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**First Annual Report of the Advisory Planning
Commission to the Legislature and Governor
of the State of New Jersey**

February 1, 1957

*To His Excellency, Robert B. Meyner, Governor of
The State of New Jersey, and To The Senate and
General Assembly of The State of New Jersey.*

Pursuant to Joint Resolution No. 16 approved October 20, 1955 and particularly to Section 3 thereof, the Advisory Planning Commission, created thereunder, hereby respectfully submits its first annual report.

Organization and Meetings.

The necessary appointments to the Advisory Planning Commission were made by Governor Robert B. Meyner and the organization meeting of the Commission was held in the office of the Governor on April 10, 1956 at which time the officers of the Commission were duly elected.

During the course of the past nine months the Commission has met regularly once a month in Trenton and has held ten regular meetings. Various subcommittees of the Commission have in addition thereto held numerous meetings on various topics specifically assigned to them. All of the regular meetings of the Commission have been well and regularly attended by the various members appointed thereto and the discussions have been thorough and comprehensive,

Public Relations.

In addition to the foregoing meetings, the Commission made arrangements with the New Jersey State League of Municipalities at its annual conference held in Atlantic City, for facilities to hold four public sessions of the Advisory Planning Commission during the course of the League conference. These four sessions were open to the public and advance notice of these sessions was given.

Through the cooperation of the Department of Conservation and Economic Development, three news releases concerning the activities of the Advisory Planning Commission were given to all the newspapers of the state, which releases stressed the desires of the Commission to have the citizenry of New Jersey communicate their thoughts and ideas relating to the subject of local planning.

In furtherance of the idea that the Commission should have available as many expressions of as many persons and organizations as possible, each member of the Commission, representing a particular group, was asked to solicit through the medium of his group the opinions and ideas of the individual membership and communicate the results of those inquiries to the Commission.

In view of the fact that membership on the Commission represents a complete cross-section of the body politic of the citizenry of the State of New Jersey, the Commission feels that they have reached as many people as possible in an effort to ascertain the difficulties, if any, with the existing planning legislation. The Commission feels, however, that further efforts should be made to obtain further opinions and has a plan in mind at the present time for

public hearings throughout the state at various convenient places and to give wide advance publicity to such hearings.

Scope of Activities.

During the first nine months of its existence a considerable amount of time has been spent by the Commission as a whole, and the individual members, in studying the Acts in question so that they would be thoroughly familiar with the problems presented to the Commission in connection therewith.

The Legislature and Governor have wisely recognized that the complexities of the problems presented under the various planning acts are such that the same cannot be resolved in any given period of time and for that reason the legislation indicates that the Commission is to be a continuing one. It has been the experience of the Commission during the first nine months of existence that the problems and suggestions already received are of such a complex nature that with all the time spent we could only cover some of the most immediate and pressing issues. The Commission recognizes full well that its duty is to study both the municipal and county planning acts but time would not permit us to do more than to briefly touch upon the County Planning Act and most of our time was devoted to pressing problems relating to the Municipal Planning Act which will be hereinafter set forth. The Commission has solicited the assistance of all the County Planning Boards of the state for their experiences under the County Planning Act and suggestions for clarification, amendment, or supplement, but to date has not had as good a response as we hope to eventually obtain,

Zoning Study Needed.

The members of the Commission also early recognized that many of the problems presented in the planning field are inter-related with the zoning enabling legislation of the State but recognizing that our powers are limited by Joint Resolution No. 16 which does not touch upon the study of the zoning enabling legislation, we would like the Governor and the Legislature to give consideration to enlarging the scope of the power and function of the Commission to study and make recommendations as to the zoning enabling legislation as well.

It has also been early and continuously recognized by the Commission in the course of its deliberations that one of the most pressing problems is a need for continuous and further enlightenment of the general public, and specifically citizens of our municipalities who are actively participating in the planning program, as to the objects, purposes and limitations of sound planning. The Commission recognizes in this regard the outstanding job which the Bureau of Planning of the Department of Conservation and Economic Development has done along those lines to date with the limited funds at its disposal, but experience of the Commission members is such that we feel only the surface has been scratched and that considerably more can and must be done by way of informational bulletins, releases, model ordinances, surveys, studies and the like for the benefit of the uncompensated private citizens who are giving unstintingly of their time on municipal and county planning boards, if we are to further sound planning at the state, county and municipal levels for the benefit of the State as a whole.

