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CHAPTER 86

COUNTY ZONING

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86.01 INTRODUCTION

Ohio Revised Code Chapter 303 authorizes counties to enact zoning in the unincorporated areas of the county. Unlike most other county land use regulations, such as subdivision regulations and building codes, county zoning only becomes effective after a vote of the residents of the unincorporated area of each township. In order for a zoning resolution to become effective in any township, the ballot question must receive a majority affirmative vote of the residents of the unincorporated area of each township voting on the issue. After a zoning resolution is adopted by a vote, subsequent amendments to the text of the zoning resolution or the zoning map do not require a vote of township residents. Zoning amendments to the text or the map, however, are subject to submission to the electors through a statutorily specified referendum procedure. The General Assembly authorized counties to enact zoning in 1947.

All townships also have the authority to enact zoning in the unincorporated area of the county. The authority of townships to zone also dates from 1947 and the law governing township zoning is contained in ORC Chapter 519. As is the case for county zoning, township zoning must also be approved by a vote of the majority of residents residing in the unincorporated area of the township voting on the question on the ballot. In the case of township zoning, the township trustees have ultimate responsibility, while in the case of county zoning final responsibility rests with the county commissioners.

Township zoning generally takes precedence over county zoning, unless the voters of the township approve its replacement with county zoning (ORC 303.22). Conversely, county zoning can be replaced by township zoning by a vote of the electors.

When considering the enactment of county zoning it is not necessary to place the issue on the ballot in all of the townships at the same time. For example, in one year, two

townships could vote on county zoning, and then three other townships could vote on the zoning question the following year. Spreading zoning issues over several elections may be the best way to proceed because its enactment takes substantial education and communication. In each case, the vote by the residents is on a township-by-township basis.

Although this chapter deals with county zoning, most of the procedural details are identical for township zoning with the exception that the township trustees, not the county commissioners have ultimate responsibility.

86.02 PURPOSE OF ZONING

The power to enact zoning is commonly referred to as a "police power authority," an action taken by government to protect the health, safety, and general welfare of its residents. Zoning is often controversial because it places restrictions on the use of land and places restrictions on the location, height, bulk, and size of buildings; the percentage of lot coverage, set back requirements; and the purposes for which buildings and land may be used (i.e. housing, business, and industry). Districts or zones are established, and the limitations in each district must be uniform for each kind of building or use of land in that zoning district with the exception of planned unit developments where the regulations need not be uniform (ORC 303.022). For more information on the status of PUD regulations see section 86.20.

Since the original enactment of the county zoning enabling legislation in 1947, the general purposes for which county commissioners could regulate building and land use was for the purpose of "promoting the public health, safety, and morals" (ORC 303.02). The absence of the specific authority to enact zoning for the purpose of the “general welfare” has been an issue of concern to counties and townships for a number of years. As a result of this concern, CCAO and the Ohio Townships Association both adopted policies to change the law to assure that the statue would authorize zoning in the unincorporated areas for the “general welfare” and for other specific purposes authorized under the municipal zoning enabling statute (ORC 713.06). Under the municipal statue, zoning may be enacted “in the interest of the public health, safety, convenience, comfort, prosperity, or general welfare.”

In order to broaden the purpose for which county and township zoning could be enacted, H. B. 148 was introduced into the 125th General Assembly in March, 2003. The legislation was passed by both houses of the legislature by May of 2004, and was signed by the Governor in August with an effective date of November 5, 2004. Under H.B. 148, ORC Section 303.02 was amended to grant counties the authority to zone “in the interest of the public health, safety, convenience, comfort, prosperity, or general welfare”, essentially the same language that exists for municipalities. The amendment also authorized the establishment of reasonable residential landscaping and architectural standards, but prohibited the ability for the standards to specify exterior building materials. In addition, the amendment limited the ability for the zoning resolution to regulate mineral extraction operations (aggregates and coal) except “in the

interest of the public health or safety." Following is a copy of ORC 303.03 as amended by H. B. 148:

> **Sec. 303.02.** ~~For~~ Except as otherwise provided in this section, in the ~~purpose~~ interest of ~~promoting~~ the public health, safety, ~~and morals~~ convenience, comfort, prosperity, or general welfare, the board of county commissioners may, in accordance with a comprehensive plan, regulate by resolution the location, height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, and trailer coaches, percentages of lot areas ~~which~~ that may be occupied, set back building lines, sizes of yards, courts, and other open spaces, the density of population, the uses of buildings and other structures, including tents, cabins, and trailer coaches, and the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of ~~such~~ the county, and establish reasonable residential landscaping standards and residential architectural standards, excluding exterior building materials, for the unincorporated territory of the county and, for ~~such~~ all these purposes, the board may divide all or any part of the unincorporated territory of the county into districts or zones of such number, shape, and area as the board determines. All such 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.
>
> For any activities permitted and regulated under Chapter 1509., 1513., or 1514. of the Revised Code and any related processing activities, the board of county commissioners may regulate under the authority conferred by this section only in the interest of public health or safety.

The enactment of this legislation caused consternation on behalf of certain residential homebuilders. As a result of this concern, the industry worked behind the scenes and at the close of the 125th General Assembly to pass legislation that would take back some of the authority granted in H. B. 148. The vehicle for this sinister change was S. B. 18, obscure legislation originally dealing with the membership of metropolitan housing authorities in charter counties (thus only impacting Summit County) which was introduced in the Senate in January 2003, passed the Senate in May of 2003 and languished in the House from then until near the end of the legislative session in December of 2004.

S. B. 18 was amended in House committee on December 8, 2004 to include provisions that took back part of the authority that was granted in H. B. 148. Then, on that same day, the legislation was ramrodded through the entire House of Representatives and the Senate where the originating body concurred in the amendments added by the House. The bill was then sent to the Governor, where a requested veto was rejected by Governor Taft, who let the bill become law without his signature. S. B. 18 became effective on May 27, 2005.

Under S. B. 18, much of the authority granted to counties and townships under H. B. 148 was effectively stripped in less than a day by powerful and influential development interests that promoted the change. Rather than to try to explain the differences the following language shows the changes that were made in S. B. 18 in comparison to the law as it had been amended by H. B. 148:

> **Sec. 303.02.** Except as otherwise provided in this section, in the interest of the public health~~,~~ and safety~~, convenience, comfort, prosperity, or general welfare~~, the board of

county commissioners may regulate by resolution, in accordance with a comprehensive plan, ~~regulate by resolution~~ the location, height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, and trailer coaches, percentages of lot areas that may be occupied, set back building lines, sizes of yards, courts, and other open spaces, the density of population, the uses of buildings and other structures, including tents, cabins, and trailer coaches, and the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of the county. Except as otherwise provided in this section, in the interest of the public convenience, comfort, prosperity, or general welfare, the board, by resolution, in accordance with a comprehensive plan, may regulate the location of, set back lines for, and the uses of buildings and other structures, including tents, cabins, and trailer coaches, and the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of the county, and may establish reasonable ~~residential~~ landscaping standards and ~~residential~~ architectural standards~~,~~ excluding exterior building materials~~, for~~ in the unincorporated territory of the county ~~and, for~~. Except as otherwise provided in this section, in the interest of the public convenience, comfort, prosperity, or general welfare, the board may regulate by resolution, in accordance with a comprehensive plan, for nonresidential property only, the height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, and trailer coaches, percentages of lot areas that may be occupied, sizes of yards, courts, and other open spaces, and the density of population in the unincorporated territory of the county. For all these purposes, the board may divide all or any part of the unincorporated territory of the county into districts or zones of such number, shape, and area as the board determines. All such 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.

For any activities permitted and regulated under Chapter 1509. 1513., or 1514. of the Revised Code and any related processing activities, the board of county commissioners may regulate under the authority conferred by this section only in the interest of public health or safety.

Currently a constitutional challenge to S. B. 18 is pending in court in an effort to invalidate the provisions of the law. The basis of the challenge is that the addition of the provisions relating to zoning in a bill dealing with metropolitan housing authorities violated the single subject rule of the Ohio Constitution. The case is pending at the time of writing (October 2006). For additional information on the changes that took place in H. B. 148 and S. B. 18 also refer to Table 1 at the end of this chapter.

86.03 EXEMPTIONS FROM AND LIMITATIONS ON COUNTY ZONING

Under state law counties are specifically limited or prohibited from regulating a variety of uses under the zoning power. Some of these limitations and prohibitions include:

1. **AGRICULTURE**--Generally, zoning may not prohibit the use of land for agricultural purposes or for the construction or use of buildings or structures related to agricultural purposes and no zoning permit can be required.

   Zoning may, however, regulate agriculture in a platted subdivision approved under subdivision regulations adopted pursuant to ORC Sections 711.05, 711.09, or 711.10. Agriculture may also be regulated in any area that contains 15 or more lots, approved as lot splits pursuant to ORC Section 711.131, if the lots are contiguous or across the street from other lots.

In situations where agriculture or agricultural buildings and structures may be regulated, the following guidelines provide guidance:

a. Agriculture may be regulated on lots of one acre or less.

b. Agricultural buildings or structures incidental to the use for agricultural purposes may be controlled on lots greater than one acre, but not larger than five acres, by requiring regulations for setbacks, height, and size.

c. Dairying and animal and poultry husbandry may be regulated on lots larger than one acre and not greater than five acres if at least 35 percent of the lots in the "subdivision" are developed with at least one structure subject to real property taxation or the manufactured or mobile home tax. In the event that dairying and animal and poultry husbandry were being conducted prior to the time the subdivision was 35 percent developed, when the 35 percent threshold is reached, the prior uses become legitimate non-conforming uses (ORC 303.21(A)(B)). No authority is granted to regulate agriculture, buildings or structures, and dairying and animal and poultry husbandry on lots greater than five acres in size.

