

M I N U T E S

Of The  
ADVISORY PLANNING COMMISSION

April 30, 1958

The members of the Advisory Planning Commission met in the conference room at 520 East State Street, Trenton, New Jersey. The Chairman, Mr. Fred G. Stickel, III, called the meeting to order at 1:55 p.m.

Those present were:

Messrs.

Fred G. Stickel, III, Chairman  
Herbert H. Smith, Vice-Chairman

William A. Bloom  
B. Budd Chavooshian  
Alfred H. Fletcher  
Robert H. Fust  
William Holster  
Philip A. McLaughlin  
Denis W. Maloney  
William A. Sutherland  
Edward B. Wilkens

Those absent were:

Messrs.

H. Thomas Carr, Secretary  
Louis Danzig  
Alexander Feinberg

The Chairman informed the members present that he desired a follow-up on two of the matters discussed at last month's meeting; namely, a letter which the Commission received from Frank H. Hankins, Jr., of the Borough of Franklin Lakes, and a letter from John S. Wright, Executive Vice-President of the New Jersey (State) Homebuilders Association, which letter was addressed to the Governor of New Jersey who, in turn, forwarded it to this Commission.

At this time, the Chairman was informed that the Secretary of this

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Commission, Mr. H. Thomas Carr, would be unable to attend this meeting. However, Mr. Carr forwarded a copy of a letter he had written to Mr. Wright, upon motion carried at the last meeting, and Mr. Wright's reply. After contents of these two letters were read to the members present, it was moved, seconded and carried that Mr. Carr's letter to Mr. Wright, and Mr. Wright's reply be made part of these minutes. As so ordered, the contents of the above-mentioned letters are as follows:

March 27, 1958

Mr. John S. Wright  
Executive Vice-President  
New Jersey State Home Builders  
Association  
16 Park Place  
Newark 2, New Jersey

Dear Mr. Wright:

This is to acknowledge receipt of a letter from Governor Meyner with respect to a letter from your organization addressed to the Governor on the matter of alleged arbitrary action of Planning Boards throughout the State of New Jersey.

I wish to inform you that no action was taken at the regular meeting of March 26th, and the letters and matter in general were passed on to the representative, namely Alexander Feinberg, for documentation and report thereon at the next regular meeting of the Commission on April 23, 1958.

It has been the policy of the Advisory Planning Commission, when confronted with matters concerned with any particular group represented on the Commission, to have the representative of the group concerned look into the matter and make a full report to the Commission at a subsequent meeting. We shall be pleased to inform you of our action following the next scheduled meeting of the Commission as outlined above.

Very truly yours,

HTC:f

H. Thomas Carr, Secretary  
Advisory Planning Commission

cc: Hon. Robert B. Meyner  
Alexander Feinberg, Esq.  
Advisory Planning Commission"

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"NEW JERSEY (STATE) HOME BUILDERS ASSOCIATION  
Military Park Hotel  
16 PARK PLACE - NEWARK 2, NEW JERSEY - Market 4-2024-5

April 25, 1958

Mr. H. Thomas Carr, Secretary  
Advisory Planning Commission  
P. A. National Bank Building  
Perth Amboy, New Jersey

Dear Mr. Carr:

In reply to your letter of March 27th.

I thoroughly appreciate the excellent work that the Advisory Planning Commission has been doing. I also wish to call your attention to the fact that the builders, in general, do not have any fight with the way the present Planning Law exists.

We are disturbed, nevertheless, by the willingness of municipal governing bodies to disregard this law thereby upgrading their zoning requirements to the point that our industry finds it difficult to build for the citizens of the State of New Jersey in all income brackets. We feel that some form of persuasion should be followed in order to bring about a realization within the municipality of the damage that they will ultimately do to the State of New Jersey if their past actions are extended and they continue to refuse to do a balanced planning job.

We thoroughly appreciate your interest as well as we express great confidence in our representative, Alexander Feinberg, as a man who knows our situation thoroughly and has always dealt fairly with all matters brought before him.

