



# Delaware County Regional Planning Commission

1610 State Route 521  
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Scott B. Sanders, AICP Executive Director



## *\*SPECIAL MEETING / WORKSHOP NOTES\**

Tuesday, April 16, 2024

6:00-7:30 PM

Byxbe Campus Large Conference Room,  
1610 State Route 521, Delaware, Ohio 43015

### ADMINISTRATIVE BUSINESS

- Call to order  
Chairman Shafer called the meeting to order at 6:00 p.m.
- Roll Call  
Representatives: David Weade, Steve Lisano, Duane Matlack, Gary Merrell, Jeff Benton, Dustin Kent, Sarah Holt, Joe Shafer, Robin Duffee, Ed Snodgrass, and Doug Price. Alternates: Ken O'Brien, Jason Haney, Will Ferguson, Bernie Cattrell, and Sandra Stults. Staff: Scott Sanders, Brad Fisher and Stephanie Matlack. RPC Legal Counsel: Pete Griggs.

Since there was not a quorum at the time of roll call no formal votes could be taken.

- Statement of Policy  
As is the adopted policy of the Regional Planning Commission, all applicants will be granted an opportunity to make their formal presentation. The audience will then be granted an opportunity to comment followed by questions from the Commission. This policy was adopted by the Regional Planning Commission to provide for the orderly discussion of business scheduled for consideration. The Chairperson may limit repetitive debate.

### POLICY / EDUCATION DISCUSSION

#### DCRPC Procedures

- 1) Presentation – Concord Township Trustee(s)
  - a) Mr. Joe Garrett, Concord Township Trustee, thanked the Commission for holding the meeting. He explained that their main issue of concern is that their zoning code isn't being followed based on the RPC recommendations. A recent rezoning request was approved without conditions by the RPC and was unanimously turned down by their Zoning Commission because there was missing information. At the Trustee meeting, the developer's attorney said they should approve their request because Regional Planning recommended approval. Mr. Garrett said their Zoning Code and Comp. Plan should be reviewed against all applications and if they do not meet their requirements it should be denied. He said there should be specific guidelines that the RPC follows in making their recommendations.

*Although it was not clarified during the meeting, staff responds that the rezoning application noted was a*

*request for 54 single-family detached condos on 36.24 acres, representing a density of 1.49 units per acre. The Concord Comprehensive Plan recommends a maximum 1.5 units per acre in that area. As a condo community, all improvements and maintenance would be private, resulting in no responsibility to the Township. The applicant proposed 22 acres of open space, or slightly under 61% of the overall acreage. Most units were adjacent to an existing golf course or other open space. Traffic generation is projected to be half of a single-family platted development and student impact to the school district would be negligible. Only two divergences were requested – developing without a plat and a reduction of structure separation from 20 to 12 feet. Condos are exempt from platting, unless an applicant chooses to plat for convenience, and similar separation had been approved in the Township and such separation meets or exceeds the Building Code. The meeting included discussion of the Landscaping Standards and the township’s representative noted that the project would be reviewed by a professional landscape architect for compliance. For these reasons, staff recommended approval of the case.*

Mr. Garrett questioned the multiple county departments that have voting privileges. Although they do agree those departments serve an important role as technical advisors, they do not believe they should have a vote. Concord also questions why the County Commissioners have three seats on the Board.

- b) Mr. Chris Rinehart, Rinehart Legal Services, explained he has been doing land use and zoning work for about 22 years all throughout Ohio. He stated he has represented applicants seeking a rezoning, townships or other political subdivisions who are reviewing rezonings, as well as residents that are for or opposed to a rezoning. He said there have been a series of recommendations that came through the RPC that did not follow the densities set forth in the zoning code which started the general question of what exactly goes into a recommendation. When looking where the criteria for review would come from they didn’t find anything in the By-Laws or anywhere independently that summarized those considerations. He reiterated “what does RPC consider when reviewing an application?” The February RPC meeting minutes listed criteria of what staff looks at during a review and he thinks that could be a starting point for the Commission to create a formalized policy for reviews. Is the standard the RPC uses an objective standard? Are there certain check marks that if you meet this criteria it will be recommended for approval?

