

**VILLAGE OF YELLOW SPRINGS
RESOLUTION #2007-09**

Whereas, the Village of Yellow Springs is a home-rule charter municipality in Ohio, and is only subject to those laws passed by the State Legislature of statewide concern as enumerated by the Legislature, and,

Whereas, the Village of Yellow Springs remains a small and vibrant community that is proud of it's home-rule heritage and generally seeks to minimize state intervention in municipal matters unless they are statewide concern, and,

Whereas, the Village of Yellow Springs sees the importance of a unified building code in the United States and throughout Ohio as being an important move that provides the highest opportunity for compliance with the building codes, and,

Whereas, the Village of Yellow Springs desires to join other home-rule municipalities in advancing the concept of a unified building code, and,

Whereas, the limitations on staff time and expertise has placed development of a local code beyond the Village's resources, and,

Whereas, the Village of Yellow Springs seeks the assistance of Greene County and the Ohio Board of Building Standards in implementing unified codes in Yellow Springs,

NOW, THEREFORE, THE COUNCIL FOR THE VILLAGE OF YELLOW SPRINGS, OHIO HEREBY RESOLVES THAT:

Section 1: The Village Manager is hereby authorized to sign an application for certification as a Residential Building Department with the Ohio Board of Building Standards.

Section 2: The Village hereby requests certification as a Residential Building Department by means of the capable services of Greene County Department of Building Regulation and to the Ohio Board of Building Standards.

Section 3: The Village Manager and Village Solicitor are directed to return to the Village Council with appropriate changes to the sections of the Codified Ordinances of Yellow Springs to reflect changes in state law and local preferences to adopt unified building codes in the future.

Karen Wintrow, Vice President of Council

Passed: April 2, 2007

Attest: _____
Deborah Benning, Clerk of Council

ROLL CALL:

Karen Wintrow __Y__ Bruce Rickenbach __Y__ Kathryn Chase __Y__

Kathryn Van der Heiden __Y__ Judith Hempfling __Y__

Council Meeting Date:

Agenda Item:

Village Council Agenda Item

Village of Yellow Springs, Ohio

Agenda Title: Consideration of Resolution 2007-09 Authorizing the Village Manager to Seek Certification of the Village as a Residential Building Department.

Presenter: Eric C. Swansen, Village Manager

Problem / Issue Statement

The Village needs to make a decision on how to continue providing building plan review and inspection services. Changes in state law are requiring the Village to make this decision within the next few weeks. Greene County has requested action as soon as possible, so they can plan accordingly.

Recommendation

Staff Recommends Adoption of Resolution 2007-xx Authorizing the Village Manager to Seek Certification as a Residential Building Department.

Introduction

The Village current places responsibility for Building Code enforcement with the Village Manager, an action dating back to 1976. The most recent code adoptions by the Village occurred in 1996 (adoption of the OBOA One, Two and Three Family Structures) and 1998 (the Ohio Basic Building Code). As a practical matter, the Village has relied on Greene County to serve as the Village's building department, and has done so for many years. The Village has no staff certified to complete building inspections.

The current building process is a two-step process that requires the Village to review a building permit for land-use consistency (including applicable utility connection fees), followed by plan review and inspection by Greene County. Applicants pay fees to both the Village and the County. The Village does not pay the County for plan review or inspection services, as the County is largely fee-supported for this service.

In 2005, Ohio established a new State Residential Building Code. This code, while very similar in many respects to the preceding codes, is the State's first adoption of building codes from the International Code Council. Prior to this code, most Eastern and Midwestern states relied on Building Officials and Code Administrators (BOCA) for developing codes for adoption. These codes differed than those implemented in the Western states where the International Conference of Building Officials (ICBO) performed a similar service. The Southern states relied on the Southern Building Code Conference International (SBCCI). The lack of continuity made it difficult for contractors, engineers, building inspectors, architects, designers, building plan reviewers and building inspectors to work in different parts of the US. It made it difficult for building product manufacturers, who make everything from drywall, engineered lumber, glass, to smoke detectors and doorbells, to compete.