ORC Section 303.01 includes a very specific definition of agriculture for the purposes of county zoning. Under this definition, agriculture includes: “farming; ranching; aquaculture; apiculture; horticulture; viticulture; animal husbandry, including, but not limited to, the care and raising of livestock, equine, and fur-bearing animals; poultry husbandry and the production of poultry and poultry products; dairy production; the production of field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, sod, or mushrooms; timber; pasturage; any combination of the foregoing; the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with, but are secondary to, such husbandry or production.”

2. **FARM MARKETS**--Zoning may not prohibit farm markets in agricultural, industrial, residential or commercial zones. This limitation applies to farm markets where 50 percent or more of the gross income comes from produce raised on farms owned or operated by the market operator during a normal year. Regulations pertaining to size of structure, size of parking areas, setback lines, and egress or ingress are, however, specifically authorized if such regulations are necessary to protect the public health and safety (ORC 303.21(C)).

3. **PUBLIC UTILITIES AND RAILROADS**--Public utilities and railroads, whether publicly or privately owned, are generally exempt from zoning (ORC 303.211(A)). This limitation applies to both the use of land for such purposes and to the location, erection, construction, reconstruction, change, alteration,

maintenance, removal, use or enlargement of buildings or structures. For example, a cable television company has been determined to be a public utility exempt from zoning (OAG 79-095).

There are two limited exceptions to this general rule. One relates to telecommunications towers (ORC 303.211(B)) and is detailed in section 86.21. The other exception is for buildings and structures of a public utility engaged in the business of transporting persons or property and for the use of land for such public utilities to the extent the exercise of the zoning power is not inconsistent with provisions of specified chapter of Title 49 of the ORC related to the Public Utilities Commission of Ohio. This provision of the law (ORC 303.211(C)), however, does not confer powers with respect to buildings, structures, or uses of land by a person engaged in the transportation of farm supplies to a farm or farm products to market or to food fabricating plants.

4. **ALCOHOLIC BEVERAGE SALE**--Zoning cannot prohibit the sale or use of alcoholic beverages in an area where the establishment and operation of any restaurant, hotel, lunchroom or retail business is permitted (ORC 303.211(D)).

5. **OIL AND GAS DRILLING**--The regulation of oil and gas drilling under zoning has been effectively preempted with the enactment of H. B. 278, effective 9-16-04. ORC Section 1509.02 provides that the Division of Mineral Resource Management at the Department of Natural Resources has the "sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells within the state." The law also declares: "the regulation of oil and gas activities is a matter of general statewide interest that requires uniform statewide regulation, and this chapter and the rules adopted under it constitute a comprehensive plan with respect to all aspects of the locating drilling and operating of oil and gas wells within this state, including site restoration and disposal of wastes from those wells.

   The enactment of this legislation also repealed some of the limited authority that previously existed under the former ORC Section 1509.39. This statewide preemption of zoning authority, however, does not affect the authority granted to local authorities to require a special permit for overweight vehicles often associated with oil and gas drilling pursuant to ORC Section 4513.34 and any bond or other security associated with such a weight permit

6. **OUTDOOR ADVERTISING**--Outdoor advertising is, as a matter of state law, classified as a business use and is permitted in "all districts zoned for industry, business, trade, or lands used for agricultural purposes." (ORC 303.20).

7. **LICENSED RESIDENTIAL FACILITES FOR MENTALLY RETARDED AND DEVELOPMENTALLY DISABLED PERSONS**--State law limits the types of regulations that may be enacted for licensed residential facilities for the mentally retarded and developmentally disabled (ORC 5123.19). There are generally two types of licensed residential facilities in Ohio. A family home provides services for not more than eight persons, while a group home provides services for 9 to 16 persons. Family homes licensed by the Department of Mental Retardation and Developmental Disabilities are permitted in any residential district, including any single family residential district. Family homes, however, can be required to comply with area, height, yard, and architectural compatibility requirements that are uniformly imposed on all single family residences in the district.

   Group homes are a permitted use in any multi-family residential zoning district; however, they may be excluded from a planned unit development district. In addition, specific authorization exists to regulate group homes as conditional uses in multi-family residential districts with the conditions limited to the following types of criteria:

   a. Requirements concerning design and site layout of the home and the location, nature and height of any walls, screens and fences to be compatible with the residential character of the neighborhood.

   b. Compliance with yard, parking and sign regulations.

   c. Regulations limiting an excessive concentration of group homes.

   Finally, state law requires the Department of Mental Retardation and Developmental Disabilities to send a notice to the county commissioners (and township trustees) at least 10 days before a license is issued for either a group or family home. Commissioners then have a 10 day period to submit comments to the MRDD Director. If comments are submitted to the Director within the 10 day period, the Director must then make written findings concerning the comments along with the decision on the issuance of the license.

8. **ADULT CARE FACILITIES**--State law (ORC 3722.03) limits zoning control over adult care facilities. An adult care facility is any residence, facility, institution, hotel, congregate housing project or similar facility that provides accommodations and supervision to from 3 to 16 unrelated adults, at least three of whom receive personal care services. Further, there are two types of adult care facilities:

   a. Adult Family Home--a facility or residence providing accommodations for from three to five unrelated adults and providing supervision and personal care services to at least three adults.

b. Adult Group Homes--A facility or residence that provides accommodations for from six to 16 unrelated adults and providing supervision and personal care services to at least three adults (ORC 3722.01).

The law declares that adult family homes are permitted uses in any residential district, including single family residential districts. Counties, however, may impose area, height, yard, and architectural compatibility requirements on these family homes if they are uniformly imposed on all single family residences in the district.

Adult group homes are permitted uses, under state law, in any multi-family residential district; however, they may be excluded from planned unit development districts. In addition, adult group homes may be regulated as conditional uses in multi-family districts under reasonable and specific standards that include:

c. Requirements that the architectural design and site layout of the home and the location, nature and height of any walls and screens and fences are compatible with adjoining land uses and the residential character of the neighborhood.

d. Compliance with yard, parking, and sign regulations.

Counties have broad authority to regulate adult group homes in single-family residential districts. Finally, counties have explicit authority to limit the "excessive concentration" of both types of homes.

9. **HAZARDOUS WASTE FACILITIES**—ORC Section 3734.05(D) specifically prohibits zoning of hazardous waste facilities in that:

> "No political subdivision of this state shall require any additional zoning or other approval, consent, permit, certificate, or condition for the construction or operation" of a hazardous waste facility authorized by a hazardous waste facility installation and operation permit issued pursuant to this chapter, nor shall any political subdivision adopt or enforce any law, ordinance, or rule that in any way alters, impairs, or limits the authority granted in the permit.

The law also provides for local public hearings if "significant" interest is shown in the state permit process. The law also includes a series of standards, including some siting standards, that must be met before the Director of the Ohio EPA may issue a permit for a hazardous waste facility.

10. **NONCONFORMING USES**—Zoning can not have a retroactive application. The lawful use of any dwelling, building, or structure and of any land or premises, as existing and lawful at the time of enactment or amendment of zoning may be continued, even when such use is not in compliance with

zoning regulations. If, however, a nonconforming use is voluntarily discontinued for two years or more, any future use must conform to the zoning regulations. Finally, all zoning resolutions must include reasonable provisions for the completion, restoration, reconstruction, extension, or substitution of nonconforming uses.

11. **LANDFILLS**—The status of landfills being exempt from zoning under the public utility exemption is dependent on the specific facts of the case. One opinion of the Attorney General (OAG 72-042) has found that a landfill owned by a county and constructed under the provisions of Chapter 343 of the Revised Code is a publicly owned public utility and thus exempt from zoning.

    Another opinion (OAG 82-052) ruled that a privately owned and operated landfill is also exempt from zoning as a public utility if its services are generally available to the residents where it is located.

    Both of these opinions, however, were issued prior to the enactment of HB 592 in 1988. These opinions may no longer apply because this law allowed solid waste management plans to have a voluntary element in the plan that exempts the owner or operator of any solid waste facility provided for in the plan from county or township zoning if the resolution or amendment became effective two years prior to the filing of a permit-to-install with the Ohio EPA.

    In addition there are a variety of court cases that address this issue and the definition of what constitutes a public utility is a mixed question of law and fact. One court of appeals held that a landfill was not a public utility and thus was not exempt from zoning (A & B Refuse Disposers, Inc. v Board of Ravenna Twp. Trustees, 64 OS 3rd 385) and the judgment was affirmed by the Supreme Court.

86.04 ENACTMENT PROCEDURE

The following is a summary of the procedure required by the Ohio Revised Code to enact county zoning:

1. **ADOPTION OF RESOLUTION TO PROCEED WITH ZONING** --The county commissioners pass a resolution declaring their intention to proceed with county zoning. This can be accomplished in two ways:

    a. They may adopt the resolution upon their own initiative, or

    b. They must adopt the resolution to proceed if they receive a petition signed by qualified voters from the unincorporated area of the township equal to 8 percent of the total vote cast for all candidates for governor at the most recent general election at which a governor was elected from the unincorporated area of each township to be included in the zoning plan. (ORC 303.03).

2. **ZONING COMMISSION DRAFTS PROPOSED ZONING RESOLUTION**—The county zoning commission has the responsibility to draft the zoning text and maps. For additional information on the zoning commission see section 86.06.

3. **PUBLIC HEARING BY ZONING COMMISSION**--After the zoning commission has prepared a recommended zoning text and map, but before the text and map are submitted to the county commissioners, public hearings are required which must be held in each township included in the county zoning plan (ORC 303.06).

