

DEVELOPMENTAL CONTROLS COMMITTEE

January 18, 2011

There was a meeting of the **Developmental Controls Committee** of the Lima-Allen County Regional Planning Commission held on **Tuesday, January 18, 2011 at 3:00 p.m.** in the Conference Room of the Commission office located at 130 West North Street, Lima, Ohio.

The agenda was as follows:

1. Roll Call
2. Approval of Agenda
3. Approval of DCC Minutes – January 4, 2011
4. Study Session: Bonds
5. Other
6. Adjournment

A quorum being present, Bruce Plumb brought the meeting to order and proceeded with the agenda.

1. **ROLL CALL**

Mr. Norman Capps	Perry Township
Mr. Bruce Plumb	City of Lima
Mr. Dan Reiff	Allen County
Mr. Walter Rysz	Richland Township
Mr. Jesse Sadiua	City of Lima
Mr. Troy Strayer	Village of Elida
Mr. Howard Violet	Marion Township

GUESTS

Mr. John Leahy, Sr.	Balyeat, Leahy, Daley, & Miller, LLC
Mr. Ron Meyer	Allen County Engineer's Office

STAFF

Mr. Thomas Mazur	Lima-Allen County Regional Planning Commission
Ms. Lisa Steffen	Lima-Allen County Regional Planning Commission

2. **APPROVAL OF AGENDA**

Motion 5 (1-18-11) DCC

Walter Rysz made the motion that the agenda be approved. Seconded by Norman Capps; motion carried.

3. **APPROVAL OF DCC MINUTES – January 4, 2011**

Motion 6 (1-18-11) DCC

Howard Violet made the motion that the DCC minutes of January 4, 2011 be approved. Seconded by Troy Strayer; motion carried.

4. **STUDY SESSION: BONDS**

Thomas Mazur presented Committee members with previous DCC meeting minutes during which Mr. John Leahy attended the meeting and discussed the bond issues with the

4. STUDY SESSION: BONDS (Continued)

Committee. Thomas Mazur reported that at the last DCC meeting the Committee discussed bond and the ability to call the bonds for the Camden Ridge Subdivision. Thomas Mazur reported that staff has played phone tag with the Developer and his bank and has met with John Leahy. Thomas Mazur reported that the Developer eventually submitted a new bond for the same amount as the previous bond. Thomas Mazur reported that this meeting was called to reeducate Committee members on the issues surrounding performance bonds and the potential use of letters of credit, security bonds or insurance bonds. Thomas Mazur reported that in 2009 Mr. Leahy and the Allen County Commissioners looked at some bond language which was quite lengthy. Thomas Mazur reported that it is questioned if Regional Planning has the authority to call and/or draw the bonds.

John Leahy reported that he believes that there is an obligation of the Regional Planning Commission to see that the subdivisions are developed correctly and completed. John Leahy commented that the bonding of subdivisions has always been somewhat of a problem. John Leahy commented that performance, maintenance and sidewalk bonds are necessary for subdivisions to ensure that the work is completed and meets the required standards. John Leahy reported that a bond provides a form of security to make sure that the developers do the work that they say they are going to do. John Leahy reported that there are all kinds and forms of bond. John Leahy reported that a bond from an insurance company is the best type of bond to get but very few small developers are able to get them. John Leahy reported that we must find novel ways to provide assurance that the work will be completed. One way that this is accomplished is by establishing lines of credit. John Leahy reported that he has developed an agreement that a developer would have to sign when they come in to get their project approved. Part of the agreement is that the developer will post the various bonds and perform work in accordance with regulations. John Leahy commented that in order to guarantee the work will be performed the Planning Commission should have something laid out for the banks to use that meets our standards. John Leahy commented that we need bonds that allow Regional Planning to draw on the bonds and get the work completed without the developer or the bank being able to argue about it and say that the work is completed. John Leahy commented that he believes if we start working with some of the banks, we should be able to get the securities we need. Thomas Mazur questioned if we are looking to issue letters of credit or bonds. John Leahy commented that a bond is the guarantee or instrument. The letter of credit is a method of securing the job and serves as the bond. Thomas Mazur questioned if the words bond and letter of credit are interchangeable. John Leahy replied that they are not interchangeable and a letter of credit is a negotiable instrument that is issued by the bank. Jesse Sadiua questioned if a letter of credit is a bond but not vice versa. John Leahy responded that a bond is a guarantee that the work will be done. A letter of credit backs up the bond. A letter of credit funds the bond. Thomas Mazur commented that the bond is nothing more than the commitment that the Planning Commission, bank and developer agreed to and the letter of credit establishes the drawdown. Jesse Sadiua commented that the bond is actually the commitment of the developer to perform the work backed up by the letter of credit. Howard Violet commented that in the minutes distributed it was discussed to try to incorporate all of the bonds into one bond. Thomas Mazur commented that there are different expectations as to what will get accomplished and when. Thomas Mazur reported that tracking the bonds gets hectic when staff tries to keep track of the bonds and what work has been completed. Thomas Mazur commented that he and Mr. Leahy had discussed what happens if the developer walks away from the project and we still have work to be completed with a bond and letter of credit to draw from. Thomas Mazur questioned who is responsible for getting the work done and whether or not we must pay prevailing wage. Thomas Mazur commented that these issues are not addressed when the bond is posted and the bond may not contain sufficient funds. Dan Reiff commented that the letter of credit is issued by the bank and the bank backs up