The code is the effort of three different code groups to create a unified building code beginning in 1997. The idea behind the code was to put aside regional differences for one single code that could apply to all circumstances nationally. There are also efforts to apply the code outside the US, most notably in Mexico. There is also an intensive effort to develop consistent technical assessment standards throughout Europe, South Africa, Brazil, Japan, Israel, Canada, Australia and New Zealand that may develop into a truly international code at some point in the future.

When the state adopted the building code in 2005, they actually adopted a number of codes designed to complement each other. These include:

- 2003 International Building Code

- 2003 International Energy Conservation Code
- 2003 International Fire Code
- 2003 International Fuel Gas Code
- 2003 International Mechanical Code
- 2003 International Plumbing Code
- 2003 International Residential Code

Since Ohio has such a strong home-rule sentiment, the codes were adopted so as to not preclude localities from having their own building codes. Home-rule Municipalities are under no obligation to comply with the state adopted codes. There is nothing to prevent a community to developing their own code, adopting another code, or partially adopting a code. This is somewhat in conflict with the views of staff from the Ohio Board of Building Standards, who beg to differ.

The difference in opinion rests with some of the language used in the enabling legislation. The codes apply to only those areas which have a building department certified to enforce the building code by the State of Ohio. Those communities who don't have a building department or who have a building department that has not been certified since 2005, are not subject to the legislation enabling the new codes.

This places the Village in a difficult position. We don't have a building department, instead relying on Greene County to serve in this capacity. Greene County is in the process of being certified. At the same time, Greene County has asked the Village to apply for certification from the Ohio Board of Building Standards. This would in essence subject the Village to the building standards set by the state, and prohibit certain local changes to the code. There is a process to allow minor local amendments to the code, although there has to be findings of fact to base these on.

One odd fact of note, the Village was certified by the Board of Building Standards as recently as 2002, although the law is fairly clear that that the Village is not required to become certified. It is odd in that we are already certified and are being asked to do so again. A legal analysis of the certification issue is provided in Attachment A from the Ohio Municipal League's Cities and Villages September/October 2006 issue. Attachment B illustrates the view of the Ohio Board of Building Standards.

Alternatives Analysis

The choices facing the Village are a lot more easily understood than the odd legalese that has put us to where we are now. The Village can continue to be certified, leaving the responsibilities for maintaining applicable sections of the building code to the Ohio Board of Building Standards and the International Code Council process, or the Village can elect to develop our own code, which we would have to enforce ourselves.

This analysis examines the relative cost to the Village, ease of implementation, probability of compliance, potential for legal conflict and impact on local control as a way of comparing the two options. These comparisons are provided in terms relative to each other.

Cost to the Village examines the relative financial needs that must be met to pursue the option. Building code enforcement is a general fund function, meaning that expenditures above and beyond those recovered in fees and fines for services, must come from the Village's general fund. A special fund could be established for this purpose, but a revenue source would need to be identified to bring the fund into balance.

Ease of implementation examines how easy a transition to the option could be accomplished. If there is a considerable difference in the way the Village implements the building code, there could be a number of unintended consequences to the Village, including non-compliance (people electing to not get permits, plan reviews), added enforcement costs, or less competition for contracting services. There are also administrative functions that must be addressed that will take limited staff time away from other matters to implement the option chosen.

Probability of compliance examines how likely the Village will see compliance on code matters is. The ultimate goal of the building code is to get compliance with the code. Compliance consists of education,

review and enforcement functions to get the desired outcome. Inability to perform any of these functions might result in reduced compliance.

Potential for legal conflict examines the potential for legal conflicts to arise with the option evaluated. Given the complexity of the issue and the numerous instances raised in Attachment A, it is clear that there might be a price for being right. That is to say, there may be considerable needed to defend the option selected. In any legal proceeding, there is the potential to either lose the case (resulting in a change in policy) or have to devote time and money to proving the case favorably. Since time and money are limited resources, this is an issue that warrants some discussion.

Impact on local control examines what control would be retained by the Village with each option. It is important to note that there is a difference between the State taking control away from local communities, and communities voluntarily giving up local control to the State. Nevertheless, if local control is limited in any manner, it should be noted.

Option 1: Continue to be certified – subject to all future Ohio code adoptions

Under this option, the Village would seek certification from the State of Ohio via Greene County. Greene County would continue to provide building plan review, inspection and enforcement for Village residents. As the State adopts amendments and/or periodic revisions in the code, they would automatically apply to the Village. Local service levels would be set by Greene County.