4. **NOTICE OF PUBLIC HEARING IN NEWSPAPER--**The zoning commission must publish a notice of the public hearing in a newspaper of general circulation in the township at least 30 days before the hearing. The notice must state the place and time where the maps and text of the proposed zoning resolution may be examined (ORC 303.06).

5. **SUBMISSION TO COUNTY OR REGIONAL PLANNING COMMISSION**--After the public hearing, but prior to sending the final recommendation to the county commissioners, the zoning commission must submit the text and map to the county or regional planning commission for approval, disapproval, or suggestions. The planning commission must respond within 20 days. If it does not respond within the time period, the zoning commission presumes approval. If the planning commission suggests material changes or disapproves the proposal of the zoning commission, a second public hearing is required, again in each township. Notice of this second hearing must be published in a newspaper at least 30 days before the hearing (ORC 303.07).

6. **RECOMMENDATION BY ZONING COMMISSION**--After it has completed its work, the zoning commission sends the recommended zoning text and map to the county commissioners (ORC 303.07).

7. **PUBLIC HEARING BY COUNTY COMMISSIONERS--**The county commissioners must hold a public hearing on the proposal submitted by the zoning commission. No time limit for the holding of the hearing after receipt of the recommendation of the zoning commission is specified in the Revised Code (ORC 303.08).

8. **NOTICE OF PUBLIC HEARING IN NEWSPAPER**--The county commissioners must publish a notice of the public hearing in a newspaper of general circulation at least 30 days before the hearing (ORC 303.08).

9. **ADOPTION BY COMMISSIONERS**--After the public hearing, the county commissioners vote on the adoption of the zoning resolution (ORC 303.10). If they wish to modify either the text or maps as submitted by the zoning commission, the changes must first be resubmitted to the zoning commission for approval, disapproval, or suggestions.

Upon receipt of the recommendations from the zoning commission, if modifications are made, a second public hearing must be held by the county commissioners. Notice of the second hearing must be published in a newspaper of general circulation in each township affected by the changes at least 10 days before the hearing. If the commissioners make changes that were disapproved by the zoning commission, a favorable vote of the entire membership of the board of commissioners is required to adopt any provision that was disapproved by the zoning commission (ORC 303.09).

10. **RESOLUTION FILED WITH BOARD OF ELECTIONS**--The zoning text and map must be filed with the board of elections at least 75 days prior to the next primary or general election for the resolution to be placed on the ballot. A special election may also be called by the county commissioners (ORC 303.11).

The zoning resolution becomes effective only in those townships where a majority of the residents of the unincorporated area of the township vote in favor of county zoning. For example, if county zoning is on the ballot in all 15 townships in a county but receives a majority vote in only ten, county zoning is then in effect in only those ten townships. Zoning becomes effective when the results are certified by the board of elections.

In addition, within five working days of the effective date of the resolution the commissioners must file the text and maps with the county recorder and a duplicate of these documents with the county or regional planning commission (ORC 303.11). The failure to file these documents with the county recorder or the county or regional planning commission does not, however, invalidate the resolution and is not ground for an appeal of any decision of the board of zoning appeals.

It is important to follow enactment procedures exactly and to maintain records of all of the procedural details of the enactment process. Failure to comply with the procedural details could cause the invalidation of zoning even after it is approved by the electors. A 1990 law (H. B. 19), however, enacted ORC Section 303.122 to require legal challenges on procedural grounds must be brought within two years after the adoption of a zoning resolution.

86.05 ZONING ADMINISTRATION AFTER ENACTMENT OF ZONING

After the enactment of zoning it is important to fairly and effectively administer the resolution that was approved by the voters. Administration of the zoning resolution involves the following persons and bodies that will be explained in greater detail later in this chapter.

1. The zoning commission that was appointed to draft the original recommendation to the county commissioners.

2. A zoning inspector that is charged with the day-to-day administration and enforcement of the zoning resolution.

3. The board of zoning appeals which serves as an appellate body and the entity that grants condition use permits.

4. An architectural review board may be appointed to enforce compliance with any zoning standards pertaining to landscaping or architectural elements, and

5. The board of county commissioners, who continue to perform all legislative functions relating to the zoning resolution.

There are thus five primary persons or bodies involved in zoning administration after enactment: the commissioners, the zoning commission, the board of zoning appeals, the zoning inspector, and possibly an architectural review board. Each of these persons or bodies is given specific responsibilities and authority under state law and each should confine their activities to specified areas of responsibility.

86.06 APPOINTMENT OF THE ZONING COMMISSION

The county commissioners of any county proceeding with county zoning must appoint a zoning commission of five members to draft a zoning resolution and map. Original appointments to the zoning commission must be staggered so that the term of one member expires each year. Members must be residents of the unincorporated areas of the county being included in the zoning resolution. Commissioners may allow for compensation and/or expenses for members of the zoning commission.
County commissioners may also appoint two alternate members to the county rural zoning commission, to terms to be determined by the commissioners. An alternate can take the place of an absent regular member at any meeting of the commission and can vote on any matter an absent member can vote on (ORC 303.04).

The zoning commission must organize and adopt rules for the transaction of business and keep a record of its actions and determinations. All meetings of the zoning commission are public meetings and the commission is subject to both Ohio's public meeting, or "sunshine" law, and to Ohio's public records law.

The zoning commission is to make use of information and counsel that is available from appropriate public officials and agencies. If there is a county or regional planning commission, the zoning commission must request the planning commission to prepare or make available a zoning plan, including text and maps, for the unincorporated area of the county or any part thereof.

The zoning commission may also employ or contract with such planning consultants and executive and other assistants as it deems necessary if funds have been appropriated by the county commissioners. If a county or regional planning commission exists, the zoning commission must use the same planning consultants and executive

and other assistants as provided for such county or regional planning commission if so ordered by the commissioners.

86.07 AUTHORITY OF ZONING COMMISSION

After the zoning resolution is enacted, the zoning commission has the following three major responsibilities:

1. To propose amendments to the text of the zoning resolution or changes to the zoning map when needed.

2. To make recommendations to the county commissioners on all proposed zoning amendments (text and map changes).

3. To approve planned unit developments, if specifically authorized in the zoning resolution.

4. To serve as the architectural review board if the commissioners do not appoint a separate board and this function is not delegated to the zoning inspector.

86.08 APPOINTMENT OF ZONING INSPECTOR

After zoning is enacted it must be effectively administered. Effective administration centers on the appointment of a qualified zoning inspector. The zoning inspector enforces the zoning resolution, reviews and issues permits, conducts inspections, investigates violations, reviews subdivision plats for conformance with zoning, and supervises other administrative details(ORC 303.16).

The board of county commissioners may also delegate the responsibility of enforcing standards pertaining to landscaping or architectural elements if such standards have been adopted and the commissioners have not established an architectural review board or delegated this responsibility to the zoning commission (ORC 303.161).

The inspector has no discretionary authority and should adhere to the letter of the law. In any county that has appointed a county building inspector under ORC Section 307.38, this person may also serve as the county zoning inspector. The zoning inspector is appointed by the county commissioners who fix the compensation for the position (ORC 303.16).

Once zoning is enacted, “no person shall locate, erect, construct, reconstruct, enlarge, or structurally alter any building or structure within the territory included in a zoning resolution without obtaining a zoning certificate. . . . and no such zoning certificate shall be issued unless the plans for the proposed building or structure fully comply with the zoning regulations then in effect (ORC 303.17). It is the job of the zoning inspector to process applications for a zoning certificate or permit.

86.09 APPOINTMENT OF A BOARD OF ZONING APPEALS

The commissioners must appoint a five member board of zoning appeals. No more than two members may be from the same township if the county zoning applies to three or more townships. Terms of members of the board of appeals also must be so arranged so that the term of one member expires each year. Members may be allowed compensation and/or expenses for performing their responsibilities.

County commissioners may also appoint two alternate members to the board of zoning appeals, to terms to be determined by the commissioners. An alternate can take the place of an absent regular member at any meeting of the board of zoning appeals and can vote on any matter an absent regular member can vote on (ORC 303.13).

86.10 AUTHORITY OF BOARD OF ZONING APPEALS

The board of zoning appeals has the following four major responsibilities:

1. To decide appeals where it is alleged there is an error in any decision, order, requirement, interpretation, or determination made by the zoning inspector.

2. To decide requests for variances to the regulations. This type of an appeal usually involves setback and other dimensional requirements where unusual circumstances related to the physical constraints of the land create a unique hardship on a property owner. In the case of a request for a variance the applicant acknowledges that he/'she is not in compliance with the requirements of the zoning resolution. In the case of an appeal as discussed above, on the other hand, the applicant usually believes that the zoning inspector is not applying the terms of the resolution correctly and believes he/she is in compliance with the regulations. Variances cannot be granted to allow a use that is not permitted in a zoning district. This would require an amendment or a district change.

3. To decide on applications for conditional uses. These are uses that are permitted by the zoning resolution when certain conditions are met by the property owner. Unlike appeals and variances where the board has jurisdiction upon appeal, for conditional uses the board has original jurisdiction to hear and decide such applications by applying standards in the resolution to the specific use being requested in the application.

4. To revoke an unauthorized variance or conditional use for mineral extraction, if any condition of the variance or certificate is being violated (303.14).

86.11 BOARD OF ZONING APPEALS PROCEDURES

The board of zoning appeals organizes and adopts rules that comply with the provisions of the zoning resolution. The board of zoning appeals must comply with Ohio's public meeting or sunshine law and Ohio's public records laws. Meetings of the board of appeals are at the call of the chair and at such other times as the board determines. The chair or acting chair may administer oaths and may compel the attendance of witnesses.

The board must keep minutes of its proceedings showing the vote of each member upon each question or if the member is absent or fails to vote the minutes must record this fact. The board must also keep records of its examinations and other official actions and these records must be filed in the office of the county commissioners.

Following is a summary of the procedures that must be followed by the board of zoning appeals prior to making a final decision on any appeal, variance, or conditional use:

1. In the case of an appeal from a determination by the zoning inspector the aggrieved party must give a notice of appeal to the zoning inspector and the board of appeals within 20 days after the decision of the zoning inspector. The zoning inspector then transmits all records to board of zoning appeals. In the case of a variance or a conditional use, an application is also filed with the board.

2. Board of zoning appeals schedules a public hearing within a "reasonable time."

3. Board of zoning appeals sends a notice of the public hearing to "parties in interest" at least 10 days before the public hearing.

4. Board of zoning appeals publishes a notice of the public hearing in a newspaper of general circulation at least 10 days before the hearing.

5. Board of zoning appeals holds the public hearing and makes its decision within a "reasonable time."

6. An appeal from a determination by the board of zoning appeals goes to the court of common pleas (ORC 303.15).

In the case where a board of zoning appeals proceeds to revoke an unauthorized variance or conditional use permit that was granted for the extraction of minerals and because a condition of the variance or conditional use is being violated, special procedures apply. The board must notify the holder of the variance or the conditional use permit by certified mail of its intent to revoke the variance or permit. The notice must inform the holder of the variance or the conditional use of the right to a hearing before the board within 30 days of the mailing of the notice. If a hearing is requested, the board must set the time and place of the hearing and notify the holder. At this

hearing the holder may appear in person, by attorney, or may present a written position statement. The holder may present evidence and examine witnesses. If no hearing is requested the board may revoke the variance or permit without a hearing (ORC 303.14).

Finally, it should be noted that procedural exactness is important. Court actions alleging a procedural error, however, must be brought within two years from the date of the action (ORC 303.122).

86.12 APPOINTMENT OF ARCHETECTURAL REVIEW BOARD

Now that counties have specific authority to "establish reasonable landscaping standards and architectural standards excluding exterior building standards," county commissioners may also appoint an architectural review board to enforce these standards. The board is to consist of no more than five members, and at least one of the members must be either a licensed architect or engineer. As an alternative, the commissioners may delegate this enforcement authority to either the zoning commission or the zoning inspector. The commissioners must adopt standards and procedures for the board to use in reviewing applications for compliance with the landscaping and architectural standards (ORC 303.161).

86.13 DUTIES OF COUNTY COMMISSIONERS

County commissioners have the following powers and responsibilities relative to zoning:

1. To propose amendments to the text or map changes.

2. To make final decisions on all amendments, whether they be changes to the text or map.

3. To establish fees.

4. To initiate the repeal of the zoning resolution. If repeal is initiated, by the commissioners, the question must then be submitted to the voters of each township. The resolution initiating the repeal must specifically mention each township where a repeal vote is desired.

5. To submit the question of repeal of the resolution to the electors of any township if it receives a petition signed by eight percent of the vote cast for all candidates for governor in the most recent general election where the governor was elected. The petition must meet the requirements of ORC Sections 303.12 and 3501.38, and must be certified to the board of elections at least 75 days before the primary or general election. No more than one such election may be held in any two calendar years (ORC 303.25).

6. To make appointments of the zoning inspector, zoning commission, board of zoning appeals, and the architectural review board.

7. To make appropriations for the administration of the zoning resolution.

The fact that county commissioners also are statutory members of a county planning commission has raised issues as it relates to votes they may cast as a member of the county planning commission on zoning issues related to the enactment or amendment of county zoning. Because a county planning commission must make recommendations to the board of county commissioners on the adoption and amendment of a county zoning resolution, some commissioners feel they should not participate in a vote that is essentially a recommendation to themselves.

As a result of this concern, legislation was enacted that allows a county planning commission to adopt a policy under which members of the board of county commissioners, as members of the planning commission, must abstain from participating and voting on the commission's recommendation, whenever a county planning commission is required by ORC 303.07 to approve or disapprove, or make suggestions about, a proposed county zoning resolution. This also applies to ORC 303.12 to recommend the approval or denial of a proposed amendment or approval of some modification of an amendment to the county zoning resolution. This provision, however, does not apply in the case of township zoning.

The policy of the planning commission may require that a quorum of the planning commission under these circumstances be determined on the basis of an eight-member commission instead of an eleven-member commission (ORC 713.22(E)).

86.14 ZONING AMENDMENTS OR DISTRICT CHANGES

Zoning amendments may be changes to either the zoning text or map. Although such changes are usually requested by property owners, the zoning commission and county commissioners may also initiate amendments.
County commissioners may require any owner or lessee of property that requests an amendment to the text or zoning map to pay a fee. The purpose of the fee is to defray the cost of advertising, mailing, filing the amendment with the county recorder and other expenses. If such a fee is required it must be paid by each applicant for an amendment.
The procedural requirements to amend the zoning resolution are very detailed and must be followed exactly. Records proving that statutory time limits have been met and showing that the content of notices to property owners and advertisements were proper is vital should a challenge on procedural grounds be taken. Fortunately the legislature, in 1990, enacted ORC Section 303.122 which requires legal challenges to an amendment on procedural grounds to be brought within two years of the adoption of the resolution approving or rejecting a proposed amendment.

Following is a summary of the procedure required for all zoning amendments:

1. The amendment is initiated by application (property owners or lessees), motion (zoning commission), or resolution (county commissioners) certified to the zoning commission.

2. The zoning commission schedules a public hearing not less than 20 nor more than 40 days from the date of the application, motion, or resolution.

3. The proposed amendment is transmitted to the county or regional planning commission within five days of receipt by the zoning commission.

4. The county or regional planning commission recommends approval, denial, or some modification to the zoning commission and this recommendation is considered at the public hearing by the zoning commission.

5. If 10 or fewer parcels of land are to be rezoned, written notice, by first class mail, must be sent to interested property owners at least 10 days before the hearing. The notice must be sent to property owners within, contiguous to, and directly across the street from the area to be rezoned. The failure of delivery of the notices, however, does not invalidate any amendment. See sections 86.15-86.17 for information on the content of both mailed and published notices.

6. The zoning commission publishes a notice of public hearing in a newspaper of general circulation in each township affected at least 10 days before the hearing, holds the public hearing and makes a recommendation to the commissioners within 30 days after the hearing. The commission also transmits the application, text and maps, and the motion or resolution initiating the amendment to the county commissioners. See sections 86.15-86.17for information on the content of the published notice.

7. The commissioners schedule a public hearing within 30 days after receiving the recommendation from the zoning commission.

8. The commissioners publish a notice of the public hearing in a newspaper of general circulation at least 10 days before the hearing, hold the public hearing, and must make a final decision within 20 days after the hearing. If their decision deviates from the recommendation of the zoning commission, a unanimous vote of the commissioners is required. If one commissioner abstains from voting on the amendment, the unanimity requirement is met. (State ex rel Dry Ridge Development Co. v Hamilton County Commissioners, 507 NE (2d) 438).

9. The amendment becomes effective in 30 days, unless a referendum is requested by property owners meeting the requirements of Section 303.12(H) of the Revised Code. This section specifies the exact form of such a petition and requires that each part of the petition contain:

    a. An identification of the amendment by name, resolution number, or both,

b. A summary of the proposal,

c. A statement and signature of the petition circulator, and

d. A statement concerning penalties for election falsification.

The petition must be signed by qualified voters from the unincorporated area of the township equal to 8 percent of the total vote cast for all candidates for governor at the most recent general election at which a governor was elected. If a valid petition is submitted, the amendment will be presented at a special election on the same day of the next general or primary election.

In addition, the petition is governed by the rules detailed in ORC Section 3501.38. In the case where a valid petition is submitted, the amendment does not take effect unless approved by a majority from the unincorporated area of the township at an election and upon certification by the board of elections of the result. A copy of the form of the petition as specified in ORC Section 303.12 is contained in section 86.18.

10. Within five days after the effective date of any amendment the county commissioners must file the amendment, including the text and maps with the county recorder and with the county or regional planning commission. For additional information see section 86.19.

Finally it should be noted that ORC Section 307.561 allows for the rezoning of property without following this procedures if the county commissioners enter into a consent decree or settlement agreement that is approved by a court. Refer to section 86.27 of this chapter for additional information.

86.15 REQUIREMENTS FOR CONTENT OF AMENDMENT NOTICES

Ohio law specifies very exact requirements for the content of mailed and published notices concerning zoning amendments. Prior to October 4, 1984 the zoning commission was required to describe the "nature" of the amendment and the county commissioners had to include a "summary" of the amendment. Since neither term was defined in law, some amendments were invalidated by the courts because of inadequate summaries. Ohio law now specifies exactly what must be included in both the mailed and the published notices.

86.16 NOTICE REQUIREMENTS FOR REZONING TEN OR FEWER PARCELS OF LAND

When the proposed amendment is to rezone 10 or fewer parcels of land as shown on the auditor's current tax list the following items must be included in the mailed and

published notices of the zoning commission and of the published notice of the county commissioners

1. The time, date and place of the hearing.

2. That the hearing is being held by the zoning commission or the county commissioners, as the case may be.

3. A statement that the hearing is for an amendment to the zoning resolution. Although the law is unclear in this regard, it is probably advisable to state how the proposed amendment was initiated---by motion of the zoning commission, resolution of the county commissioners, or application of a property owner.

4. A list of the addresses of all properties to be rezoned and the names of owners of these properties as shown on the auditor's tax list.

5. The present zoning classification of the property and the proposed zoning classification.

6. The time and place where the motion, application or resolution proposing the amendment will be available for public examination. This must include the text and maps that are part of a proposed amendment. It must be available for at least 10 days before the hearing.

7. The name of the person responsible for giving the notice (mailed or published). This will usually be the chairman or secretary of the zoning commission or the commissioners' clerk.

8. Other information requested to be included by the zoning commission or county commissioners.

9. In the case of the zoning commission notice, a statement that after the hearing the amendment will be submitted to the county commissioners for action.

86.17 NOTICE REQUIREMENTS FOR REZONING MORE THAN TEN PARCELS OF LAND OR ANY AMENDMENT TO THE TEXT OF THE RESOLUTION

In the case where more than 10 parcels of land, as shown on the auditor's current tax list, are proposed for rezoning or when the proposed amendment involves any change to the text of the zoning resolution fewer items must be included in the published notices. If more than 10 parcels of land are to be rezoned or are affected by the proposed amendment, then mailed notice is not required. In these cases, only items 1, 2, 3, 6, 7, 8, and 9, above, must be included in the published notice.

86.18 FORM OF ZONING REFERENDUM PETITION AND STATEMENT OF PETITION CIRCULATOR

ORC Section 303.12 includes the specific form of a referendum petition and the statement of the circulator of a referendum petition as follows:

PETITION FOR ZONING REFERENDUM

(if the proposal is identified by a particular name or number, or both, these should be inserted here) .....

A proposal to amend the zoning map of the unincorporated area of ..... Township, ... County, Ohio, adopted ..... (date) ..... (followed by brief summary of the proposal).

To the Board of County Commissioners of ..... County, Ohio:

We, the undersigned, being electors residing in the unincorporated area of ..... Township, included within the ..... County Zoning Plan, equal to not less than eight per cent of the total vote cast for all candidates for governor in the area at the preceding general election at which a governor was elected, request the Board of County Commissioners to submit this amendment of the zoning resolution to the electors of ..... Township residing within the unincorporated area of the township included in the ..... County Zoning Resolution, for approval or rejection at a special election to be held on the day of the next primary or general election to be held on .... (date) ...., pursuant to section 303.12 of the Revised Code.

Signature Street Township Precinct County Date of

Address Signing

or

R.F.D.

.....

.....

STATEMENT OF CIRCULATOR

I, ... (name of circulator) ....., declare under penalty of election falsification that I am an elector of the state of Ohio and reside at the address appearing below my signature; that I am the circulator of the foregoing part petition containing ..... (number) ..... signatures; that I have witnessed the affixing of every signature; that all signers were to the best of my knowledge and belief qualified to sign; and that every signature is to the best of my knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 [3501.38.2] of the Revised Code.

.....

(Signature of circulator)

.....

(Address of circulator's permanent residence in this state)

.....

(City, village, or township, and zip code)

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE."

86.19 FILING OF ZONING RESOLUTIONS AND AMENDMENTS WITH COUNTY RECORDER AND PLANNING COMMISSIONS

Within five working days after a zoning resolution or amendment takes effect, county commissioners must file the zoning resolution or amendment, including text and maps, in the county recorder's office. Within the same time period these same materials must also be filed with the regional or county planning commission.
All existing county rural zoning resolutions and amendments adopted under Sections 303.11 and 303.12 of the Revised Code, including texts and maps, that were in effect on January 1, 1992 should have been filed with the county recorder's office by February 13, 1992.

Failure to file any zoning resolution or amendment with the recorder or planning commission does not invalidate the resolution or amendment and can not be used as a basis for an appeal of any decision of a board of zoning appeals.
The county recorder must keep county and township zoning resolutions and amendments, including texts and maps, in the office and make all these documents available for public inspection during normal business hours. The county recorder must notify the county commissioners and each board of township trustees by January 15 of each year of their responsibility to file county and township zoning resolutions and amendments with the recorder's office. The recorder must charge a statutorily set fee for each resolution and amendment filed with his office (ORC 317.081).

The county recorder charges $100 for each county or township zoning resolution filed with his office, regardless of the size or length of the resolutions. Each zoning amendment filed with the county recorder's office requires the payment of a fee of $20 for the first page and $8 for each additional page (ORC 317.32).

86.20 SPECIAL PROVISIONS PERTAINING TO PLANNED UNIT DEVELOPMENTS

The original law on PUD's dates from 1972 when H. B. 1016 was enacted ORC Section 303.022. This law gave authority to counties to establish PUD regulations and zones or districts. Also of significance was a provision that PUD regulations need not be uniform, the normal legal requirement for property within any zoning district. A PUD was defined to be a development which would integrate residential development with collateral uses and in which lot sizes, set backs and dwelling types may be varied to achieve design objectives and to make provision for open spaces, common areas, utilities, public improvements, and collateral non-residential uses.

Since the original enactment of the PUD law there have been two major changes to the PUD law, one enacted in 1984 (S. B.164) and the other in 1997 (H. B. 280). For those interested in the history of these laws, refer to County Advisory Bulletin 97-8, published by CCAO in October of 1997. This CAB can be found on our website at: http://www.ccao.org/newsletter/cab199708.htm .

Under the current law, a county zoning resolution may establish or modify planned-unit developments. Planned-unit development regulations may apply to property only at the election of the property owner. The PUD regulations must include standards to be used to approve or disapprove any development within a PUD. Approval of a PUD is by the county commissioners unless the commissioners choose to delegate this authority to the county zoning commission.

A PUD shall further the purpose of promoting the general public welfare, encouraging the efficient use of land and resources, promoting greater efficiency in providing public and utility services, and encouraging innovation in the planning and building of all types of development. Within a planned-unit development, the county zoning regulations, where applicable, subdivision regulations, and platting regulations need not be uniform, but may vary in order to accommodate unified development and to promote the public health, safety, and morals, and the other purposes of ORC Section 303.022.

Generally, the law authorizes three primary options for the establishment of PUD's. In addition the law provides that PUD's may also be established under the conditional use procedure. Following are the four options (see Table 2 at the end of this chapter which summarizes the four options) for the establishment of PUD's under the law:

1. **PUD Option A**--(ORC 303.022 (A)). Under Option A, commissioners amend the text of the zoning resolution to provide for one or more types of PUD's. Specifically, this could mean that the amendment would establish in the text of the resolution one or more PUD zoning districts. For example, there could be a PUD-residential, a PUD-commercial, a PUD-industrial, a PUD-office, and/or a PUD-mixed use district. Each district would be established as part of the zoning resolution but none of the districts established would be automatically placed on the zoning map. In this way the requirement that the PUD regulations "...do not automatically apply to any property..." is met.

   At the same time, and as a part of the text of the zoning resolution, standards must be established for guiding subsequent administrative approval of PUD plans. The standards should be included for each type of PUD district that is established in the text of the zoning resolution. Remember that the resolution does not have to allow for multiple districts, but if it does, there must be standards for each type of PUD district. If the resolution does provide for multiple PUD districts, there might be a general set of standards applicable to all PUD districts, but there should also be separate standards that apply to each PUD district. The amendment to establish PUD districts and standards would be subject to referendum.

Essentially what is suggested is the establishment of one or more "floating" PUD districts and standards for approval of all PUD plans as a part of the text of the zoning resolution. The zoning map, however, will not delineate any property in any PUD district unless and until a property owner requests a rezoning to one of the PUD districts contained in the text of the zoning resolution. Commissioners would follow the regular zoning amendment procedure to rezone the specified property to the particular PUD district. This rezoning action also would be subject to a referendum.

After the zoning map amendment becomes effective, the former zoning district designation is changed on the map to the new PUD district designation. After the map is amended, the property owner would apply for approval of a PUD plan pursuant to the standards and regulations contained in the zoning resolution. Approval or disapproval pursuant to the standards would be the responsibility of the commissioners unless they delegate this responsibility to the zoning commission. Approval or disapproval of a PUD plan pursuant to the standards, however, is an administrative act even if the action is taken by the commissioners. As such, the action is not an amendment and is thus not subject to referendum, but may be appealed to common pleas court pursuant to ORC Chapter 2506.

2. **PUD Option B**--(ORC 303.022 (B)). Under Option B a property owner may apply to establish a PUD district for particular property they own. An amendment to the text of the zoning resolution is proposed at the same time that the change to the zoning map is proposed. The designation of the property on the zoning map as a PUD and the adoption of regulations that will apply only to that particular PUD would follow the regular zoning amendment procedure. The zoning map and text amendment would be subject to referendum.

   Once the zoning map amendment becomes effective, the former zoning district designation is changed on the map to a PUD designation. It is suggested that the property rezoned to a PUD should contain a numerical PUD designation (PUD-2006-1, PUD-2006-2, etc.), and the regulations that are adopted which will apply to the particular PUD in question should be similarly numbered.

   After the map and text are amended, the property owner would apply for approval of a PUD plan pursuant to the standards and the regulations that were adopted for that particular PUD. The commissioners would approve or disapprove the PUD pursuant to these regulations; however, this responsibility could be delegated to the zoning commission.

   Approval pursuant to the adopted regulations would be considered an administrative act even if the approval or disapproval was done by the

commissioners. As such, the action is not an amendment and is thus not subject to referendum. It may, however, be appealed to common pleas court pursuant to ORC Chapter 2506.