Topics or Problems Discussed.

In the course of the Commission's ten meetings held during the past nine months, the following topics have been discussed at some length.

1. Should municipalities be legally required to adopt a Master Plan prior to the enactment of a general zoning ordinance?
2. Should a member of the Board of Education be required to sit as a member of the planning board?
3. To what extent should members of other non-elective municipal administrative boards and bodies be permitted to serve on a planning board?
4. How might the lack of cooperation of various municipal agencies, boards and bodies with the planning board be minimized or eliminated?
5. Should there be some means of controlling the timing of development through the medium of the planning act?
6. May building permit fees be legally imposed in excess of the cost of the administration of the building department?
7. To what degree direct or indirect interest ought to prevail in disqualifying planning board members from acting in that capacity?

8. What are the meanings and implications of tentative and preliminary approval?
9. Are there conflicts between the Housing Authorities Act, Redevelopment Agencies Act, Blighted Areas Act, and the Municipal Planning Act?
10. Is the language of Section 22 of the Municipal Planning Act broad enough to authorize municipalities to require the bonding company to make available sufficient funds during the course of completion where default has occurred, or to complete itself?
11. Does the Municipal Planning Act contemplate regulation of the use of land, buildings and structures in connection with the exercise of the power of subdivision control?
12. Is the Realty Improvement Sewerage and Facilities Act, Chapter 199 of the Laws of 1954, adequately enforced?
13. To what extent is the County Planning Act to municipal subdivisions?

In addition to the foregoing suggestions, individual letters received from various persons and organizations throughout the state were read and replies thereto made.

Specific Subjects Acted Upon.

In view of the fact that the foregoing topics cover such a wide range of interest and the solution of the same would necessitate considerably more time than was available to

the members of the Commission, it was early agreed that our attention would be directed to the following suggestions so that some recommendation could be made in connection therewith to the Legislature in the first annual report.

1. Tentative and preliminary approval.
2. Conflict of interest.
3. Membership of planning boards.
4. The misunderstanding of the subdivision regulations insofar as the control of use of land.
5. Possible conflict between the various redevelopment acts and the planning act.
6. Elimination of limitation on injunctive process now available to municipalities for violations.

Recommendations.

Your Commission respectfully recommends the following amendments or supplements to the Municipal Planning Act of 1953.

I. Membership and Conflict of Interest.

That R. S. 40:55-1.4 be amended to read as follows:

“The governing body may by ordinance create a planning board of not less than five nor more than nine members. The members shall consist of, and be divided into, for convenience in designating the manner of appointment, the four following classes:

Class I—Mayor.

Class II—one of the officials of the municipality to be appointed by the mayor.

Class III—a member of the governing body to be appointed by it.

Class IV—other citizens of the municipality to be appointed by the mayor.

When the board consists of less than seven members Class II shall be omitted. All members of the board shall serve without compensation, and the members of Class IV shall hold no *elective or salaried* municipal office, except that one of such members may be a member of the board of education. *One or more members of Class IV may also have membership on any other appointive municipal board or authority providing that not more than one member on any one such board shall also be a member of the Planning Board and further providing that the Office of Chairman of the Planning Board shall not be held by a member who is also Chairman of any other appointive municipal board or authority.* The terms of the members composing Classes I and III shall correspond to their respective official tenures. The term of the member composing Class II shall terminate with the term of the mayor appointing him. The term of one member of Class IV first appointed shall expire at the end of each year beginning at the end of the first year. Thereafter the term of each shall be the same number of years as there are members of Class IV on the board. If a vacancy in any class shall occur otherwise than by expiration of term, it shall be filled by appointment as above provided for the unexpired term. *{No member of the planning board shall be permitted to act on a matter in which he has: (a) a direct financial interest,*

(b) interest by relationship which arises out of marriage or blood, (c) a private interest which would result in direct and immediate personal or economic benefit. Members may, after a public hearing, be removed for inefficiency, neglect of duty, or malfeasance in office by the officer or body appointing them."