Very truly yours,

(signed)

J. S. Wright  
John S. Wright  
Executive Vice President

JSW:jb"

In connection with the above, the Chairman requested that this matter be held in abeyance inasmuch as Mr. Feinberg was unable to be present at this meeting, stating that he would get in touch with Mr. Feinberg requesting him to attend the next monthly meeting, at which time this matter

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could be taken up and a procedure to be followed outlined.

The Chairman informed the members present that, in accordance with a motion carried at the last meeting, he had communicated with Mr. Frank H. Hankins, Jr., of Franklin Lakes, in reply to Mr. Hankins' inquiry regarding the conveyance of lands for municipal facilities, informing Mr. Hankins that his inquiry would be given careful consideration before a definite answer could be provided, and that research on this matter was in progress.

In this connection, the Chairman reported that he had communicated with the National Institute of Municipal Law Officers (NIMLO) seeking information covering this matter, to which he received a reply which he read aloud to the members present. The letter from NIMLO mentioned three or four communities in California and one in Denver as practicing the procedure of the dedication of lands or fees in lieu thereof. (See material attached)

Mr. Chavooshian, who was also requested to seek information in regard to this matter, upon motion carried at the last meeting, reported that he had communicated with Mr. Dennis O'Harrow, Executive Director of the American Society of Planning Officials, requesting research from the Planning Advisory Service of ASPO, and that he had received a lengthy reply from Mr. O'Harrow and added material in which such States as Arkansas, New York and Washington, were mentioned as having authority to require dedication of land, and New York and Arkansas having authority to require fees in lieu of dedication. (See material attached)

After reading excerpts from the above-mentioned material, Mr. Chavooshian quoted from a California case, mentioned in Walter A. Blucher's PLANNING NOTES wherein park and school fees were held illegal. Comments in relation to this

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entire subject were also submitted by Mr. Chavooshian from members of the staff of his Bureau. (See material attached)

A lengthy discussion ensued in which the Chairman remarked that, after reviewing much of the legislation existing in other States, he felt that New Jersey had gone as far as most States; however, he remarked that some justifiable standards must be established concerning the question involved.

At this point the Vice-Chairman warned - in speaking of dedication of lands - that all lands, such as all small lots in a community would have to be taken into consideration, which could result in a hodgepodge, stating that people do not want playgrounds on small lots adjacent to their properties, and that an efficient administration of parks and recreation would not result.

The Chairman expressed an opinion that, unless a master plan has been adopted the problem could not be completely resolved at this time. With regard to master plans, it was suggested that in creating a master plan steps should be taken to establish municipal policies and to work out an over-all plan for the benefit of the community, and that ordinances should not be passed which require developers to contribute money for school purposes, parks, playgrounds, etc., which facilities may not, in the future or at all, be provided for in the immediate vicinity of the developer.

Questions arose as to the assessment for park areas, and the establishment of future plans for new areas, at which time it was mentioned that it might be easier to get the present Assessment Act amended.

It was suggested that parks, playgrounds, and school sites should be based on the same plan as sewers, roads and streets, which are subject to public general and local assessment.

In continuing the discussion on a master plan, the Chairman suggested

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that in drawing up a master plan relating to parks, for instance, as part of the master plan, to locate the area to be benefited by such a park; to have the master plan relating to parks adopted after Public Hearing by ordinance and then permit, as part of the planning process, the assessment either by land or fees in lieu of land for the acquisition of that site.

The question arose as to property owners in such an area, whether or not they would also be expected to contribute as well as the developers. It was the consensus that those benefiting from a park in that area should pay the the facility. It was also mentioned that the master plan relating to parks could serve as the basis for an ordinance, to acquire the site and make the assessments in accordance with that plan, either in advance to be paid by those who are already in the area, and to be paid later by a developer at the time he begins his work.

The Chairman made it known that, what the subdivider is most anxious to learn is that which is required of him, and stated that a master plan should be in effect in order that the subdivider can have a definite plan to follow.

The Chairman also remarked that enabling planning legislation does not now give powers unless a plan has been already established, publicly aired, and has been adopted.

