

M I N U T E S

Of The

ADVISORY PLANNING COMMISSION

May 28, 1958

The members of the Advisory Planning Commission met in the offices of the New Jersey State Bar Association, 229 West State Street, Trenton, New Jersey. The Chairman, Mr. Fred G. Stickel, III, called the meeting to order at 1:45 p.m.

Those present were:

Messrs. Fred G. Stickel, III, Chairman
Herbert H. Smith, Vice-Chairman
H. Thomas Carr, Secretary

William A. Bloom
B. Budd Chavooshian
Alexander Feinberg
Alfred H. Fletcher
Robert H. Fust
William Holster
Philip A. McLaughlin

(Dr. Wilkens was unable to attend as he served on the program of the County Planners Association's meeting to discuss the present County Planning Legislation; an extension of his obligations as a member of the Advisory Planning Commission, which meeting was also held on May 28.)

Those absent were:

Messrs.
Louis Danzig
Denis W. Maloney
William A. Sutherland

At the opening of the meeting Mr. Robert H. Fust, representative of the New Jersey State League of Municipalities, provided each member present with the May issue of the NEW JERSEY MUNICIPALITIES (which magazine is published by the League each month with the exception of July, August and September), in which an article appears entitled: "Master Plans and School Boards," by Thomas P. Cook, Deputy Attorney General, Counsel to the New Jersey Department of

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Education. The Chairman urged those present to study the article, as it defines the legal relationship between planning boards and school boards and tends to point out that boards of education stand to gain substantial benefits, tangible and intangible, by working with the planning boards. (Those who were unable to be present at this meeting will be forwarded a copy of the May issue of this magazine.)

The Chairman announced that the chief order of business at this meeting was to have Mr. Alexander Feinberg report on his meeting with Governor Robert B. Meyner in connection with a letter written to the Governor by one John S. Wright, Executive Vice-President of the New Jersey (State) Home Builders Association, which Association is represented on this Commission by Mr. Alexander Feinberg, and to consider possible courses of action to be taken by this Commission in dealing with the matter.

Mr. Feinberg reported that he, personally, met with Governor Meyner who informed him that he was not taking the Commission to task in his thinking or any action by reason of Mr. Wright's letter. The Governor did remark, however, that when and if this Commission is ready for public hearings, it would be a wonderful idea. Mr. Feinberg further stated that the Governor was most reassuring and Mr. Feinberg felt that, for the moment, the Commission could disabuse their minds in this particular incident which he felt was unnecessary, unwarranted and unfortunate.

The Chairman, at this point, read the letter written to him by the Governor concerning this matter, and it was the Chairman's belief that it was an Executive Order, and he felt something should be done about the matter by the way of public hearings, etc., especially since the Chairman informed the Governor that the Commission would take action after it heard from Mr. Feinberg.

The Chairman, at this time, asked Mr. Feinberg if, as a representative

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of the New Jersey (State) Homebuilders Association, he were in accord with his letter to the Governor in this regard (Mr. Stickel read aloud his letter to the Governor), to which Mr. Feinberg replied that he was in accord with every word in that letter and supports every word written therein.

A discussion followed with regard to resolving this matter quickly and suggestions were offered such as holding public hearings and/or conferences with individuals registering complaints. In reference to the suggestion of sitting in on cases of complaints wherein the Commission might act as an arbitrator in an advisory capacity, the Vice-Chairman warned of the involvement arising from such a procedure such as:

- 1) the many meetings that the APC would have to hold other than the usual monthly meetings -
- 2) the difficulty of being able to get all the members of the APC to meet as a group on a given date -
- 3) the problem of time again - screening such cases, and -
- 4) if cases were not screened the Commission would find itself in a position of having to hear numerous inconsequential cases upon which the Commission could not possibly act -
- 5) the Commission would find itself getting into many disputes regarding these cases which would detract many ways from the character of the Commission as a non-partisan advisory group, and possibly distract the Commission from the intent of the statute which created it, regardless how well the Commission conducted itself -
- 6) the reaction of the municipalities involved toward the Advisory Planning Commission; whether or not the municipalities would consider their local problems as such to be settled by this Commission.

The Commission was in complete accord with the thinking of the Vice-Chairman and it was the consensus that before the Commission decides to proceed with this matter it should obtain definite facts of actual cases and names of the individuals and communities involved so that the Commission could evaluate the scope of the problem.

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Further suggestions were made with reference to working out some arrangement whereby several typical instances of complaints that the New Jersey (State) Home Builders Association received could be brought to the attention of this Commission by way of documentation. Mr. Holster, representative of the New Jersey Municipal Engineers Association, moved that Mr. Feinberg, representative of the New Jersey (State) Home Builders Association, request documentation on a few cases which seem to be general which might have something to do with improving the present legislation or showing the need for legislation, and then have this Commission review these cases.

