From:	Morgan Zoning
To:	Roger Gates
Cc:	Eric Pottenger; Zeb Acuff; vances@swwater.org
Subject:	Re: Residential Estate District
Date:	Tuesday, October 23, 2018 2:01:27 PM

Thank you for the information.
I will discuss this with Zeb, Eric and Sue.

Dale E. Marshall
Zoning Administrator
513-738-8279

Under Ohio law, no zoning certificate shall be issued unless the plans for the proposed building or structure fully comply with the zoning regulations then in effect. Please understand that our conversation and this e-mail are a discussion on a potential project and does not constitute a representation or warranty that a zoning certificate will be granted in accordance with the Morgan Township Zoning Resolution.

On Tue, Oct 23, 2018 at 10:10 AM Roger Gates <gatesrs@butlercountyohio.org> wrote:

Dale:
While I agree with the concept of eliminating the Residential Estate District" and instead creating a "Residential Estate Development" as a conditional use in the A-1 District, I think this is more complex than you may realize. RC 711.001 defines a "subdivision" of land and RC 711.13 prohibits the transfer of land pursuant to a subdivision plat prior to the time the plat is recorded in the offfice of the County Recorder. Subject to certain exemptions, the statutory definition of a "subdivision" generally includes any division of one or more contiguous parcels of land "into two or more parcels, sites, or lots, any one of which is less than five acres for the purpose, whether immediate or future, of transfer of ownership." However, RC 711.001(B)(2) expressly includes within the definition of "subdivision":

> The improvement of one or more parcels of land for residential, commercial, or industrial structures or groups of structures involving the division or allocation of land for the opening, widening, or extension of any public or private street or streets, except private streets serving industrial structures, or involving the division or allocation of land as open spaces for common use by owners, occupants, or leaseholders or as easements for the extension and maintenance of public or private sewer, water, storm drainage, or other similar facilities.

Therefore, it seems that any division of one or more tracts of land for purposes of creating a "Residential Estate Development" would require the filing of a subdivision plat with the County Planning Commission and compliance with the County Subdivision Regulations. Although the Township Zoning Resolution could regulate certain development aspects such as permitted uses, minimum lot sizes, setbacks, and other building restrictions, matters dealing with roads/streets, utilities, etc. would fall within the scope of Planning Commission's approval. The Subdivision Regulations also contain requirements for street construction, surface water drainage, and water/sewer approvals.

My feeling is that you should have a discussion with the County's Planning Staff (Zeb Acuff), the County Engineer (Eric Pottenger), and Southwest Regional Water District (Sue Vance) so that you have a full understanding of what is within the scope of the Township's regulatory authority through its zoning resolution. You may also need to reach out of Jeff Agnew at the Butler County General Health District to fully understand requirements for the use of household sewage treatment systems.

Roger S. Gates
Assistant Prosecuting Attorney
Chief, Civil Division
Butler County, Ohio
513.785.5221
Fax: 513.887.3748

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>>> Morgan Zoning <zoning@morgantownship.org> 10/22/2018 3:04 PM >>>

Roger

In regards to Article 7A - Residential Estate District: you queried if MTZ would do a zone change. That is not our intention. Our intention is to have 7A become our Private Road Development but have a dedicated road when finalized. This article has been in our regulations since the early 2000s. My question to you is could we rename 7A to be Residential Estate Development instead of District. As it would still fall under Article 7 Agricultural?

Dale E. Marshall
Zoning Administrator
513-738-8279

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On Tue, Oct 9, 2018 at 2:11 PM Morgan Zoning <zoning@morgantownship.org> wrote:

> Thank you!
> I will present this to our Zoning Commission next week at our monthly meeting.
> Dale E. Marshall
> Zoning Administrator
> 513-738-8279
>
> *Under Ohio law, no zoning certificate shall be issued unless the plans for the proposed building or structure fully comply with the zoning regulations then in effect. Please understand that our conversation and this e-mail are a discussion on a potential project and does not constitute a representation or warranty that a zoning certificate will be granted in accordance with the Morgan Township Zoning Resolution.*
>
> On Tue, Oct 9, 2018 at 10:05 AM Roger Gates <gatesrs@butlercountyohio.org> wrote:
>
> > Dale:

I have a couple of questions/comments.

1. Proposed Article 7A.1 seems to say that lots in the Residential Estate District must be "situated on a dedicated public no-outlet street." Any division of land into lots which involves "the opening, widening, or extension of any street or road" requires the filing of a subdivision plat with the County Planning Commission. This is true regardless of whether the street/road is public or private. For any road which is to be dedicated to the public, the County's Subdivision Regulations provide minimum construction standards. Therefore, if your intention with this proposed Article 7A is to require a zoning district change whenever a developer proposes a subdivision involving a new public street/road, the Zoning Resolution cannot regulate the construction of the streets nor would a separate subdivision plat be required.
2. I have some questions about the water main size specified in Sec. 7A.24. I doubt that Southwest Regional Water District has any objections to you requirements for fire hydrants, however they may have questions about the 6-inch main size specification. Although their minimum requirement is 6-inch, there may be situations where they may have concerns with connecting a 6-inch pipe to a 4-inch (or smaller) pipe especially if the RED would involve only a handful of lots. Has this requirement been discussed with the Water District.
3. So that it is clear, Sec. 7A.31 should be revised to make clear that the restrictions contained in that section dealing with agricultural structures and uses are applicable only when the lot area is not greater than five acres. Although RC 519.21(B) could permit the prohibition of agriculture (including animal husbandry) on lots of one acre or less, that would not be an issue in the RED because the minimum lot area would be 3 acres.

One other comment is that I find myself wondering whether it is necessary to create a new zoning district to impose these types of restrictions on residential development within what is currently an A-1 District. The zone change process can be cumbersome and since it is a legislative process brings the possibility of a referendum into play. It seems that it would be possible to place limits on residential use as a principal permitted use and to create a conditional use within the A-1 District for this type of residential development. The resolution could prescribe certain mandatory conditions which the BZA must adopt in conjunction with approval of an RED; you could allow the BZA to deviate from the mandatory conditions only upon the developer showing an unnecessary hardship. You could also give the BZA authority to specify other conditions if it determines those additional conditions to be reasonably necessary to make the proposed development compatible with other uses in the area. In the end, this is really a policy decision and it may be that the intent is to place this type of decision in the legislative arena rather than a quasi-judicial forum such as the BZA.

1. Sec. 7A.8 should be revised to include a subsection specifying a minimum lot area of 3 acres.
2.

Roger S. Gates
Assistant Prosecuting Attorney
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