The Chairman requested Mr. Chavooshian to obtain a copy of the Arkansas legislation, which Mr. Dennis O'Harrow mentioned in his letter to Mr. Chavooshian, for review and study by this Commission, and expressed his opinion that the members present crystallize what has been discussed at this meeting so that the topic can be resumed at the next meeting with a view to resolving the matter fully.

In summary, the Commission generally agreed that:

- 1) Reference to the master plan is a fundamental approach,

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- 2) A master plan should be prepared which includes a plan locating community facilities (including open spaces),
- 3) The area benefited by these community facilities should be designated on said plan,
- 4) the master plan must be adopted before authority can be given to require dedication or fees in lieu of dedication,
- 5) Adoption of the master plan, of course, will follow public hearing which will place everyone on notice concerning the public facilities and methods for acquisition,
- 6) All areas in the municipality, developed partially or completely or undeveloped, will be treated under similar provisions, and
- 7) These provisions must adequately account for the need; must not overtax the financial ability of the developer; they must be versatile enough to cover different kinds of situations and to offer alternative courses of action to the developer.

The question of the legality of requiring dedication without compensation was not fully resolved. The need for possible changes in local assessment procedures will be discussed in greater detail at future meetings depending upon the final disposition of the major question before the Commission.

The meeting was concluded at 4:00 p.m. The next meeting will be held on Wednesday, May 28, 1958, at the New Jersey State Bar Association, 229 West State Street, Trenton, New Jersey.

PLEASE NOTE CHANGE OF MEETING PLACE FOR THE MAY MEETING.

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April 28, 1958

Brice W. Rhyne, Associate General Counsel  
National Institute of Municipal Law Officers  
839 17th Street, N.W.  
Washington 6, D.C.

Dear Brice:

Thanks for your letter of April 10th together with a copy of the ordinances of the California communities as well as Denver so far as they relate to subdivision regulations, and particularly requirements of developers to donate land or cash for school and recreation facilities.

After writing you I also ran across the recent California case which you mentioned in the A.S.P.O. Bulletin, and which held that such fees were illegal. I am in agreement with the holding in that case as it sets forth my philosophy. We in New Jersey, however, have specific statutory authority by way of enabling legislation that permits municipalities as part of the planning subdivision process to require the developer to install all improvements which are directly related to the development, such as streets, storm sewers, sanitary sewers, water, curbs, sidewalks, trees, drainage rights of way, etc.; but the Planning Advisory Commission of the State of New Jersey, of which I am the Chairman, and the original committee for drafting our planning enabling legislation, of which I was also a member, never went so far as to permit municipalities by specific legislation to require developers to put up cash or donate land for general public projects.

I can see, as part of the planning process, that you may require the developer to provide recreational areas within his own development for use of the future owners of land within the development, and provided the development was large enough to warrant such a recreational area. I can not see, however, how a municipality can require a developer to donate land for general park or recreational purposes, which areas would be unrelated to the subdivision of his own property, nor can I see how a developer can be required to put up cash for either parks or recreational areas or school facilities.

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April 28, 1958

We recently had a group of developers (who got together with the town) enter into a trust arrangement with the town whereby they would build a school for the town under a voluntary agreement. If such arrangements can be worked out voluntarily, I suppose they are all right, but I can't see where the municipality under the police power could require the furnishing by individuals or developers of general public improvements.

The ordinances which you sent me, so far as they relate to improvements within the development, are similar to those for which we have specific statutory enabling legislation, but to the extent that such ordinances go beyond requiring improvements within the development, I'm wondering <sup>whether</sup> in those states there is any statutory enabling legislation which would authorize such an arrangement.

Is it possible for you to inquire of the municipal attorneys for these particular cities as to what statutory authority there is by the state level which would support previous of these ordinances. I am firmly convinced that the California Decision is correct and unless there is some set legislation beyond what we presently have and authorize such provisions in such ordinances, I am fearful that such ordinances will fall by the wayside as was the situation in California, and as Chairman of this Planning Commission, I would like to offer such legislation in New Jersey and would like to know if any of these other states where these practices follow have such enabling legislation.