Comment:

The foregoing amendment of Section 4 of the Municipal Planning Act will permit the planning board to have the benefit as members thereof, members of other appointive municipal boards or authorities, such as parking authorities, sewerage authorities, housing authorities, whose functions may and are usually directly related to some portion of the planning function. It also, however, prohibits any such other member from serving as chairman of the planning board if such person is chairman of the other appointive body.

The suggested amendment further clarifies and lessens the severe limitations of the language of the present act which prohibits any person with a "direct or indirect, personal or financial interest" from acting on matters before the planning board, which provision has recently been interpreted by the courts in such strict fashion as to raise serious questions as to whether public spirited citizens with wide public interests could serve on such boards. Zell v. Roseland, 42 N. J. Super. 75.

The Commission feels that in the interest of getting public and community minded people to serve on planning boards that they should only be disqualified where there is direct financial interest or interest which arises out of direct economic or personal benefit.

II. Resolution of Conflict between Municipal Planning Act and Housing Authorities Law, Chapter 300, Redevelopment Agencies Law, Chapter 306, Blighted Areas Law, Chapter 187.

That R. S. 40:55-1.13 be supplemented by adding the following paragraphs after the first full paragraph of Section 1.13 as presently enacted.

“Whenever application is made by a department or agency of a municipality or any authority created thereby to any State or Federal agency for aid or assistance in the furtherance of any capital improvement, major construction project, or the development of plans therefor which may affect an existing or proposed master plan of the municipality or any part thereof or is an improvement or project specifically contained therein, or which, under the terms of any agreement with the State or Federal agency, requires the eventual approval by the Municipal Planning Board, the Planning Board shall be informed of the submittal of such application by the transmittal of a duplicate copy thereof at the time every such application is made.

Where a master plan or any part thereof affecting or likely to be affected by the planning and construction of such improvements or project is in existence, the Planning Board shall report within forty-five (45) days to the applying municipal agency, or authority, stating the extent of its interest therein, the relationship of the project to any master plan proposals, and if appropriate may render tentative approval of the project along with such other recommendations as it may consider worthy of the attention of the applying municipal agency or authority.”

It is further recommended that to conform to the suggested amendment immediately above that the Housing

Authorities Law, Chapter 300, The Redevelopment Agencies Law, Chapter 306 and the Blighted Areas Law, Chapter 187, be amended where appropriate to provide for a forty-five (45) day limit for the submission of reports by the planning board.

Comment:

The purpose of this recommended amendment is to make urban renewal an integrated function of the planning board. Therefore, it was deemed advisable to put planning boards on notice when an urban renewal project, or for that matter any public improvement project, which required federal or state funds was contemplated by any municipal agency, in order that the planning board would have an opportunity for review and coordination with its planning program. The further recommendation for amendment in the various urban renewal acts is to conform this time limit provision with the provision provided for in the Municipal Planning Act.

III. The Misunderstanding of the Subdivision Regulations insofar as the Control of Use of Land.

That to the first paragraph of R. S. 40:55-1.14 there be added the following language:

← “Provided however, that no provision of such subdivision ordinance shall regulate or attempt to regulate or control or attempt to control the use of land, buildings or structures, such power being exercisable only through a zoning ordinance.”

Comment:

It has come to the attention of the Commission that through misunderstanding of the true nature and extent

of the power to control subdivisions that planning boards are attempting to regulate the use of land, which under the law is limited to ordinances adopted in accordance with the zoning enabling legislation and the constitutional amendment. It was thought advisable, under such circumstances, that such misunderstanding be eliminated through clarification of the extent and scope of subdivision ordinances.

IV. Tentative and Preliminary Approval.

That the next to the last full paragraph of Section 18 of the Municipal Planning Act shall read as follows:

"The governing body or the planning board, as the case may be, may grant tentative approval to a plat showing new streets or roads or the resubdivision of land along a mapped street. This tentative approval shall confer upon the applicant the following rights for a three-year period from the date of the tentative approval:

(1) That the zoning use, sizes of lots, side-yard restrictions, location and width of streets including cartway, upon which tentative approval was granted will not be changed.