It was moved, seconded and carried that documentation from the New Jersey (State) Home Builders Association, through its representative, Mr. Alexander Feinberg, should be requested of typical cases wherein it is felt that legislation or education might be improved.

At this point, the Chairman made the statement that it should be made known to all the agencies and/or organizations represented on this Commission that where complaints are made there should be documentation brought to the attention of the agencies and/or organizations' representatives serving on this Commission who, in turn, should bring the matter to the attention of this Commission; in other words, screen cases by the aforementioned procedure. (Which statement the Chairman requested be made part of these minutes.)

The Chairman also requested Mr. Feinberg to write a letter to Governor Meyner informing him of the action being taken by the Advisory Planning Commission, and to write to Mr. John S. Wright, of the New Jersey (State) Home Builders Association for documentation.

The Chairman informed the members present that he had talked with Assemblyman Martin Kesselhaut (D) from Essex County, who informed him that he has submitted the Commission's First Annual Report to the Legislative Drafting

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Commission. Each recommendation made in the First Annual Report is to be drafted as a separate bill so that if there were any substantial objections to some of the recommendations all would not be disregarded, as might be the case if all were included in one bill. The Chairman informed the Commission members present that the bills are being drafted for legislation this year so that they will be in time to be introduced for the January meeting.

The next order of business was that of the question posed by the Borough of Franklin Lakes with regard to subdivisions -- dedication of lands or fees in lieu thereof. The Chairman informed those present that he had communicated with the National Institute of Municipal Law Officers (NIMLO) and others requesting research in this connection, and reported that extensive investigation had been made on this subject, compiled and forwarded to him among which was an opinion of an Illinois judge who ruled that the imposing of fees for the dedication of land is illegal, and in this particular case over which the Illinois judge presided (which was read aloud in part by the Chairman), the judge ordered the municipality to reimburse the subdivider in the amount of \$118,000.00.

The Chairman remarked that he considers this opinion as being excellent, coming close to the conclusions of his aspects of this problem.

He further stated that many municipalities are imposing such fees as part of their subdivision process. The Chairman expressed grave concern about this procedure and remarked that even if legislation "spelled out" the requirement of such fees, such enabling legislation would conflict with the constitution in that it would take property without due process of law, etc., and suggested the need for amendment to the Local Improvement Act, which would permit the imposition of local assessments in advance of improvements.

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A lengthy discussion followed with regard to assessments, funds held in escrow for public facilities, the possibility of legislation which would legalize imposing fees, etc. Also, whether or not the question of providing lands, or fees in lieu thereof, for parks and schools could be considered on the same basis as that of the provision of sewers, etc., by the developer.

At this point, Mr. Feinberg expressed his desire to go on record stating that, although he appreciates the problems which are involved, he believes it to be discriminatory, inequitable, unfair and unconstitutional to expect a developer to contribute to the building of new schools; he stated further that he would not now or in the future support the idea.

After the above discussion, the Chairman expressed his opinion that he feels it to be the duty of this Commission to inform Mr. George Skillman, of the Division of Local Government, State Department of the Treasury, of the decision of the Illinois judge with regard to fees for the dedication of land so that he could, in turn, acquaint the municipalities with this situation. He suggested that Mr. Skillman be invited to attend the next monthly meeting of this Commission and pose the problem to him at that time. It was then moved, seconded and carried that Mr. George Skillman be invited to the next meeting. To fully inform Mr. Skillman of this situation, it was suggested that a copy of the Opinion of the Illinois judge be forwarded to him prior to the next meeting so that he could familiarize himself with the illegality of the imposition of these fees so that at the next meeting he might be prepared to offer suggestions by the way of informing municipalities of the financial embarrassment in which they could be placed if they practiced the procedure of imposing such fees. The Chairman is to write to Mr. Skillman in this connection.

In summarizing what had been discussed at this meeting, the Chairman

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stated that it was the consensus that this Commission can not go beyond the present enabling legislation which provides that the municipality may require a subdivider to set aside lands for parks, schools, etc., in accordance with the master plan or official map and reserved for one year within which time the municipality must acquire it by the way of condemnation, etc. The Chairman further stated that this Commission can not amend the local plan without running into a constitutional problem, requiring dedication, with no compensation, of subdivision or some fee in lieu thereof, and that it is improper to expect the Planning Act to accomplish something for which it is not intended; namely, raising revenue which is a tax policy matter.

The meeting adjourned at 4:10 p.m. The next meeting will be held on Wednesday, June 25, 1958, at 520 East State Street, Trenton, New Jersey, at 1:30 p.m.

The Chairman announced that there will be no meetings during July and August of this year.