4. STUDY SESSION: BONDS (Continued)

the bond. Dan Reiff questioned how the bank feels obligated for a letter of credit if the developer skips out. John Leahy commented that the bank should be making sure that the developer has credit when issuing the letter of credit. John Leahy commented that the bank will generally freeze that credit and issue the bond. John Leahy commented we are really looking at what we need to secure the bond. John Leahy commented that there are combination bonds which are issued more by insurance companies. Insurance companies have subdivision bonds which cover different aspects. John Leahy commented that the problem is that most developers will not qualify for insurance bonds. Dan Reiff commented that it is harder to qualify with a bank now and if we are lessening the control that the bank has, it is going to be even more difficult to deal with the developers. John Leahy responded that when the developer's come in and sign the agreement with Regional Planning it is up to them to go argue with the bank. Dan Reiff commented that we are basically trying to weed out the weak developer's. John Leahy responded that essentially yes. Thomas Mazur commented that many of the first time developer's don't understand the hydraulics and engineering involved and think that the development will be quick easy money, which is not always the case. Thomas Mazur questioned if we have a bond, will the Planning Commission, County Engineer or Commissioners force the subdivision to be completed under the auspices of that bond and if so who retains the authority and/or responsibility and liability of invoking the bond that may have been written five years previously. Thomas Mazur commented that we are not protected against inflation which may mean the bond will not cover the work required. Thomas Mazur reported that because of the language of the bonds like Camden Ridge, we would have had to be reimbursed for the work and would not have received money to cover the costs up front. Thomas Mazur commented that another problem is who invokes the bond and what if the bond does not cover the costs of what still needs to be done. Thomas Mazur questioned if we would have to pay prevailing wage for the work. Jesse Sadiua questioned if Mr. Mazur brought up prevailing wage because Regional Planning is a public entity while the private sector developer does not have to observe that. Thomas Mazur responded yes. John Leahy commented that generally if an insurance bond is invoked the insurance company will come in and hire the work done, which is the ideal way to do it. John Leahy commented that in a case where a bank takes over, more than likely they are not going to want to go out and finish the subdivision which may put the Planning Commission in the position to take care of it. John Leahy commented that he believes we must be more vigilant in keeping track of the work that has been done and still needs to be done. If a developer has five years to do work on the subdivision and he does nothing by the end of the first year, he should be called in and it should be discussed with him. John Leahy commented that if you wait until towards the end of the bond and nothing has been done, the developer is not going to get the work done. Walter Rysz questioned if it was possible to adjust the amounts of the bonds to address inflation rates. Thomas Mazur commented that we could require a new engineer's estimate every twelve months but that costs the developer money. Thomas Mazur commented that he is not sure if even with a twelve month annual update if the costs would be reflective of inflation. Norman Capps questioned if you could do a buy down of the bond based on the percentage of completion. Thomas Mazur responded that that is currently done. Thomas Mazur commented that pro rating the bond is only fair to the developer. Thomas Mazur commented that it is costly for the developer's to get a bond with a majority of the cost coming from the banks to draw up and prepare the bond. John Leahy commented that Regional Planning must set up the parameters that they want followed. Thomas Mazur reported that we could require developers to use ODOT cost estimates which would better protect us from insufficient funds being available in the bonds. Thomas Mazur commented that Regional Planning does not want to make things difficult for the developers, but we must protect the political subdivisions. Dan Reiff commented that we are also protecting those individuals who have already bought a lot in the subdivision. Thomas Mazur