We have many communities in our own state that have ordinances similar to the ones that you sent me, but there is absolutely no state law which permits such ordinances. I am trying to fill that gap.

Sincerely yours,

Fred G. Stickel, III

S:h

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LETTER TO A WISCONSIN CITY

SUBDIVISIONS - REQUIRING SUBDIVIDERS TO PAY MONEY OR  
DEDICATE LAND FOR SCHOOLS AND PARKS

I have your letter concerning subdivisions controls that require subdividers to pay \$250.00 per lot or per acre of industrial property to assure proper school and park facilities.

Our new book MUNICIPAL LAW at pages 421, 978-979 contains a comprehensive discussion of subdivision controls. We here at NIMLO feel that the case of Ayers v Los Angeles, 34 Cal. 2d 31, 207 P.2d 1, 11 A.L.R. 2d 503 (1949), would be sufficient to sustain such an enactment. Also it has been held that a municipality may require that park areas be dedicated to the public prior to plat approval. In re Lake Secor(?) Development Co., 141 Misc. 913, 252 N.Y.S. 809, discussed in our book MUNICIPAL LAW at page 421 and page 578.

In our 1957 Municipal Ordinance Review, we noted that two municipalities adopted subdivision regulations that I think would be of interest to you. At 10 NIMLO Municipal Ordinance Review 15 (April, 1957):

"SUBDIVISION REGULATION - SCHOOL FACILITIES CERTIFICATE: Franklin Wisconsin, requires that each owner or subdivider shall at the time of submitting a plat for approval offer proof from the school, or school district in which area the subdivision is to be located that adequate school facilities at grade school level are, or will be, available to provide for the educational needs of the potential number of families that will occupy the subdivision and if such proof is not given, the owner or subdivider shall pay a fee of \$500.00 per home to the school district to provide satisfactory arrangements for the schooling of the families that are to be located in the subdivision."

And at 10 NIMLO Municipal Ordinance Review 32 (August, 1957):

"SUBDIVISION CONTROL - FUND FOR SCHOOL FACILITIES: Park(?) Ridge, Illinois, adopts comprehensive regulation of subdividing that will penalize sales in violation thereof and requires subdividers to pay \$300.00 per lot for the purpose of providing reasonable school facilities."

See also NIMLO Municipal Ordinance Review 33 (September, 1957):

"ANNEXATION COSTS CHARGED TO ANNEXED AREA: Denver, Colorado, will require unincorporated areas desiring to be annexed to pay \$2,000.00 per area and to dedicate 8% of their land."

The Supreme Court of Puerto Rico has sustained a measure requiring subdividers to dedicate 5% of their land to park purposes. Pizarro v. Puerto Rico Board, (June 25, 1948).

However, a California District Court of Appeals has recently invalidated a subdivision ordinance requiring separate payments for school and park and for drainage facilities. Kelber v City of Upland, 318 p.2d 561. It appears that this decision invalidated the ordinance because of preempting state statutes and that statements concerning reasonableness of the charge under the particular facts involved are dicta.

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PLANNING ADVISORY SERVICE

AMERICAN SOCIETY OF PLANNING OFFICIALS  
1313 EAST 60TH STREET - CHICAGO 37, ILLINOIS

DENNIS O'HARROW, EXECUTIVE DIRECTOR

April 9, 1958

Mr. B. Budd Chavooshian  
Chief, Bureau of Planning  
Department of Conservation and  
Economic Development  
State House Annex  
Trenton 25, New Jersey

Dear Budd:

The problem of providing community facilities in new subdivisions is a tough one. State enabling legislation on subdivision is, in general, still following the old model act and only a very few of the acts provide for reservation or dedication of needed land; only two provide for a fee in lieu of dedication or a capital fund which is to be built up from such fees. However, our quick check of state legislation should not be taken as the last word because our file is not always up to date.