Mr. Rinehart said he has used RPC’s recommendation for or against on behalf of his client. If there is a standard that is consistent, then it makes it harder for people like him to use it for or against someone else.

## 2) Comments – Elected Officials / Heads of Dues Paying Members

- a) Ms. Meghan Raehll, Berlin Twp. Trustee, stated that they updated their Comp. Plan a couple years ago. They are currently in the process of updating their Zoning Code and at that time approached DCRPC and specifically indicated that once they went through the process of updating that information, would they have the assurance that decisions made at DCRPC would be aligned with the decisions that were represented within their Comp. Plan as well as their Zoning Resolution. She commended DCRPC for holding to that with applications that have come through recently and were not aligned with those codes. She would like the staff recommendation to be more specific as to whether the submission meets the Zoning Code and Comp. Plan. If it does, then she would vote yes or no if it does not.

Ms. Raehll has an issue with rubber stamps of extensions. There should be a standard as to why we

are approving extensions, such as for sewer or utility issues. Vague “economic conditions” are not acceptable reasons for extensions. More detail should be provided with each request.

- b) Mr. Randy Ormeroid, Delaware Twp. Trustee, questioned if RPC could provide any assistance regarding annexation requests and help keep land in the Township.

*Later in the meeting, Mr. Sanders noted that regarding the annexation issue, staff takes into consideration the individual Township and how a denial might affect the applicant’s response of whether to annex or not. We also look at recent trends within a particular Township and how they respond to previous cases. That’s one reason why it is difficult to create a standard set of responses for all cases.*

- c) Mr. Charles Miley, Brown Twp., said RPC helped their community members write their Comp. Plan. He said a developer recently brought in a plan with 14 lots on a CAD but the RPC made them put a stub out to Three Bs & K Rd and in essence it made a cut through from 521 to Three Bs & K. He doesn’t believe putting in cut throughs is a way of keeping a rural flavor in a township.

*Later in the meeting, Mr. Sanders commented that the referenced project is a subdivision with a street built to public standards (not a CAD) and developed with the township’s FR-1 zoning so neither the Commission nor the Township had the opportunity to say yes or no from a zoning perspective as long as they met the FR-1 standards. Brown Township will judge whether the lots meet the frontage and size requirements on the plat. During the subdivision review process, staff and DCEO staff agreed that there should be a road stub to a large parcel to the east. This was provided via a grassy unpaved easement. The lot next to it may never develop. (Actually, two adjacent lots would have to develop before the road was fully connected.) Staff supports connecting neighborhoods for a variety of reasons, including providing alternate routes so that every trip does not have to travel to and from a single access point for every trip and for the efficient provision of services, such as school busses, emergency vehicles, and snow plows. Mr. Sanders noted that he wasn’t sure why anyone would use it as a cut-through, since the usual option would be to travel straight down 521 to a right turn on S. Three Bs and K, rather than travel through two neighborhoods with multiple driveways.*

- d) Mr. Scott Donaldson, Liberty Twp., thanked Mr. Sanders for stepping in to help them with their Comp. Plan after severing the relationship with the previous firm. He expressed his support for the other trustees in wanting to change some of the language in the staff reports.

- e) Ms. Renee Vaughan, Genoa Twp., stated she appreciates RPC hearing them and holding a special meeting. She agrees with previous statements made by Township Representatives and wanted to highlight four things. She agrees with the standardization of the vote to help protect Townships when they are involved in a lawsuit. She believes voting members should receive material ahead of time. She does not agree extensions should be handed out so freely. She also agrees that the County has too many votes on the Commission.