If a county or township wishes to use Option B, an amendment to the current zoning resolution may be needed. Under Option B the text of the zoning resolution would be amended to allow property owners to apply for PUD designation as an amendment to the zoning map at any location. The applicant should also submit the regulations under which the property owner proposes the particular PUD would be governed. Unlike Option A, there would be no "floating" PUD districts or standards established in the text of the zoning resolution. The text of the zoning resolution might be limited to rather broad authority for property owners to apply for a PUD under such terms and conditions (regulations) as the property owner desires. This approach is beneficial because of its flexibility. It allows developers and design professionals to be creative and unhindered by regulations. At the same time, the procedure requires a detailed disclosure of the nature and type of development that is proposed. The procedure also assures maximum public scrutiny, including a right to referendum on both the particular property and the unique regulations that will apply to the particular development.

3. **PUD OPTION C**--(ORC 303.022 (C)). Under Option C, commissioners may establish PUD regulations and may rezone land for PUD's. Option C is similar to Option A with several major differences. One difference is that Option C enables commissioners to rezone land in a township for PUD's or as one or more PUD districts upon its own initiative. Another difference is again evident when comparing Option C with Option A. Under Option A, when land is rezoned on application of a property owner, the previous zoning district and regulations no longer apply to the property. Under Option C if the property is rezoned for PUD's or as a PUD district in the absence of an application from a property owner, the existing non-PUD zoning and regulations continue to apply unless or until the owner exercises the option to develop under PUD regulations.

   Under Option C the property owner essentially has two options:

   a. To develop the property in compliance with the regular non-PUD zoning that was in place prior to the establishment of the PUD regulations; or

   b. To develop the property in compliance with the PUD regulations.

   Under Option C, both types of regulations are now available to the property owner at the same time. Another way of looking at this option is that the old zoning district still exists as the "base zoning" and at the same time the PUD zoning designation or district "overlays" the old "base zoning."

The PUD zoning thus becomes an additional option for the property owner. The county or township cannot force the owner to use the PUD approach for development. The owner has the right to develop pursuant to the "base zoning" even when a PUD "overlay" has been established on the owner's property.

The establishment of the PUD designation or districts in the text of the resolution, the specific rezoning as an "overlay district," and the adoption of PUD regulations would all follow the zoning amendment procedure. As such, these actions would be subject to referendum.

Once the "overlay district" and regulations have been legislatively established, a property owner may apply for administrative approval of a PUD plan in the "overlay district." The commissioners must approve or disapprove the proposal in compliance with the established PUD regulations. This action is not an amendment and is thus not subject to referendum. The action, however, would be subject to appeal to common pleas court pursuant to ORC Chapter 2506.

After final approval of the PUD as being in conformance with the regulations or after a final non-appealable court order approving the PUD, the zoning map is then changed. The change to the zoning map would be the removal of the old "base zoning" district designation. The new statute declares that the removal of the old "base zoning" district designation is neither a legislative or administrative act, but solely a "ministerial" act. As such, it is subject to neither referendum or administrative appeal pursuant to ORC Chapter 2506.

4. **PUD OPTION D, AS A CONDITIONALLY PERMITTED USE**--(ORC 303.14). During legislative hearings on H. B. 280 some townships voiced concern that Options A, B, and C would disrupt current PUD approval processes. Specifically, some townships were allowing PUD's as conditionally permitted uses.

   As a result of this concern, the statute now includes a provision stating that nothing in ORC Section 303.022 prevents a county "...from authorizing a planned unit development as a conditional use in the zoning resolution pursuant to Section 303.14 of the Revised Code."

   Conditional uses are uses that may have a significant impact and thus require an administrative hearing for approval. Under this approach the text of the zoning resolution must authorize one or more types of PUD's within specific zoning districts as conditional uses. The inclusion of PUD's as a conditional use means that the board of zoning appeals (BZA) may approve "a development which is planned to integrate residential, commercial, industrial, or any other use." There would be no change in the zoning map associated with this option. While the requirement for standards in ORC 303.022 does

not apply to conditional uses, under ORC 303.14, a conditional use is essentially a permitted use if specified conditions included in the zoning resolution are met. Thus, whereas Options A, B, and C require approval or disapproval to be based on standards or regulations, under Option D approval or disapproval must be based on specific conditions or criteria included in the text of the zoning resolution. While the terminology is different, the result is similar.

The establishment of various types of PUD's as conditionally permitted uses in particular zoning districts and the adoption of conditions or criteria for their approval as a part of the text of the zoning resolution would have to follow the regular amendment process. As such, these changes to the resolution would be subject to referendum.

Once the text of the zoning resolution has been amended, a property owner may apply for a conditional use permit for the PUD if it is a conditionally permitted use in the zoning district where the property is located.

Under the conditional use approach, however, the application goes to the board of zoning appeals for approval or disapproval. Ohio law gives the BZA original jurisdiction for conditional uses. The BZA would then proceed as required by law and would grant or deny the application on the basis of the conditions or criteria included in the text of the zoning resolution. Approval or disapproval by the BZA is clearly an administrative, not a legislative, act. As such, a referendum is not permitted; however, an appeal to common pleas court under ORC Chapter 2506 is allowed.

This option simply authorizes the listing of a "planned-unit development" (i.e., integrated residential, commercial, industrial, or other uses) as a conditional use in a particular zoning district. The conditional use approach, however, does not enable the flexibility of the other options since district standards cannot be relaxed through conditional use approval. ORC 303.14(C) authorizes the BZA to grant conditional zoning certificates only for the specific uses mentioned in the zoning resolution. An administrative hearing is required to assure that the use will not have a significant impact in the existing zoning district. The administrative body is authorized to place conditions on the use to mitigate such impacts. However, the BZA is not authorized to issue such a permit if a specific requirement of the zoning resolution will be violated. The conditional use procedure only allows conditions that are more restrictive than the district standards applicable to the conditional use and does not allow the district standards to be relaxed.

Conversely, Options A, B and C, as enabled by ORC 303.022 authorize PUD's to be approved without compliance with base district regulations. That is, the zoning and subdivision regulations need not be uniform, but may vary

in order to achieve innovative development, efficient use of land and resources, and efficient provision of public utility services.

86.21 SPECIAL PROVISIONS PERTAINING TO TELECOMMUNICATIONS TOWERS

In 1996 the General Assembly enacted H. B. 291 which amended ORC Section 303.211 to give county commissioners authority to apply zoning regulations to telecommunications towers in areas zoned for residential use. Traditionally, zoning law limits the authority of a zoning resolution with respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use or enlargement of any building or structure of a public utility or the use of land by any public utility for the operation of its business.

H. B. 291 created an exception to the general limitation placed on the regulation of public utilities. The law authorizes the county commissioners or board of zoning appeals, under specific circumstances, to regulate the location, erection, construction, reconstruction, change, alteration, removal or enlargement of a telecommunications tower in a residential district. The law specifically precludes regulation concerning the maintenance or use of such a tower or any change that would not substantially increase the tower's height. In addition, the power conferred applies only to a particular telecommunications tower and then only upon the commissioners providing timely notice to the person constructing the tower. Thus, the application of zoning regulations to telecommunications towers is on a tower-by-tower basis.

Any person who plans to construct a telecommunications tower to which county zoning regulations apply must provide written notice by certified mail to each of the following:

1. Each owner of property, as shown on the county auditor's current tax list, whose land is contiguous to or directly across the road from the property on which the tower is proposed to be located. In addition, notice must also be sent to the owner of any residential dwelling and to the person occupying the residence if different from the owner. In this case, the notice is sent to the owner or occupant of a residence within 100 feet of a proposed tower, and even to those persons inside of municipalities.

2. The board of township trustees of the township in which the tower is proposed to be constructed.

3. The board of county commissioners.

The written notice to the affected property owners and the township trustees would have to provide the following information:

1. Person's intent to construct the tower

2. A description of the property identifying the proposed location

3. That the property owner and the township trustees have 15 days after the date of mailing the notice to give written notice to the county commissioners requesting that zoning apply to the proposed location of the tower. If notice provided by certified mail to the property owner or trustees is returned unclaimed or refused, then the person must provide notice by regular mail. The failure of delivery of the notice does not invalidate the notice.

The written notice to the county commissioners must include the information specified in 1 and 2 above and verification that the person has provided written notice as required to affected property owners and township trustees.

County zoning applies to a telecommunications tower only if the commissioners send notice to that effect to the person proposing to construct the tower. This notice must be sent if any of the following occurs:

1. The county commissioners receive written notice from an affected property owner or the township trustees of the township in which the tower is proposed to be constructed requesting that zoning apply to the proposed location of the tower. The commissioners must receive this notice no later than 15 days after the date of the mailing the notice by the person proposing to construct the tower to the property owner and the township trustees.

2. Any member of the board of county commissioners makes an objection to the proposed location of the tower within 15 days after the date of mailing of the notice from the person proposing to construct the tower to the commissioners.

County commissioners must send notice that zoning will apply to the particular tower no later than five days after the date the commissioners first receive a notice from a property owner or the township trustees, or the date upon which a commissioner makes an objection, whichever is earlier.

If the commissioners mail a notice to a person proposing to construct a tower within the time frames provided by law, then from the date the notice is mailed the tower is subject to county zoning. If commissioners receive no notice from property owners or township trustees asking that zoning apply to the tower or no commissioner objects within the time frame provided by law, then the tower is "without exception" exempt from zoning.
It is again important to note that the application of county zoning authority to telecommunication towers applies to each particular tower, and only upon the provision of notice within a specified time by the county commissioners to the person proposing to construct the tower. Likewise, it only applies if the area is zoned for residential use. If no notice is sent by the county commissioners to the person proposing to construct the tower within the specified time frame, then the tower is exempt from zoning.

For additional information on telecommunications towers and for suggestions on how to amend county zoning resolutions to provide a regulatory framework refer to County

Advisory Bulletin 96-06 published by CCAO in August 1996. This CAB can be found at http://www.ccao.org/newsletter/cab199606.htm on our web site.

