OHIO'S FIVE-ACRE EXEMPTION: Comments from County Farmland Preservation Plans, 2000

The following are comments taken from reports from the 2000 County Farmland Preservation Plans submitted to the Ohio Department of Development and the Ohio Department of Agriculture. The intent is to learn what the reports included with an emphasis on the recommendations. All county reports were not available, but relevant comments are included from those reports that were reviewed. Prepared by Allen Prindle, March 2001. Please feel free to address any questions or comments to him at 614-823-1481 or AMPrindle@otterbein.edu.

Lot-splits are currently reviewed for accuracy of legal description, compliance with zoning requirements such as minimum frontage and suitability for on-lot wastewater leaching. Other local rules related to road construction, dimension of lots, placement of structures, maintenance agreements, drainage improvements, safe access, etc. are established through subdivision rules. Lots that are more than 5 acres in size are not subject to these reviews. The Ohio Farmland Preservation Task Force discussed this issue in 1997.

- Auglaize County: Recommendation: "Limit the amount of land each home can be built upon." The report indicates a trend for residential homes to be built upon acreages greater than the minimum one acre required by the county. On many occasions, the home is built upon a tract of land, with the balance of the land lying idle/non-productive. Buffers can be used to separate residential areas from agricultural areas, thus sheltering agricultural nuisances, such as odors and noise.
- **Butler County:** "Lobby for and work toward legislation which would allow counties to set limits on the parcel sizes."
- Carroll, Harrison, and Jefferson Counties: Recommendation: "Change subdivision regulations to eliminate the acreage threshold by which land splits must be approved by planning commissions and require all land splits to be approved by planning commissions." Current Ohio subdivision regulations allow planning commissions to approve land splits for parcels of up to five acres. Land splits resulting in parcels of five acres or more do not need to be approved by the planning commission. Because of this it is very profitable for developers to purchase farms and split them into many odd shaped lots of more than five acres, and avoid scrutiny by planning commissions.
- Champaign County: Recommendation: "Lobby for current State legislation to remove five acre exemption," There is great consensus on (1) the five-acre exemption creates needless waste of agricultural land, increases service costs to governmental bodies and creates poor quality development. (2) Frontage development should be controlled.... (3) Limit annual lot splits from the original parcel, (4) tighten approval process for on-site septic system.
- Clark County: There is concern about large lot scattered development having an increasingly erosive effect on agriculture within the county. One township had 8% of the building permits during the last 4 years but accounted for 19% of the land conversion. Virtually all the development was in minor subdivision or simple lot split configuration. Recommendation: To support efforts at the state level to eliminate the 5 acre exemption...

- Clinton County: County may wish to examine the advisability of increasing the minimum lot size from the 2-acres blanket that is currently in vogue. Some areas are experimenting with a 20 to 40 acre minimum lot size to help discourage development. Allowing low-density residential development in rural areas displaces farming as well as commercial and industrial development patterns.
- **Darke County:** Fourteen of the 20 townships are zoned. Of the zoned townships the least restrictive ag zone is 5 acres. Five townships have chosen a 10-acre minimum agricultural lot size, while 7 townships have chosen 20 acres as their minimum agricultural lot size.
- Delaware County: Recommendation: "Support repeal of Ohio Law that exempts 5 acre or larger lot-splits from subdivision review." Review all lot-splits involving conversion of farmland to residential, commercial or industrial use. Currently, lot-splits are reviewed for accuracy of legal description, compliance with zoning requirements such as minimum frontage and suitability for on-lot wastewater leaching. Lots five acres or more in size are not subject to any additional subdivision rules. Subdivision rules set standards for construction of new roads, sewer and water lines, dimensions of lots, placement of structures, easements for maintenance, drainage improvements, safe access, and conformity to county-wide development plans. The present rules encourage the formation of lots greater than five acres to avoid the subdivision review process. This creates lots for residential use that are larger than many people want and takes more farmland out of production than necessary.
- **Gallia County:** "Recommend change in state subdivision regulations increasing the lot size limit from over 5 acres to a larger size for compliance with these regulations."
- Greene County: Recommendation: Regional Planning and Coordinating Commission of Greene County prepare model zoning resolutions for: (1) Exclusive Agriculture Zoning, (2) Large Minimum Lot size Zoning, and (3) some type of Area-Based Allowance Zoning. Currently Ohio law exempts any land transfer over five acres from having to adhere to local subdivision regulations, ORC Section 711.001(B)(1). This has resulted in five plus acre tracts (rural non-farm lots) being created along existing roads throughout the county. Often times this type of development results in problems for the entire community. These problems include surface and subsurface drainage, traffic congestion, increased roadway conflicts, land use conflicts between residential and agricultural uses, and other items. The Green County Farmland Preservation Taskforce recommends that the definition of subdivision be modified to "The division of a single lot... provided, however, that division of land for agricultural purposes into parcels of more than ten (10) acres, ... shall not be included within the meaning of subdivision."
- **Hardin County:** Recommendation to update the Hardin County subdivision regulations to include the necessary land use tools to implement smart growth policies. "The county planning commission is exploring new ways to control the number of lot splits below five (5) acres that may be subdivided from a larger parcel. Policies that are being considered include: Limiting the number of minor subdivision splits (less than 5 acres) from a parcel based on the specific date. Limiting the number of minor subdivision splits (less than 5 acres) that would be permitted within a specific time period, i.e., 10 years.
- **Henry County:** Comment from a small group discussion "5 acre or more requirement only adds to the problem, more acres out of ag use." "Try to limit lots sold that are in

