensive plan if it (1) reflects current land uses, (2) allows for change, (3) promotes public health and safety, (4) uniformly classifies similar areas, (5) clearly defines district locations and boundaries, and (6) identifies the use or uses to which each property may be put. The Court concluded that Granger Township's zoning resolution met all of the *White Oak* requirements and affirmed the Court of Appeals' decision.

II. PLANNED UNIT DEVELOPMENT (PUD)

A. Introduction.

1. Statutory authorization: ORC Section 519.021.
2. Definition of PUD:
A development which is planned to integrate residential, commercial, industrial or any other use
3. State ex rel. Zonders vs. Delaware County Board of Elections (1994), 69 Ohio St. 3d 5
4. Purpose of PUD
5. Election of property owner

II. PLANNED UNIT DEVELOPMENT (PUD) (cont.)

B. Types of PUD's

1. Non-specific PUD Regulations
2. Site Specific PUD
3. Floating PUD
4. Conditional Use PUD

C. Advantages and disadvantages

D. Legislative vs. Administrative

1. Test: Whether the action taken is one enacting a law, ordinance or regulations, or executing or administering a law, ordinance or regulation already in existence
2. If legislative, subject to referendum and, if administrative, subject to an appeal

III. AGRITOURISM

A. O.R.C. 519.21 confers no power to prohibit agritourism in any district. (Effective 8/16/2016)

1. "Agritourism" means an agriculturally related educational, entertainment, historical, cultural, or recreational activity, including you-pick operations or farm markets, conducted on a farm that allows or invites members of the general public to observe, participate in, or enjoy that activity.
2. "Agritourism provider" means a person who owns, operates, provides, or sponsors an agritourism activity or an employee of such a person who engages in or provides agritourism activities whether or not for a fee.

III. AGRITOURISM (cont.)

B. Townships may regulate such factors as:

1. Size of structure used primarily for agritourism;
2. Size of parking areas that maybe required;
3. Building setbacks; and
4. Ingress/Egress when necessary to protect public health and safety.

C. Township may not require any parking area to be improved in any manner, including requirements governing drainage, parking area base, parking area paving, or any other improvement.

IV. MEDICAL MARIJUANA

A. O.R.C. Section 519.21 (D). Effective 9/8/2016.

B. Nothing in O.R.C. Section 519.21 prohibits a township zoning commission, board of township trustees, or board of zoning appeals from regulating the location of medical marijuana cultivators, processors, or retail dispensaries or from prohibiting such cultivators, processors, or dispensaries from being located in the unincorporated territory of the township.

V. ETHICAL CONSIDERATIONS

A. Chapter 102 – Ohio Ethics Laws.

- 1. Personal Interests.
- 2. Family and business associates.
- 3. Advisory opinions.
- 4. "Hot Line:" 614-466-7090

B. Primary prohibitions.

- 1. Use of authority or influence to secure a thing of value if the thing of value has a substantial and improper influence upon the public official.
 - a. Prohibits actions, discussions, lobbying, etc.
 - b. Thing of value includes a "detriment."
- 2. Cannot solicit or accept anything of value if the thing of value has a substantial and improper influence upon the public official.

V. ETHICAL CONSIDERATIONS (cont.)

C. Section 102.09 – Copies of Chapter 102 and Section 2921.42.

D. Individual meetings with applicants or opponents.

- 1. Legislative vs. Quasi-judicial.

E. Trustees attendance at hearings (and vice versa).

F. Section 511.13 – Interest in a township contract is prohibited. (Absolute prohibition.)

G. Section 2921.42 – Unlawful interest in a public contract is prohibited. (Exceptions.)