86.22 ZONING OF CELLULAR TOWERS AND SATILLITE DISHES UNDER FEDERAL LAW

Congress has enacted the Telecommunications Act of 1996 which is principally intended to deregulate the telecommunications industry by removing legal barriers to companies entering different lines of business. Congress resisted attempts to preempt local control over telecommunications towers opting instead to reaffirm local zoning control over such structures provided the following standards are met by state law and local regulations:

1. Zoning controls cannot "unreasonably discriminate" among "providers of functionally equivalent services." This apparently gives political subdivisions the authority to treat different types of facilities with different visual, aesthetic or safety impacts differently under generally applicable zoning requirements.

2. Zoning controls cannot prohibit nor have the effect of prohibiting cellular telephone service. Care must be taken to assure that set back and height requirements do not effectively prohibit any tower for cellular service.

3. Zoning officials must act in a reasonable period of time.

4. Denial of a request to place, construct or modify a tower must be in writing and supported by substantial evidence contained in a written record.

5. Zoning controls cannot regulate cellular towers on the basis of environmental concerns about their radio emissions.

The Telecommunications Act preempts local control with respect to satellite service by giving the Federal Communications Commission (FCC) sole authority to regulate direct to house satellite service and by directing the FCC to adopt rules prohibiting restrictions on satellite transmissions. The FCC issued rules preempting local zoning, land use regulations, building regulations, and other similar regulations if they materially limit satellite transmission or reception or they impose more than minimal cost on the dish user.

Exceptions to the federal limitations include local rules that have a clearly defined health, safety or aesthetic objection that is stated in the text of the regulation itself and do not unnecessarily burden access to satellite services. Unless a waiver from the FCC is granted, local regulations affecting satellite dishes of 1 meter or less in residential areas and 2 meters or less in commercial or industrial areas are preempted.

86.23 SPECIAL PROVISIONS PERTAINING TO MANUFACTURED HOMES

S. B. 142 of the 122nd General Assembly, which became effective in March of 1999, made a series of significant changes in Ohio law relating to manufactured homes. Of particular importance is ORC Section 303.212. The primary purpose of the new law is to treat manufactured homes the same as “stick-built” homes.

Critical to understanding and administering zoning and other local land use regulations under the new law is a series of statutory definitions. As a result of the enactment of the new law it may be a practical necessity to amend county zoning resolutions so that the definitions in a zoning resolution are consistent with those in Ohio law.

It is not uncommon for zoning resolutions to contain definitions that are outdated and may make it difficult to comply with the new law. For example, definitions such as "sectional home", "modular home", and "trailer" are sometimes included in zoning resolutions. Because "sectional and modular homes" are not defined in state law, such definitions may create confusion in administering zoning regulations. Likewise, the definition of "trailer" in some zoning resolutions often refers to what is now defined as a mobile or manufactured home under Ohio law. Counties are thus encouraged to change definitions in the zoning resolution to conform to the definitions in state law.

One of the major purposes of S. B. 142 was to ensure that local zoning authorities allow manufactured homes under the same terms and conditions as they allow other single family homes. Under ORC Section 303.212, the authority of a county zoning resolution "to prohibit or restrict the location of a permanently sited manufactured home . . . in any district or zone in which single family homes are permitted" is prohibited.

Likewise, ORC Section 3781.184(C)(1) provides that any manufactured home that is constructed in accordance with federal construction and safety standards established by the U. S. Department of Housing and Urban Development (HUD) and is a permanently sited manufactured home shall be a permitted use in any district or zone in which a political subdivision permits single-family homes. This section goes on to state that "no political subdivision may prohibit or restrict the location of a permanently sited manufactured home in any zone or district in which a single family home is permitted."

As it relates to county and township zoning, the law is not a total pre-emption of county and township zoning authority. For example ORC Section 303.212(B) clearly specifies that the law does not limit the authority of a county zoning resolution to regulate in certain very specific ways that apply to manufactured homes. Similar provisions are included in ORC Section 3781.184(C)(2).
As a result of these provisions of law, county zoning resolutions may not prohibit a manufactured home from a zoning district in which single family homes are a permitted use. This general prohibition, however, is limited as follows:

1. The manufactured home must qualify as a permanently sited manufactured home. In order to qualify as a permanently sited manufactured home, it must meet all of the following:

    a. The structure is affixed to a permanent foundation and is connected to appropriate facilities;

    b. The structure, excluding any addition, has a width of at least 22 feet at one point, a length of at least 22 feet at one point, and a total living area, excluding garages, porches, or attachments of at least 900 square feet;

    c. The structure has a minimum 3:12 residential roof pitch, conventional residential siding, and a 6 inch minimum eave overhang, including appropriate guttering;

    d. The structure was manufactured after January 1, 1995, and

    e. The structure is not located in a manufactured home park.

2. The manufactured home must be constructed in accordance with the federal construction standards established by the Manufactured Housing and Construction and Safety Standards Act of 1974.

3. The manufactured home must have a permanent label or tag affixed to it as specified in federal law that certifies compliance with the federal construction and safety standards.

4. The zoning resolution may, however, require a permanently sited manufactured home to comply with all zoning requirements that are "uniformly imposed on all single-family residences within the district or zone. . . except requirements that specify a minimum roof pitch and requirements that do not comply with . . ." the HUD construction and safety standards.

5. The zoning resolution may also prohibit from any residential district or zone any manufactured home that does not qualify as a permanently sited manufactured home, a travel trailer, park trailer, or a mobile home.

Finally, the manufactured home law includes language to ensure that the law does not prohibit a private landowner from incorporating a restrictive covenant in a deed that would prohibit the inclusion of manufactured homes, permanently sited manufactured homes, travel trailers, mobile homes, or park trailers on conveyed land. This new provision of law also specifies that this language "does not create a new cause of action or substantive legal right for a private landowner to incorporate such a restrictive covenant in a deed.

For more detailed information on the changes that were made with the new manufactured home law, refer to County Advisory Bulletin 99-08 published in July of 1999. For those that want more information, this CAB can be found on our website at: http://www.ccao.org/newsletter/cab199908.htm .

86.24 SPECIAL PROVISIONS PERTAINING TO SHOOTING RANGES

Legislation enacted in 1997 (H. B. 209) addresses the issue of the relationship of shooting ranges to county zoning. Proponents argued that the law was needed to protect owners, operators, and users of shooting ranges. The primary purpose of the law was to protect shooting ranges that were in existence and have operated for a number of years from legal action by residents in the vicinity of the shooting range. Many shooting ranges were established decades ago in isolated areas; however, as development has taken place and people have moved near shooting ranges, more complaints and legal action to suppress or stop objectionable noise have put some shooting ranges out of business.

The major impact of the law (ORC 1533.83-1533.85) as it relates to local laws, including county zoning is limited to the reconstruction, enlargement, remodeling, or repair of structures or facilities that are part of existing shooting ranges. The new law has very little impact on local laws dealing with the establishment of new shooting ranges. The law specifically requires shooting ranges, at the time of their establishment, to "comply with all existing local ordinances, regulations, or laws." As such, new shooting ranges must comply with county zoning regulations when being established.

While the Chief of the Division of Wildlife may adopt rules establishing standards for the reconstruction, enlargement, remodeling, or repair of any structure or facility that is part of a shooting range, these standards do not pre-empt local laws that also establish standards for structures or facilities that apply generally to all structures or facilities and not exclusively or primarily " to structures or facilities that are part of a shooting range." In other words, if a county or township zoning resolution includes standards relating to the reconstruction, enlargement, remodeling or repair of structures or facilities that generally apply to all structures or facilities, there is no question that the shooting range must comply. Standards which single out structures or facilities that are part of a shooting range, however, are no longer authorized.

To complicate the matter even further, the law specifically reserves the right of counties to issue or deny conditional zoning certificates for the reconstruction, enlargement, remodeling, or repair of an existing shooting range pursuant to ORC Section 303.14 (C). Thus, notwithstanding the previous provision, if a county zoning resolution specifically requires a conditional use permit for the modification of structures or facilities that are part of an existing shooting range, no pre-emption is anticipated. In this case, however, as is required under current practices, the zoning resolution must require modifications of structures or facilities that are part of an existing shooting range to obtain a conditional use permit. The zoning resolution must also include reasonable and specific standards which, if met, entitle the owner of the existing shooting range to approval of

the conditional use permit. In our experience, however, conditional uses are generally used for the establishment of new uses, not the modification of existing uses as this is generally governed by provisions of the zoning resolution dealing with non-conforming uses.

In this regard, the law also addresses current law related to nonconforming uses. Nothing in the Act limits the authority of the county zoning resolution as it applies to the "completion, restoration, reconstruction, extension, or substitution of nonconforming uses" under ORC Section 303.19. This language thus conforms to the existing requirement of law that a county or township zoning resolution provide for "non-conforming uses upon such reasonable terms and conditions as are set forth in the zoning resolution."

For additional information refer to County Advisory Bulletin 97-9 published by CCAO in October 1997. For those that want more information, this CAB can be found on our website at: http://www.ccao.org/newsletter/cab199709.htm .

86.25 ENFORCEMENT AND PENALTIES

Legal enforcement of a county zoning resolution involves the zoning inspector and the county prosecutor. The prosecutor is the legal advisor to all county boards, including the zoning commission, the board of zoning appeals, the architectural review board, and the board of county commissioners.

Once zoning is enacted, no person shall locate, erect, construct, reconstruct, enlarge, change, maintain, or use any building or use any land in violation of the resolution. Each day the violation continues is a separate offense (ORC 303.23). The penalty for a violation is a fine of not more than $500 for each offense (ORC 303.99).