- parcels of 5 acres or less, to prevent the larger fields from being broke up." "Acreage for building a home should be at least 2 acres but not to exceed 5 acres."
- **Holmes County:** The Holmes County Subdivision Regulations will continue its policy of allowing a maximum of 4 lot splits from the original parcel as it was approved in 1977. This initiative will be used to slow the process of converting a farm into subdivision using the rules of minor subdivision approval.
- **Huron County:** "Provisions for 5-acre lot splits with no infrastructure requirements could be viewed as a planning oversight. Those landowners who are interested in subdividing land into smaller parcels for development should be made to address drainage, septic, infrastructure and soils issues. Irregular shaped lots that are considered too long and narrow, too wide with little depth, triangular shaped, minimal frontage in relationship or into irregular shapes should be scrutinized and prohibited where possible. The need for infrastructure and the impact on future infrastructure needs should be reviewed when land is being subdivided."
- **Madison County:** The county is now using a 20+ minimum agricultural zoning. Lots must be greater than 20 acres to be sold as agricultural. All splits 20 acres or less must be rezoned, and therefore reviewed, for public health, safety, comfort, convenience, and general welfare. Other counties who have a 5-acre or less minimum agricultural zoning lose farmland quickly. Developers divided the farm into 5-acre tracts and sell them as "ranchettes." They can do this because the lots are still considered agriculture in those counties; and therefore, do not have to be rezoned or reviewed prior to selling. People will buy 5-acre lots because it does not seem so very big at first and they want to live in the country. This 20-acre minimum makes it more difficult to get around the rules. Both people and banks balk at 20-acre sized lots. Banks will not loan on 20 acres as easily as they will on a smaller lot. Since land less than 20 acres must be rezoned, developers split out what they need – enough land for well and septic – which usually is less than 5 acres. The result is a reduction of waste land – land that is taken out of production – as fewer people sell over twenty acre tracts than people do with 5 acre agricultural minimum tracts to circumvent home site review. The twenty-acre agricultural zoning has been successful in saving farms because farmers have a chance to offer competitive bids when the farm goes to auction. It is easier for the farmer to compete with 5 potential home site buyers on 100 acres versus 20 potential home site buyers on 100 acres if the county dropped its minimum farm size to 5 acres.
- **Mahoning County:** A consistent county-wide definition of the minimum acreage considered for agricultural zoning is also needed. In Mahoning County, this definition varies from between 0.39 and over 5 acres.
- Marion County: Recommend that the state of Ohio strengthen the ability of Township Zoning and County Subdivision Regulations to limit the number of land divisions in rural areas. This is seen as more effective than large lot zoning, which increases the price of housing and ends up using extra acreage. Frontage requirements for all lots including those over five acres, cutting down on flag lots. Limit the number of lot splits allowed in agricultural zoning districts.
- **Medina County:** Many townships use 2-acre zoning. "Several counties in Ohio have adopted 40 acre and 20 acre minimum agricultural zoning which has substantively decreased land speculation and eliminated the negative effect of the 5 acre subdivision