So far as we have been able to determine, only three states, Arkansas, New York and Washington, have provisions empowering cities to require dedication. The Arkansas law also provides for reservation and a fee in lieu of dedication and specifically mentions a fund which is limited to parks and playgrounds. Copies of opinions by state attorneys general in New York and Washington are enclosed; the New York opinion is favorable. In Washington, it seems that the state attorney general took an unfortunately conservative viewpoint; a clearer statement of legislative intent would probably be necessary to alter the attorney general's opinion. A court test might or might not turn up the same answer on the Washington act; this is hard to judge from our layman's view.

There is an increasing degree of impact on the subdivider from reservation to dedication. The difference, which courts would probably note, between dedication and fees in lieu of dedication is principally a matter of precedent; requirements for street dedications are well established. The boundaries of the police power are pushed out with each step from reservation to dedication to fees in lieu of dedication.

Mr. B. Budd Chavooshian

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Connecticut has an act which says "regulations shall provide . . . that in places deemed proper by the planning commission open spaces for parks and playgrounds shall be shown on the subdivision plan" but provides no "teeth." The Illinois act says subdivision regulations may include "reasonable requirements for public streets, alleys, ways for public service facilities, parks, playgrounds, and other public grounds." . . . . "No map or plat of any subdivision presented for record, . . . shall be entitled to record or shall be valid unless the subdivision shown thereon provides for streets, alleys, and public grounds in conformity with the applicable requirements of the official plan." Again, no "teeth." The possibility here is that the official plan or map concept might be expanded to provide at least for reservation of sites. The Indiana act says "In determining whether an application for approval shall be granted, the commission shall determine if the plat provides for; . . . . fair allocations of areas for streets, parks, schools, public and semi-public buildings, homes, utilities, business, and industry" and "as a condition of approval of a plat the commission may specify . . . provision for schools [and] provision for recreation facilities." It is unlikely that either the Illinois or Indiana acts would support provisions for dedications or fees; the Illinois Attorney General has delivered an opinion to the effect that communities can not require fees or dedications unless the state legislature authorizes them specifically to do so. A 1957 Montana act follows the Indiana act in general.

The Massachusetts act says. "Before the approval of a plat, the board may in proper cases require that the plat show a park or parks suitably located for playground or recreation purposes or for providing light and air. If such plat is approved, such park or parks shall be deemed to be dedicated to the public use." However, Massachusetts communities cannot require dedications or fees for any public purpose. As you know, your New Jersey Act provides for reservation. In 1953, the Ohio subdivision act was modified, eliminating a provision which limited requirements for dedication to dedication only for streets and ways. Not knowing the legislative history of the Ohio act, the question is left hanging as now there does not seem to be any provision for requiring dedication for any purpose.

In Information Report No. 46, which we are sending to you on loan, there is a discussion of what had been attempted up to January 1953 by local ordinances. As the review of state legislation indicates, most of the states do not clearly authorize local communities to require reservation, dedication, or fees in lieu of dedication which might be put in a capital fund. Therefore, as I mentioned in my letter on April 1, the local communities in almost all states have gone out on a limb when they attempt to require any of the above. Consequently, adverse decisions on this question can probably be expected until the

Mr. B. Budd Chavooshian

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April 9, 1958

state enabling acts are revised to authorize these requirements. A copy of the July 1956 Newsletter is enclosed which summarizes the problem on page 53. A New Jersey case is reported in the June 1957 Newsletter, page 55, and an important California case was reported in the latest (April 1958) Newsletter on page 31.

There has been a lot of loose thinking about schools and parks in new residential developments. Much of this thinking takes place under the label of "community facilities," a term which plays into the hands of the less public spirited homebuilders. Their logic is this: community facilities are things that everybody uses and should therefore pay for; parks and schools are community facilities; therefore, everybody (meaning the city or the school district) should pay for parks and schools.

Part of the fallacy lies in the definition of community. "Community" can be a general term that includes city or county. Maybe planners have helped promulgate this looseness by using "community" instead of the more awkward terms "city or county" or "local governmental unit." "Community" can also be synonymous with "neighborhood," as in the various unofficial community councils in Chicago.