- f) Mr. Doug Price, Troy Twp., said the Townships look to RPC staff for guidance. He asked what holds more weight, the Zoning Resolution or the Comp. Plan? He thinks the RPC should get rid of conditional approvals. The application either meets the requirements or it doesn’t. Let the Zoning Commission / Trustees make the decision. List the reasons why, if it was denied. He questioned the deadline for rezoning applications so that staff has a longer time to review and the Commission can get the report earlier. Mr. Price brought up a case of a conditional approval in Harlem Twp. where the lot wasn’t the right size and frontage and he thought it should have been a denial.

Mr. Sanders explained that regarding the Harlem Township example, an applicant has to rezone from a 5-acre minimum if you want a 2-acre lot. Over the years Harlem has expressed to him that they feel 5 acre lots use up too much farm land and that they are generally agreeable to a request to rezone from 5 acres to 2. Staff also sees those more favorably so staff made a conditional approval noting that the applicant should rework the acreage to fit within the standards. Staff felt like the configuration of the lot COULD work based on the land available so the staff review is essentially “should a rezoning for a 2-acre lot be supported” and then the conditions lay out what the applicant needs to do. Mr. Sanders noted that in general, staff only has one chance to review and send to the Township so to deny a case simply because some details are not worked out seems to be inappropriate. We are often lucky to see a revision, even in larger cases, so we only have one shot to make comments.

- g) Ms. Michele Boni, Orange Twp., thanked the Commission for having the meeting. She agreed with adopting a standard for rezoning reviews. She stated that RPC recently recommended denial on a project that the township was a little surprised about and they are hoping to leverage that, which was a good outcome for them. Her concern is how they can get that communicated to them ahead of time. She questioned how a denial is communicated to the applicant. Are they made aware of it ahead of time? She also questioned if we are seeing consistent denials, is it time to update the Comp. Plans? Should the RPC staff reach out to those Townships to look at that.

Later in the meeting, Mr. Sanders noted that he thought he remembered that the staff recommendation for denial was transmitted to the Township through a letter/e-mail prior to the RPC “readout” meeting so it shouldn’t have been a surprise. After checking staff’s notes, it is noted that the application was sent by Orange Twp. to the RPC staff on 12/1/23 for an internal review since it was an overlay application and not a traditional rezoning. On 12/4/23, staff responded to the township with a number of bullet points, including the determination that the warehouse proposal was not a permitted use in that subarea of the RCOD. That generated a phone conversation between RPC staff and township staff, and the recommendation was eventually reported out during the RPC meeting on 12/21/23.

As to communicating with applicants, the RPC’s rezoning review is conducted to provide recommendations to the individual township. Applicants who ask for comments prior to the meeting (and many of them do) are accommodated. As noted later in the meeting, staff has a goal of providing staff reports earlier.

- h) Ms. Sandra Stults, Scioto Twp., said that each of the Townships are vastly different with different Comp. Plans.

### 3) Comments – RPC Members

- a) Mr. David Weade, Berkshire Twp., suggested RPC move their submission dates up to give more time to complete the report and give Townships more time to review the recommendation prior to the meeting.

Later in the meeting, Mr. Sanders noted that staff had already committed to this as a goal, based on previous conversations.

- b) Mr. Ed Snodgrass, Porter Twp., questioned how detailed the Commission should be when reviewing the zoning applications. Should staff review every detail down to the setbacks of each lot or review the general details (density, etc.) and give a conditional approval with a list of items to consider. The job of the Commission is to look at the big picture. It’s the Township’s job to work through all the details.

#### 4) Comments – Members of the Audience

- a) Ms. Kathy Davis, Genoa Twp. resident, encouraged the Commission to think of Delaware County as a whole and the curb appeal of the County. She is concerned with the number of established trees being cut down along all the roadways. She also expressed concern with everyone's water level and how density impacts that.
- b) Mr. Rick Wheeland, Genoa Twp. resident, stated we need to have a vision for our zoning that represents the people of that area. He feels more emphasis is being put on the needs of the applicants than the needs of the residents in the Townships. He had concerns of a possible development in his area but was told he couldn't say anything until it came up for Commission review. He expressed concern with not getting representation from all of the Township Trustees over concerns he has with the roads in his area.

*Later in the meeting, Mr. Sanders noted that Mr. Wheeland's subdivision was developed utilizing Genoa's "straight" Rural Residential district and did not require rezoning. That project included a public township road and a stub street to a second phase which is no longer being pursued. No development plan or proposal has come in for that next property other than a Sketch Plan two years ago, so staff has stated that there is nothing to review or discuss until the next property comes in for either a rezoning or a subdivision and is on an RPC agenda. RPC and DCEO staff do support the connection of neighborhoods for the purposes noted previously.*

#### 5) Comments – RPC Staff

Mr. Sanders noted that he would try to respond to several items where he made notes to himself since much of what was said was not shared with him ahead of time. *(Many of these responses have been inserted elsewhere as they related to comments.)*

Mr. Sanders went through a brief PowerPoint that summarized the duties of the DCRPC and where it fits in the rezoning process. Within 5 days of receiving a rezoning application, it must be forwarded to the RPC. The RPC has traditionally set a "soft" zoning deadline as the Monday the week before the RPC meeting. He said that is something staff doesn't really have the authority to enforce. Staff tries to accommodate the individual Township because RPC only meets monthly. The Township has to forward an application to the RPC within 5 days after receipt and put the application on their agenda between 20-40 days from receiving it. We do everything we can so the Township doesn't have to table the application for another month. If the townships support us being stricter, we certainly can try to be.

Currently staff doesn't upload the rezoning applications and materials to our website, although we do upload preliminary and final plat applications/plans. He noted that staff could upload the Development Plan at a minimum, but uploading the entire application, especially when they are three-ring binders with multiple sized plans, would likely be more effort and time than would be effective for the average Commission member.

The Powerpoint also included the language in the Bylaws that describes what the Commission and staff consider, generally, in all its work, noting that some items, such as regional goals, objectives, needs, and standards, are not always easy to define and aren't really in a checklist.

He noted that the following information/considerations are what staff uses as a template to form the basis for all the 519.12 statutory reviews, which were also presented at the February RPC meeting:

- *Case number and title / Basic Request and Location;*
- *Surrounding Land Use, Current Zoning Designation, Current Use(s) / Available and proposed utilities;*
- *School District(s) / Critical and Natural Resources from staff's combined resources data source;*
- *Introduction - General description narrative designed to summarize the project;*
- *Graphics illustrative of the overall proposal – additional graphics may be shown beyond those in the staff report;*
- *General use, density (if residential), general road layout, open space, etc.;*
- *Local Comprehensive Plan - Current recommendations, other conditions, noting whether it generally complies or not, particularly with regard to density and land use;*
- *Traffic, access, and drainage issues;*
- *General Signage, Lighting, and Landscaping requirements;*
- *Sanitary Treatment and feasibility based on the projected use;*
- *Divergences: Summarize and indicate the how each request compares to the requirements of the Zoning Resolution. Identify any divergences that may be needed but are not being requested;*
- *Overall Staff Recommendation, including a restatement of any Divergence recommendations, based on the consideration of all the above issues.*

Although staff uses the whole template for all cases, some items don't apply to certain applications, such as more simple "straight" districts, but staff always makes a comment regarding density and land use. Staff looks at signage, lighting, and landscaping but there are so many different requirements within each Township code that we don't count trees or measure the height of every berm. We try to touch on the waste treatment and who might need to sign off on the plan, whether it be the Sanitary Engineer, Health District, or OEPA. We take care to point out and make recommendations on divergences that are requested by the applicant and point out ones that we think they need but they might have missed. Sometimes an application is submitted for a use that the Comp. Plan didn't anticipate but it may be something the Township may want to have. Just because a certain use isn't specifically named doesn't necessarily mean that it must be denied. For reference, Commission staff reviewed 40 different cases in 2023.