(2) That the general terms and conditions specifically agreed upon between the applicant and the governing body or the planning board upon which tentative approval was granted will not be changed. Any special provisions and all mutually accepted conditions of tentative approval shall be in conformity to all ordinances, regulations, Master Plan proposals and official maps on record and in force at the time of granting of approval and the terms of the agreement shall specify the extent to which they are binding upon the parties

thereof and such provisions and conditions may not thereafter be altered until after the expiration of three years without the consent of all parties thereto.

(3) That the said applicant may submit on or before the expiration date the whole or part of or parts of said plat for final approval."

That there will be added to the definitions in R. S. 40:55-1.2 the following definitions:

" 'Preliminary or Sketch Plans' means general sketches and proposals which may be submitted by a developer to a Planning Board for its information and unofficial review as a means of informing such Board of possible or potential development of an area at what may be an unspecified future date to serve as the means of establishing a better understanding of mutual problems and of exploring questions of policy with regard to master plan proposals in the area prior to the submittal of any specific and detailed plans for tentative approval."

" 'Tentative Approval' means the conferment of certain irrevocable rights upon a subdivider for a 3 year period prior to final approval, after specific elements of a subdivision plan have been agreed upon by the Planning Board and the subdivider, in order to preserve the integrity of the subdivision plan and to encourage large scale and long range comprehensive subdivision planning."

Comment:

One of the major areas of discussion and difficulty in the administration of the 1953 Municipal Planning Act seemed to be the confusion and misunderstanding of the nature and effect of tentative approval referred to in Section 18 of the Planning Act. This confusion was added to

by the use interchangeably of the word "preliminary" and the word "tentative" in reference to approval of subdivision. The original Commission which drafted the Municipal Planning Act of 1953 intended that preliminary and tentative approval be separate and distinct acts of a planning board. As a matter of fact the word "preliminary" is nowhere referred to in the Planning Act and crept into the planning picture in New Jersey as a result of a model subdivision ordinance drafted by the previous Commission with the assistance of the Bureau of Planning. In order to clarify this situation the Commission suggests the above amendment as a clearer expression of its original intent, and the Commission further suggests the addition of definitions which will clearly set forth the distinction between "preliminary" and "tentative" approval. If any further information is desired in regard to this suggestion reference to the Subcommittee's Report to the Planning Commission is suggested.

V. Elimination of Limitation on Injunctive Process Now Available to Municipalities for Violations.

The following language be eliminated from Section 23 of the Municipal Planning Act, R. S. 40:55 1.23:

"If the streets in the subdivision are not such that a structure on said land in the subdivision would meet the requirements for a building permit under section three of the Official Map and Building Permit Act (1953)."

Comment:

This suggestion of elimination of the above set forth language is made necessary in the interest of permitting

municipalities to have the benefit of injunctive relief and the invalidation of conveyances by civil action for violation of the planning act where such violations occur on already improved and accepted streets within the definition of "streets" set forth in the Act. It was pointed out to the Committee that with the language above set forth being in the Act, municipalities would not have the power to enjoin any violation or set aside any conveyance made in violation except on unimproved streets of the municipality. Somehow or other this limiting clause found its way into the Act, which was not the original intent of the former Commission. If, however, the Legislature should not see fit to eliminate the entire clause we wish to point out that reference in said language to "Section 3" is an error and should be "Section 10".

Conclusion.

In conclusion, the Commission wishes to indicate to the Governor and Legislature of the State of New Jersey, that based upon its limited study of the Municipal Planning Act of 1953 in the past nine months, it is of the opinion that the Act is basically a sound one. There are and will be further avenues of clarification and amendment that will have to be explored and further recommendations for amendment may need to be made. The Act, however, in itself is recognized throughout the country and in New Jersey as being a sound one and any wholesale revision or amendment of the same should be avoided. Many and most of the criticisms being voiced concerning the Municipal Planning Act of 1953 arise out of misinformation or misunderstanding or misinterpretation of the language of the Act.

Acknowledgments.

Your Commission wishes to express its appreciation to the Governor and Legislature, and particularly the Bureau of Planning of the Department of Conservation and Economic Development and its Commissioner and Director of the Division of Planning and Development, for the wholesale cooperation and assistance they have afforded the Commission during its first year of existence. We would particularly like to express our appreciation to Gladys Pettit who has faithfully and efficiently served the Commission as its recording secretary during our lengthy meetings.

Respectfully submitted,

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