The fact of the matter is that people in the older parts of the city have already paid for parks and schools. Are their children going to be attending the new school in the new suburban area? Are they going to be using the small, neighborhood park that should be provided in the new suburban area? I am certainly not implying that a public agency -- either a city or county or a school district -- should back down on its obligation to provide schools and parks. But I do think that some recognition should be given to (1) the residential builder's part in creating a need for new schools, and (2) the new house-owner's contribution to the school population.

At the minimum, reservation of land for parks, playgrounds, and schools should be provided for. If possible, dedication should also be provided for with a proviso for fees in lieu of dedication as a means of adding flexibility to the local ordinances and providing subdividers with a choice.

On the question of a capital facilities fund for streets, sidewalks, curbs, sewerage, storm drains, etc., the state acts generally follow the standard act very closely, providing for required dedication, required installation, and a performance bond. We have no knowledge of legislation or proposals for a capital fund for such improvements because, apparently, these facilities can be satisfactorily obtained through the usual enabling act and local ordinance provisions.

Sincerely,

/s/ Dennis  
Executive Director

DOH:Cbg

Enclosures on loan (6)

The Arkansas law on city planning

ASPO Newsletter, July 1956 (For your retention)

Information report No. 46 and supplement

New York attorney general opinion

Washington attorney general opinion

PLANNING BRIEF

School and Park Sites in  
New Subdivisions

With the boom in subdivision activity in the postwar period, the problem of how local public officials can acquire sufficient sites for schools and recreation areas to serve their growing populations has become more and more complex. In some areas they have been successful in persuading subdividers to provide them. In others they have been able to require, by local or state law, that subdividers (1) reserve land, which the school authorities then buy; (2) dedicate land outright; or (3) pay a fee in lieu of dedication of land. However, in some areas the constitutionality of such laws has been challenged and in some cases they have been ruled against.

A variety of legal and persuasive methods have recently been used to get necessary sites:

In New York State, town planning boards are operating under general authorization in the Town Law to require fees or dedications from subdividers for parks and playgrounds. The State Comptroller, asked for an opinion, said:

"A town planning board may, where special circumstances exist, require a subdivider to deposit a specific sum of money per acre . . . in separate playground and parks funds . . . in lieu of requiring the subdivider to set aside land area. Such situation must be a reasonable one . . ."

"In proper cases a town planning board may set aside land areas for park and playground areas so long as not unreasonable or capricious."

The Washington state legislature in 1955 passed an amendment that requires city, town, and county authorities to ". . . see that appropriate provision is made in plat or subdivision for streets and other public ways, parks, playgrounds, sites for schools and school grounds . . . ."

The effect of the law is questionable, however. The attorney general, asked for an opinion on whether "appropriate provision" means that a donation of property is required or whether the owner must merely hold the property available for purchase, replied that the law requires neither and that property for schools and school grounds may only be acquired by eminent domain.

The director of a local planning agency in the state, commenting on the effect of the law and the opinion, said that some schools had greater success in getting sites gratis, at nominal cost, or at least reserved, prior to the law and the opinion.

Supervisors of Multnomah County, Oregon, last year voted to require \$37.50 a lot from each subdivider for parks. Previously, when the Portland city planning commission had jurisdiction over subdivisions within a five-mile radius of the city, builders had to give the county 5 per cent of their land for parks. Local builders say they prefer the fee system.

The Louisville and Jefferson County Planning and Zoning Commission attempts to

get school officials and subdividers together if it believes a school site should be reserved, but the reservation is contingent upon purchase by the school board. A policy of requiring land developers to dedicate playground sites was abandoned in 1954 because the planning commission concluded that such dedications must conform to a master plan for schools, parks and recreation areas, which did not then exist. Subsequently a plan was prepared but has not yet been adopted. Meanwhile, subdividers are asked to provide space voluntarily.

In Southfield Township, Michigan, the township and school district boards in March voted to ask builders to contribute \$200 for each house they build, if they build two or more. The resolution does not force builders to pay the fee but one of the township trustees said "levying the tax outright is the next move after we have talked to them."

Nankin Township, Michigan, also faced with a school crisis, in March issued a warning that it may ban new building permits if subdividers did not "improve public relations." The planning commission then had petitions for nearly 10,000 new houses. Officials pointed out that one school had 121 children in two rooms and the basement and 600 were expected by fall. Residents have posted signs warning prospective buyers to stay away because of the school room shortage.

Similar warnings to prospective buyers were issued in the two Illinois suburban towns of Glenview and Northbrook, where school board members put signs near public schools saying: "School Crisis." "Our Schools are Filled." "Not Enough Money for New School Buildings." "School Taxes at Maximum Allowed."

On the negative side of the picture are some prohibitions against requiring dedications or fees:

Massachusetts communities cannot require them for any public purpose.

"No rule or regulation shall require, and no planning board shall impose, as a condition for the approval of a plan of a subdivision that any of the land within said subdivision be dedicated to the public use, or conveyed or released to the commonwealth or to the county, city or town in which the subdivision is located, for use as a public way, public park or playground, or for any other public purpose, without just compensation to the owner. . . ."

The Illinois attorney general, asked for an opinion on requirements in Park Ridge and Palatine that builders pay \$300 a lot to help build schools, said that communities may not enact ordinances requiring such fees or dedications unless they have authorization from the state legislature to do so.

Although many California cities have been requiring dedications or fees for park and recreation purposes (see May Newsletter, page 34), the Senate interim committee on subdivision development and planning in a 1955 report recommended that the subdivision map act ". . ." be amended to prohibit any governing body from requiring the dedication of sites or the payment of money in lieu of dedication for school sites, parks, or other than for improvements as defined in the Subdivision Map Act itself [related to street work, utilities, etc.]"

The committee criticized the "growing" practice of demanding cash payments and dedication of land as a condition to processing a subdivision map, and pointed out that this procedure had already been held unconstitutional by the attorney general in instances relating to counties.

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ASPO  
Newsletter  
June, 1957

School Site Dedicated. "Reserved" Land Was Dedicated. Dedication  
of School and Playground Site.

Point Pleasant Manor Building Co. v Brown,  
Superior Court of New Jersey, Appellate Division,  
Oct. 29, 1956, 126 A. 2d 219.

Plaintiffs were the owners of a tract of land that was subdivided and from which they sold some 160 houses. On the original plat, prepared in 1950, there was shown a two and one-quarter acre parcel of property with the description, "Reserved for Proposed School and Playground." A number of copies of the plat were made, lots were sold therefrom, and property purchasers were led to believe that the site shown would be a school site.

In 1953 another plat was made in which the block was marked P-3 and was cut into nine lots. Plaintiffs built five one-family houses on the block.

The lower court held that there had been a dedication to public use even though no dedication had been accepted. This was affirmed by the appellate division.

Plaintiffs contended that the term "reserved" does not indicate a present appropriation of land to a public use. The court said that if the word "reserved" stood by itself on the plat and that was all there was to establish the dedication, the argument would be in point.

Plaintiffs argued further that since the township had accepted taxes, it was estopped from claiming a dedication. In answer to this, the court said that the receipt of taxes on dedicated property does not create any such estoppel against the public authorities.

ASPO NEWSLETTER

PLANNING ( Subdivision: park and school fees held illegal.  
LEGAL NOTES ( Kelber v. City of Upland, District Court  
( of Appeal, California, Nov. 27, 1957,  
Walter H. Blucher ( 318 P. 2d 561.

Plaintiff owned about 15 acres of land within the city of Upland that he proposed to subdivide. As a condition to the approval of the subdivision plat, the city required that he pay \$30 for each lot in the subdivision, the money to go into a park and school site fund. Funds derived from such fees were to be used solely for the purpose of acquiring park and school sites in Upland. It was also required that in lieu of construction of drainage structures, he pay a fee of \$99.07 an acre, to go into a subdivision drainage fund.

Plaintiff paid \$1,440 to the park and school site fund and, in addition, \$1,500 for the subdivision drainage fund. He brought suit to recover these fees, since he is the owner of other land in Upland that he intends to subdivide, and wanted to restrain the city from collecting similar fees against this property.

The city contended that the subdivision map act does not fully occupy the field of subdivision control; that the city has the authority to adopt and enforce reasonable requirements that are not specifically set forth in the map act as a condition precedent to the approval of a subdivision map; and that the city has authority to require the payment of fees in lieu of a dedication where the payment of fees is reasonably related to the character of local and neighborhood planning. The City argued that the requirement of such contributions "is in line with the modern tendency to extend the earlier concept of the police power as confined to matters of public peace, safety, morals and health so as to include the broader field of general welfare . . . ."

On the other hand, plaintiff contended that the requirements are in conflict with the subdivision map act and impose conditions that are invalid. The court said that the principal question is whether these provisions merely supplement the requirements of the statute in a reasonable way or whether they materially change the requirements necessary for the approval of a map as fixed by the legislature.

The court was of the opinion that the subdivision map act was intended to clearly limit, by its definitions, the authority of a city to adopt local ordinances regulating subdivisions; and that it appears that the fee provisions of the city ordinances that provide the basis for the collection of the fees "are fund raising methods for the purpose of helping to meet the future needs of the entire city for park and school sites and drainage facilities, and that they are not reasonable requirements for the design and improvement of the subdivision itself . . . ."

Editor's Note: Suppose the subdivider had owned 150 acres rather than 15 acres and had platted 750 lots rather than 50 lots. School facilities for 1,000 children might be required. Can it be said that the general welfare specifically related to this subdivision is not involved? If authority does not now exist for requirements similar to those proposed by the ordinances here under consideration, it is this editor's forecast that the necessary legislation will be available in the near future and that such legislation will obtain court approval.

Providing Community Facilities in Subdivisions

State Planning Bureau Staff Comments

Some considerations

(1) Providing open spaces in subdivisions is a part of the whole problem of providing and maintaining community facilities but differs from some aspects of that broader problem in that it involves a land requirement. On the other hand, providing the land for parks and school sites is only a part of the over-all cost of building the schools, improving the parks, and maintaining them when completed. The fact of the land requirement may be more important than the over-all cost in that once the most suitable sites for the facility, or as is entirely possible all suitable sites, are developed in other uses it can become impossible to re-acquire them.

(2) The most obvious solution is for the community to acquire sites for such facilities in advance of development. This is apparently unworkable because of limited financial resources available to an undeveloped community.

(3) There are a number of different types of open spaces which are classified under the category of parks. Each of these can conceivably be financed in such a way that the burden of cost falls largely upon those most benefited. As parks which have a state-wide function are paid for by the State, so the theory can be applied to neighborhoods. By requiring dedication or fees in lieu of dedication, the cost at least of the land acquisition is borne by the purchasers of lots and homes in the vicinity of the park.

This theory is open to the same criticisms as the present taxation system which places the costs of community facilities on property within one political jurisdiction which may not include its related industrial and commercial land. The practice of separating residential development from industrial and commercial development will tend to place the entire burden of the cost of sites upon residential properties under a dedication or fee system.

(4) A comprehensive plan for neighborhood parks cannot reasonably spot those small parcels of land that should be reserved or dedicated within small individual subdivisions. Such small plots would probably be the result of ordinances requiring each subdivider to dedicate land on some "percentage" or "per dwelling unit" basis. Such small sites would, besides being the least desirable in the subdivision, be expensive to maintain and result in a costly local park system. It would seem desirable that small sites within a subdivision not be turned over to the municipality but, if provided, be maintained by the property owners. A fee system which allows the municipality to pool monies from each subdivider in order to purchase the most desirable sites both from the standpoint of natural beauty and economic size appears to be the most advantageous. Such a system would require that sites be selected in advance and included in a comprehensive plan and official map and regulations for reservation be used.

(5) In conclusion it would seem that since in order to acquire the required sites at all it must be done at the time of subdivision, that the community wide nature of park and school provision is preserved in that only the cost of the land itself is asked to be paid for directly by the home purchaser, and that not only are local schools and park of direct value to each neighborhood, but are becoming an increasingly important factor in the home purchaser's selection; the cost of providing the sites should be reasonably borne by the subdivider and transferred into the cost of the homes sold.

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