In the event any building is or is proposed to be located, erected, constructed, reconstructed, enlarged, changed, maintained, or used, or any land is or is proposed to be used in violation of the zoning resolution, the commissioners, the prosecutor, the zoning inspector, or the building inspector may take action to stop the violation. The remedies include but are not limited to injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove the violation. In addition, any adjacent or neighboring property owner who would be specially damaged by a violation may also institute legal actions (ORC 303.24).

86.26 STATUS OF COUNTY ZONING AFTER ANNEXATION

If land in the unincorporated area of the county is annexed to a municipality the county regulations remain in effect and are enforced by county officials until the land is zoned by the municipality. If land is incorporated as a new municipality, the county zoning remains in effect until the election of officials, but not more than 90 days (ORC 303.18).

86.27 CONSENT DECREES AND SETTLEMENT AGREEMENTS

Specific authority was granted in 2005 for counties to settle court actions by a consent decree or by a court approved settlement agreement. As it relates to zoning, such a consent decree or settlement agreement is authorized even if the agreement or decree is contrary to the zoning amendment law (ORC 303.12) or even if a zoning referendum petition is pending on a rezoning approved by the commissioners.

Such a consent decree or settlement agreement may include an agreement to rezone property included in the decree or agreement without following the regular rezoning procedures as specified in ORC Section 303.12. The decree or settlement agreement may also include the approval of a development plan. In order for the court to approve of such a decree or settlement agreement, the court must make specific findings of fact that proper notice has been made and the decree or settlement agreement is fair and reasonable.

If the decree or agreement involves a zoning issue subject to a referendum, the commissioners must publish a notice of their intent to meet and consider and take action on the decree or agreement in a newspaper of general circulation at least 15 days before the meeting. In addition, the commissioners must allow members of the public to express objections at the meeting. Copies of the proposed court decree or settlement agreement must also be available for public inspection at the commissioner's office during normal business hours.

Also, at least 10 days before the submission of the decree or agreement to the court for its review and consideration, the plaintiff in the action is required to publish a notice in a newspaper of general circulation in the county. This notice must include the caption of the case; the case number; the court in which the decree or settlement agreement will be filed; a description of the property involved; and, the proposed change in zoning or permitted use being proposed under the decree or agreement (ORC 307.561).

85.28 CONTRACTS FOR ADMINISTRATION OF VILLAGE ZONING

If a county has county zoning, it may enter into a contract with a village, but not a city, to administer the village zoning ordinance. The powers that may be contracted for include regular zoning enforcement duties of the county zoning inspector and the hearing and deciding of appeals from the decision of the zoning inspector or requests for variances using the county board of zoning appeals. This authority is contained in ORC Section 713.11(B).

TABLE 1

GENERAL WELFARE ZONING - COMPARISON OF OLD LAW WITH CURRENT LAW

Township Zoning Enabling Provisions Comparison of HB 148 and SB 18			
HB 148 Health, Safety & General Welfare* All Types of Development	**SB 18 Health and Safety Only All Types of Development**	**SB 18 General Welfare ** Residential Development Only**	**SB 18 General Welfare ** Nonresidential Development Only**
location	location	location	location
height	height		height
bulk	bulk		bulk
number of stories	number of stories		number of stories
size of buildings and structures ***	size of buildings and structures ***		size of buildings and structures ***
percentage of lot areas to be occupied	percentage of lot areas to be occupied		percentage of lot areas to be occupied
setback building lines	setback building lines	setback building lines	setback building lines
sizes of yards, courts, open spaces	sizes of yards, courts, open spaces		sizes of yards, courts, open spaces
density of population	density of population		density of population
uses of buildings and structures ***	uses of buildings and structures ***	uses of buildings and structures ***	uses of buildings and structures ***
uses of land for trade, industry, residence, recreation, or other purposes	uses of land for trade, industry, residence, recreation, or other purposes	uses of land for trade, industry, residence, recreation, or other purposes	uses of land for trade, industry, residence, recreation, or other purposes
reasonable landscaping standards (**residential only**)		reasonable landscaping standards	reasonable landscaping standards
reasonable architectural standards excluding exterior building materials (**residential only**)		reasonable architectural standards excluding exterior building materials	reasonable architectural standards excluding exterior building materials

* Includes health, safety, convenience, comfort, prosperity, and general welfare enabling language

** Includes convenience, comfort, prosperity, and general welfare enabling language

*** Includes tents, cabins, and trailer coaches

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Notes on Comparison Table

The first column in the chart illustrates the township zoning enabling provisions provided in HB 148, which became effective November 5, 2005. This statute added the following authority to the 1957 version of the enabling act:

- Added "convenience, comfort, prosperity, and general welfare" purposes.
- Removed "Morals" purpose.
- Added authority to require residential development to meet landscaping and architectural standards and procedures, except for exterior building materials.

The next three columns in the chart illustrate the township zoning enabling provisions provided in SB 18 as a comparison to the HB 148 provisions.
The second column contains "public health and safety" zoning enabling provisions.

- Retains all existing authority as in HB 148
- **Removes the authority to require landscaping and architectural standards and procedures.**

The third column contains "convenience, comfort, prosperity, or general welfare" zoning enabling provisions for residential development.

- Retains the existing general welfare authority, as found in HB 148, for: location; setback of building lines; uses of buildings and structures; uses of land for trade, industry, residence, recreation, or other purposes; and landscaping and architectural standards and procedures, except for exterior building materials.
- **Removes the general welfare authority for: height; bulk; number of stories; size of buildings and other structures (including tents, cabins, and trailer coaches); percentage of lot areas to be occupied; sizes of yards, courts, and open spaces; and density of population.**

The fourth column contains "convenience, comfort, prosperity, or general welfare" zoning enabling provisions for nonresidential development.

- Retains all existing authority as in HB 148
- Adds the authority to require nonresidential use landscaping and architectural standards and procedures.

TABLE 2

COMPARISON OF METHODS OF ESTABLISHING PLANNED UNIT DEVELOPMENTS

(Summary of HB 280 - ORC 303.022 and 519.021)

Effective October 21, 1997

	PUD DISTRICT TYPE A (A FLOATING DISTRICT ENABLING LEGISLATIVE APPROVAL OF PUD'S IN COMPLIANCE WITH PRE-ESTABLISHED REGULATIONS)	**PUD DISTRICT TYPE B** (A DISTRICT ENABLING LEGISLATIVE APPROVAL OF PUD'S WITH UNIQUE REGULATIONS FOR EACH PUD)	**PUD DISTRICT TYPE C** (AN OVERLAY DISTRICT ENABLING ADMINISTRATIVE APPROVAL OF PUD'S IN COMPLIANCE WITH PRE-ESTABLISHED REGULATIONS)	**CONDITIONAL USE PUD's** (A CONDITIONAL USE LISTING IN SPECIFIC DISTRICTS ENABLING ADMINISTRATIVE APPROVAL OF LAND USES IDENTIFIED AS PUD'S) (PER ORC 303.14 AND 519.14)
How are PUD's enabled in a zoning resolution?	By Text Amendment (LEGISLATIVE ACTION SUBJECT TO REFERENDUM)	By Text Amendment (LEGISLATIVE ACTION SUBJECT TO REFERENDUM)	By Text Supplement and Map Supplement (i.e., optional overlay district) (LEGISLATIVE ACTION SUBJECT TO REFERENDUM)	By Text Amendment (LEGISLATIVE ACTION SUBJECT TO REFERENDUM)
How are PUD's initiated on specific property? (I.E., HOW A PROPERTY OWNER ELECTS TO USE PUD STANDARDS)	*Owner submits application for:* Map Amendment (LEGISLATIVE ACTION SUBJECT TO REFERENDUM)	*Owner submits application for:* Text Amendment and Map Amendment (LEGISLATIVE ACTION SUBJECT TO REFERENDUM)	*Owner submits application for:* PUD Plan Approval (ADMINISTRATIVE ACTION - BY LEGISLATIVE BODY OR BY THE ZONING COMMISSION IF DELEGATED -- NOT SUBJECT TO REFERENDUM)	*Owner submits application for:* Conditional Use Approval (ADMINISTRATIVE ACTION - BY THE BOARD OF ZONING APPEALS -- NOT SUBJECT TO REFERENDUM)
What is the effect of approval of a property owner's request?	Development of the property must comply with PUD requirements legislatively approved *for all PUD districts* (including conditions of approval to assure compliance with pre-established standards)	Development of the property must comply with PUD requirements legislatively approved *for the applicant's property* (including conditions of approval to assure compliance with pre-established standards)	Development of the property must comply with PUD requirements legislatively approved *for all PUD districts* (including conditions of approval to assure compliance with pre-established standards)	Development of the property must comply with the general criteria *for all conditional uses* and specific standards legislatively approved *for the PUD land use* listed in the code as a conditional use (including conditions of approval to assure compliance with pre-established standards)

				in addition to the uniform standards in the non-PUD zoning district
Must zoning standards be uniform for each class or kind of building or use within an approved PUD?	No	No	No	Yes - except where conditions result in standards more restrictive than the existing district regulations (i.e., the *minimum* requirements of the non-PUD zoning district remain effective)
Who is authorized to certify compliance of a PUD Plan with pre-established PUD zoning standards?	County Commissioners / Township Trustees or Zoning Commission if delegated	County Commissioners / Township Trustees or Zoning Commission if delegated	County Commissioners / Township Trustees or Zoning Commission if delegated	Board of Zoning Appeals
How long is the typical review and approval process? (I.E., AFTER INITIATION BY THE PROPERTY OWNER)	4 to 7 months	4 to 7 months	1 to 2 months	2 months

Prepared by Ron Miller, Executive Director of the Hamilton County Regional Planning Commission