The cost for this option is fairly low, and is consistent with current practice and funding levels. No additional staff would be needed, as the Village would not review plans or conduct inspections. Some legal work and staff time would need to be put forth to align the code with current practices and the state law that we elect to subject ourselves to.

Ease of implementation is high. This option is identical to the current practice, so there is a considerable ease to implement this. Some legal work and staff time would need to be put forth to make code changes to reflect this. Unlike our current code references, which are more than 10 years old, the Village code could be changed to adopt the State codes by reference, eliminating the need to update the Village code so frequently (new code changes occur every 3-5 years on average).

Probability of compliance is high. The County employs nine people for this task. An additional four people are available to the County by contract. All of these people are certified in one or more areas of the code, which makes all inspected work largely compliant. Work that is conducted without a permit or inspections is the biggest area of non-compliance for most building departments.

There is relatively limited exposure to legal conflict. Since this option has the Village doing what the State wants, the State is not likely to pursue action against the Village. The County has responsibility for the work of their employees and contractors for workers compensation, liability and property damage. This places little risk to the Village.

Impact on local control is highest with this option. The Village cedes some authority to the State and International Code Conference to develop the building code. This includes developing specifications for building materials, testing building materials, developing installation requirements, illustrating construction techniques, requiring certain building components, testing the installation of building materials, etc. As a practical matter, the Village lacks the expertise, experience and resources to duplicate these efforts locally. There remains some ability for local amendments, although these are few and require a considerable finding of facts to implement. As the Village has learned with the matters surrounding energy conservation, there is some ability to implement “above the code” requirements such as the Energy Star program. Such efforts would still be allowed, as they are technically not a building code, but an additional requirement enforced with independent third-party verification, not inspections by certified building inspectors.

Option 2: Do nothing – Requiring us to maintain our own code

Under this option the Village would take responsibility for inspecting all building department matters, including plan review, inspection, and enforcement. This could be accomplished with in-house staff, contracted staff or a combination of the two. The Village could adopt something very similar to the State

codes as they are adopted by the state, but preserve our local authority to add, change or modify the codes for local purposes.

The cost for this option is fairly high. The Village has no staff trained or certified to be plan reviewers or inspectors. Depending on the codes implemented there is a considerable effort that would need to be put forth, including staff time that would take away from other responsibilities. It would be difficult to quantify the costs at this stage, since there are many unknowns about what codes would be enforced. As a practical matter, it might be difficult to obtain personnel to implement a code other than the one the state code. Some cities in the US have gone to extraordinary lengths to have a local building code, complete with evaluation of building materials, developing installation requirements, illustrating construction techniques, requiring certain building components, testing the installation of building materials.

Implementation would be more complex. Since people would need to come to the Village for permits, there would be considerable confusion to among local contractors, residents and professionals on how to get work done in Yellow Springs at first. People are most accustomed to having the County review plans and make inspections. Depending on the code selected, the Village would need to review and adopt codes for implementation or develop our own codes. This is not a simple task.

Probability of compliance would be relatively low initially, although it could ultimately be funded to provide an equal level of service than the County currently provides. This is due to a number of anticipated factors including the overall change in procedures adding complexity, the difficulty of contractors to want to develop a specialized knowledge for a small segment of the business market to meet our procedures, and the sporadic nature of building permits in Yellow Springs might necessitate using contracted labor to perform this work. Contracted labor is generally assigned work, such as reviewing plans or inspecting a project, rather than looking for enforcement matters.

There is more exposure to legal conflict with this option. However, it is unlikely that the Village would need to handle these matters alone, as other communities might fall into the same legal exposure for the same reasons. Attachment A illustrates some of the legal issues that might arise. It should be noted, that there is very little to gauge the intent of the legislature and Ohio Board of Building Standards in this matter. As a result, there is no certainty that legal challenges will exist with this option.

This option provides the least impact on local control, as local control is entirely preserved with this option.

Recommendation

Staff Recommends Adoption of Resolution 2007-09 Authorizing the Village Manager to Seek Certification as a Residential Building Department.

Approved by:

