

Memorandum

To: Chair and Members of North Olmsted Planning & Design Commission

From: Bryan P. O'Malley, Assistant Director of Law

Cc: James M. Dubelko, Director of Law

Re: Biddoulph Trail Residential Cluster – Declaration of Condominium

Date: June 25, 2008

On June 11, 2008, the PDC recommended approval of the above, conditioned in part upon the submission and approval of their Declarations and By-laws by the Law Dept. prior to the site plan being released by Engineering Dept. for recording. The PDC also deferred review and approval of its Report to Council until June 25, 2008.

This short memo is designed to reiterate and document my previous report on this subject, to clarify the review requirements and to reinforce the PDC condition of approval. Generally, Chapter 1136 does not contemplate the Law Dept.'s review and approval of Declarations for compliance with state law, namely Revised Code Chapter 5311. Nor is it permissible for the City to rewrite the developer's sample document, as tendered. Thus, the requirements of Chapter 1136 in this regard have not yet been satisfied but your recommendation for approval is conditioned upon future submissions, much like other Engineering details.

The Declarations are subject to review for the purpose of insuring that the Association and future property owners are on notice of and required to maintain the site in accordance with approved plans and ordinances. That no provision of the Declaration undermines the City requirements and includes covenants to impose affirmative duties consistent with adherence to the site plan and ordinances.

Simply put, to make sure that 'what you see is what you get'. Also, as the Association practically functions as a property maintenance enforcement agency, that they are required to uphold the conditions of approval, especially the items shown on the site plan, such as density, design, and landscaping, etc.

Some of the Declarations will echo terms and conditions arising from Easement documents that will provide for emergency access and maintenance, at the owners expense.

Another item of interest will be the Disclosure Statement required by state law, which may be the most effective location for meaningful notification that the Declarations render the street and most improvements, including the maintenance, a private obligation. The Notice may also reference trash removal as a private obligation.

As I indicated in my previous report, the primary enforcement mechanism is by and through the City's zoning code to insure that the development proceeds strictly upon the site plan and other conditions of approval. The Declarations are an additional tool to enable the Association to continue enforcement consistent with the City standards and ordinances.