Mr. Sanders stated that in conversations with Concord Twp. leading up to this meeting, a trustee had stated and the letter received from the township specifically notes that an application should meet 100% of the Zoning Resolution and 100% of the Comprehensive Plan to receive a recommendation of approval or approval with modifications. When staff asked if items such as density, or the number of trees, or the height of light poles, were treated differently, the trustee responded that Concord views all those items the same - if anything doesn't comply, the project should be denied.

Mr. Sanders noted that a Comprehensive Plan is more aspirational and can't always be a simple checklist of items to fulfill. Staff always makes density the primary factor for a review and then looks at the other items the developer is proposing but staff can't count trees and make sure light poles aren't too tall. He was curious if that is the approach all the townships wanted to take in reviewing rezonings. The two Concord Township Trustees in attendance noted that was not the approach being requested by their Board.

Mr. Pete Griggs, of Brosius, Johnson & Griggs, explained that the Comp. Plan is just a guide. The Zoning Code is going to control. Developers have taken the position that they are suing just to sue

because for the most part Townships have not been willing to stand up on these issues. So, sometimes it doesn't matter what decision is made by RPC or the Township. He agrees with coming up with a little more guidance on staff reviews but you have to be careful with what you ask for. Some Townships might get upset with staff for recommending denial every time.

In terms of voting members, the statute for Regional Planning Commissions basically says when you form a Commission you all get together and you figure it out. There's no requirement that the Commissioners have X number of votes or who is or who isn't a voting member. That is just the way it was formed but it doesn't mean times haven't changed. The Commission can look at how they operate and whether or not they feel that the By-Laws need to be changed. It's not a legal issue but a policy issue and for the Commission to decide.

The Subdivision Extension issue could be reworked to require an application and more justification for the request.

Mr. Griggs feels that an Approval or Denial with no conditions is not a good idea. The statute uses the words approval with some form of modification. He agrees with Mr. Sanders in changing the recommendation wording is the best approach.

#### 4) Discussion

- a) Chairman Shafer thanked staff and Regional Planning members for all the hard work they do. There was good feedback and more discussion to be had by the Executive Committee and he hopes to present the Commission with some suggestions on the next steps. He said going forward, he would like to see such feedback come through the designated representative as to policy matters since ultimately any changes would need to be approved by a majority vote of the Commission.
- b) Mr. Joe Garrett, Concord Twp. said that because Commission votes are being used a tool against them (the Township), that recommendations could include items that don't meet the standards. For example, they have a Landscape plan that is challenging to interpret and doesn't expect the Commission to have an in-depth knowledge of it but the recommendation should state what wasn't reviewed.
- c) Mr. Scott Donaldson, Liberty Twp., asked if some form of disclaimer could be added to the wording of the recommendation. He also asked if a recommendation of denial could include conditions that could possibly be addressed in order for an approval to be considered by the Township.
- d) Ms. Erica Fouss, Orange Twp., suggested a disclaimer that would identify other items that aren't on the typical review list.

Mr. Sanders explained that he has always felt that it's obvious that a development will eventually have to meet the other sections of the applicable code, since the Zoning Inspector or staff ultimately have to grant a zoning permit so that a building permit can be granted. And unless a divergence has been specifically granted that it basically goes without saying that the development has to meet the Zoning Resolution because that's where the standards are defined. However, because it adds clarity, staff recently added a statement to the staff report template that essentially says that "all other requirements in the Zoning Resolution must be met." He noted that when staff does recommend denial, it is always

based on a number of items that could be considered a list of things that could be resolved to make the project more approvable.

Chairman Shafer said that statement could be looked at and see if there are other ways to state that.

## **ADJOURNMENT**

Chairman Shafer thanked everyone for attending and participating in a constructive discussion and closed the meeting at 7:30 p.m.