4. STUDY SESSION: BONDS (Continued)

commented that when he was speaking with one of the banks he did not understand why the developers were responsible for putting in sidewalks. They commented that sidewalks were part of the building code. Thomas Mazur informed the lender that Allen County does not have a building code. Thomas Mazur commented that all of the subdivisions that go in pass the burden of sidewalks on to the homeowners. Dan Reiff commented that that is the logical way to handle it. Thomas Mazur commented that we used to make the developers put in the sidewalks when the streets were put in. The developers objected to this. Thomas Mazur commented that we could develop new language that would allow us to draw down the funds to complete the work. Thomas Mazur commented that Allen County is extremely lucky because we do not have subdivisions going bankrupt. John Leahy commented that the main thing is to keep on top of things and make sure the subdivisions are progressing as they are supposed to. Howard Violet questioned if there is a subdivision that does not have any lots sold if they should require the developer to put sidewalks in anyway if it's part of the agreement. Howard Violet commented that it makes perfect sense on the part of the developers to not want to put in sidewalks and have them driven over during construction. Thomas Mazur commented that part of the problem is when developer's bite off more than they can chew. Howard Violet questioned if there was a precedence established or a template that could be used from another community. John Leahy commented that there is bond language in the statutes, but are generally the insurance bonds. The bank letters of credit will be individual to the banks. John Leahy reported that we do have some forms that we want the banks to use that will allow us to draw down on the bonds when we need to. Howard Violet questioned who grants the authority to allow a subdivision. Thomas Mazur responded that DCC makes the determination as to whether or not the plans submitted meet the minimum specifications and whether or not based on the engineering analysis that standards are all being met. Howard Violet questioned if the DCC makes the decision or recommendation on the scope or size of the development. Thomas Mazur responded that the DCC simply accepts the plans if they meet the specifications. Thomas Mazur commented that we do allow phasing of the developments. Howard Violet questioned if the purpose of this meeting was to develop a format or regulation for bonding or if it is to provide an explanation of how it works. Bruce Plumb responded that the meeting is mainly for informational purposes. Walter Rysz questioned what the mechanism is for the calling of the bonds. John Leahy responded that that must stay within the Planning Commission. Thomas Mazur reported that the County Engineer's Office goes out and inspects the subdivision which is how the engineer's estimate gets validated. The DCC approves the subdivision contingent upon the bond being received and the County Engineer signing off. Thomas Mazur reported that staff sends out a letter to the developer and bank notifying them that their bond is coming due and that they must either post a new bond or complete the required work. Walter Rysz commented that there is no one to go out and check on the subdivisions to see if the work is being done to the proper specifications. Thomas Mazur commented that the County Engineer's Office goes out and inspects the subdivisions right now if we ask them to, but no one goes out and looks things over on a regular basis. Dan Reiff commented that we are forcing the developer's to incur more costs by going out and getting a new bond. John Leahy commented that most banks probably charge a premium either once or twice a year to have a bond. Thomas Mazur commented that we are not entirely sure how the bonds work with the banks and what it costs to get a bond. Norman Capps questioned how driveway cuts are done in a subdivision. Norman Capps questioned if they are put in when the streets and curbs are done. Ron Meyer responded that it depends. In some subdivisions they are and in others they are not. John Leahy commented that it is not easy for a developer to get a bond from a bank. John Leahy commented that insurance bonds would be the best to use because the insurance companies deal with the bonds all the time. Howard Violet questioned what we should do about current obligations. John Leahy responded that we will have to work through them. Bruce Plumb questioned if

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we could require them to use insurance bonds. John Leahy responded that you could but you might not have any developers who are able to obtain them. Bruce Plumb commented that we do not want to discourage development. Dan Reiff commented that it sounds like the insurance bonds are the preferable option to require developers to use. Thomas Mazur commented that they may be preferable but they are also more expensive for the developers to obtain. Norman Capps questioned if it would be more advantageous to make the developers do the sidewalks first with the streets. Thomas Mazur commented that it would be a lot easier for staff. Norman Capps commented that if they are in the right of way they would have to be done to the County standards. Dan Reiff commented that there are two different County standards, one for the sidewalk in the area where the driveway is and one for the sidewalks excluding the driveway. Dan Reiff commented that if you don't know where the driveway is going to be, you can't build the sidewalks all the same thickness. Dan Reiff commented that the driveways are going to be thicker than the sidewalks. Jesse Sadiua commented that the insurance bond is the preferred bonding mechanism but is more expensive to obtain. John Leahy responded that he does not know if the insurance bonds are more expensive to obtain but they are probably more difficult to obtain. Jesse Sadiua commented that our main objective is to protect our citizens and what is best for our citizens. John Leahy responded that requiring insurance bonds would be best for the citizens. John Leahy commented that he has not fully explored the option of insurance bonds. Bruce Plumb commented that if the sidewalk is put in first, even with six inches of thickness, the sidewalk is going to fall apart with the trucks driving over it during construction. Ron Meyer commented that it would then be necessary to require the homeowner to replace the broken sidewalk and who has the authority to do that. Thomas Mazur reported that typically the condominium associations do a much better job because they are controlling the rate of construction and know exactly what is happening. Thomas Mazur commented that a lot of the problems that arise in subdivisions are due to the lack of a building code. Walter Rysz commented that if you don't put the top coat on the street and the sidewalks in until all of the lots are sold, the subdivision will never get done. Thomas Mazur commented that the problem comes down to the platting process and allowing the developers to plat too much of an area. Thomas Mazur commented that Regional Planning allows twelve month performance bonds after the property is platted. Thomas Mazur commented that they are allowed five years for the sidewalk bonds. Thomas Mazur commented that if all of the bonds came due in twelve months, there wouldn't be any problem. Howard Violet questioned how common building codes are in Ohio and why Allen County doesn't have a building code. Thomas Mazur responded that all of the urban counties have a building code. Norman Capps commented that the reason Allen County does not have a building code is because eight or nine of the townships don't want a building code. Dan Reiff commented that they have been looking at building codes for fifteen years. Dan Reiff commented that until they get the cooperation of the townships, a building code will not become a reality in Allen County. Dan Reiff commented that there are currently a few townships that are considering pushing for a building code. Jesse Sadiua commented that when reviewing previous DCC minutes Roy Hollenbacher had commented that the reason townships don't want a building code is because it would cost them money that many of them don't have. Howard Violet questioned how having a building code would cost the townships money. John Leahy responded that it would cost the townships money to enforce the building code. Norman Capps commented that he believes the sidewalks should be required to be built with the roads. In the long run there is less management required and it will probably be cheaper for the developer. Bruce Plumb commented that he agreed. Thomas Mazur questioned if the DCC should give twelve month bonds instead of sixty month bonds and require it to be part of the performance bond. Norman Capps commented that if the sidewalks are done at the same time, the money saved on the bonding will help offset the additional charge of putting in the sidewalks. Bruce Plumb commented that in the long run, the developers will be better

4. **STUDY SESSION: BONDS** (Continued)

off because it will be a lot easier for them to manage. Bruce Plumb commented that this won't solve the problems we currently have. Thomas Mazur responded that we could nurse those through and if we come up with a new bond and new policies, it would preclude problems from lingering. Thomas Mazur commented that in five or six years the older problems will be resolved and that will be the end of it. Thomas Mazur questioned if the Committee still wanted him, John MacDonell, and John, Sr., to meet with the banks. Bruce Plumb questioned if Mr. Mazur was referring to standardizing the paperwork and if it would do any good. John Leahy responded that it might be beneficial to try a couple of banks individually to see what they think.

5. **OTHER**

None.

6. **ADJOURNMENT**

Motion 7 (1-18-11) DCC

Norman Capps made the motion that the meeting be adjourned. Seconded by Dan Reiff; motion carried.