- exemption provision of the Ohio Revised Code. Only Home Township has adopted zoning that could be termed agriculturally supportive (10 acres).
- Morrow County: Recommendation: "Encourage and support efforts to amend the ORC Sec 711 concerning the definition of a subdivision." The Morrow County Farmland Preservation Task Force recognizes that continuing efforts have been made by the Morrow County Commissioners and the Morrow County Regional Planning Commission to garner political support from the State to amend the definition of a subdivision. This definition has been attacked by every organization concerned with land-use planning, yet, the lobbying organizations for the realtors and home builders associations have continued to stifle any attempt to put the issue to a formal vote by the state legislators. While this issue has been promoted as a farmland preservation tool (which may be one reason it does not have the necessary political support), it is really a land use planning tool. As it stands today, land speculators will use this definition to avoid, at all costs, the proper review of local agencies such as regional planning commissions. Amending this definition will not stop residential growth, it will result in better, well-planned land use which will result in more orderly growth throughout the state. We recommend that the Morrow County commissioners continue to educate and lobby state legislators to amend this section of the ORC.
- Ottawa County: Recommend Legislation at the state level which Eliminates the five-acre exemption.
- **Portage County:** Incentives for increasing open space, use of conservation subdivision design, as well as allowing contribution of fees in lieu of open space set aside in every major subdivision may help to reduce the amount of land developed per residence, as well as providing land owners options so they will not try to avoid platting land by utilizing existing road frontage development and/or 5 acre lot exemptions allowed by state law.
- **Richland County:** The subdivision of land creating parcels 5+ acres is exempt from subdivision regulations, so long as the property will have at least 60 feet of frontage on an improved road. Ohio law also permits 4 new lots of less than 5 acres to be created from an existing parcel along an improved road without being subject to subdivision regulations. It is not clear why this five-acre exemption was granted, or what advantages can be attributed to this exemption. The downside to the exemption is that developers have devised approaches to dividing up large parcels to provide lots in the country, which are not controlled by subdivision regulations and storm water/erosion regulations. These developments may negatively impact surrounding properties, and some developers have created an extensive market for lots just over the 5-acre exemption. In many cases homes are built on the 5 acres parcel, using only 1 acre for the house, leaving 4 acres of what once was probably productive farmland. It is not known how much rural acreage has been divided into building lots exempt from the subdivision regulations. ... When development takes place in rural areas outside the regulatory authority of the Subdivision Regulations, it is also outside the regulations governing stormwater runoff, and may create problems between the adjoining lots created under the 5-acre exemption. The ability to control road access to lots is also lost due to this exemption. Add a number of new driveways to what was once a little-used road can increase the possibility of accidents.

- Ross County: Goal B of the Development Subcommittee: Repeal the "five-acre exemption." This goal would require a change in the current state legislation. The members of the group recognize that this is a difficult task due to the lobbying power of special interest groups. However, they felt it is still important to pursue this goal. One option would be to seek a modification of the current state legislation to allow the "five acre exemption" to be a local decision. Develop incentives to promote the utilization of planned unit developments until the current state legislation is changed.
- Sandusky County: Local subdivisions regulations are shaped and restricted by enabling legislation at the state level. The state law exempts 5-acre parcels from review. This encourages the development of 5-acre lots in rural areas and has a significant impact on lot size development throughout the county. In the context of farmland preservation there is debate over the difference of development by requiring five—acre lots and the loss of additional land to residential use due to large lots. Suffice it to say that lack of local control of large lots complicates any farmland preservation strategy. Recommendation: Work to change the current state enabling legislation regarding subdivision regulations specifying that lot sizes over five acres are not subject to review and that non-platted minor subdivisions are not subject to drainage review.
- **Union County:** The majority of land converted from farmland to housing in Union County is in the form of lots over five acres. In 1998, 1200 of the 1638 acres developed for housing was in lots over five acres, which represents 73% of the acreage converted but only 40% of the total homes constructed. The Task Force believes that a major contributor to this statistic is a provision in Ohio law exempting lot splits over five acres from the county regulation process. ... A landowner or developer may completely avoid county oversight by building on a lot that is 5.01 acres in size or greater. The five acre lot exemption creates incentives for inefficient land use by encouraging home construction on lots that may be larger than desired by the homeowner and too small to allow for additional uses. In many instances, portions of large lots which are converted from agriculture to housing are not used by the landowner and eventually end up growing weeds, which creates problems for nearby farms. Additionally, the desire to create a lot at least five acres in size results in odd shaped lots mixed together with no consideration for septic system capabilities, drainage, driveway placement, access management or aesthetics, and a landscape which is undesirable to many residents. Recommendation: removal of the five-acre exemption in Ohio law would detract from the incentive to build homes on lots that are greater than five acres and may encourage use of well-planned, more efficient residential development. Remove the five-acre exemption language and require that all lot splits go through the county oversight process.
- Wood County: Recommendation Modify existing legislation to increase the subdivision exemption rule from five acres. Adopt legislation which authorizes counties to strengthen subdivision regulations.