

M I N U T E S

Of The

ADVISORY PLANNING COMMISSION

June 25, 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 2:00 p.m.

The members present were:

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

William A. Bloom  
B. Budd Chavooshian  
Philip A. McLaughlin

Those absent were:

Messrs. Louis Danzig  
Alexander Feinberg  
Alfred H. Fletcher  
Robert H. Fust  
William Holster  
Denis W. Maloney  
William A. Sutherland  
Edward B. Wilkens

Mr. George Skillman, Director of the Division of Local Government, State Department of the Treasury, was also in attendance.

The Chairman introduced the members present to Mr. George Skillman. Mr. Skillman had been invited to attend this meeting to discuss the practice by some municipalities of requiring dedication of land, by subdividers, or fees in lieu thereof for community facilities, and the problem posed by such procedure.

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The Chairman suggested that the regular business be dispensed with at this time in order to enlighten Mr. Skillman of the hazards involved if such practices by the municipalities continue.

In this connection the Chairman read aloud to Mr. Skillman a letter which this Commission had received from the Borough of Franklin Lakes with regard to subdivisions in the Borough, inquiring about the dedication of lands or fees in lieu thereof for community facilities. (which letter is under consideration by this Commission.)

In reference thereto, the Chairman informed Mr. Skillman that Mr. Chavooshian and he had written to the various State and National Planning Agencies defining the problem and requesting research therefor. The material which was received by Mr. Stickel and Mr. Chavooshian was discussed in part with Mr. Skillman, pointing out one case in particular where an Illinois judge held that the practice of imposing fees is illegal and ordered the municipality which was involved to reimburse the subdivider in the amount of \$118,000.00.

After acquainting Mr. Skillman with the danger of such practice by municipalities the Chairman inquired of Mr. Skillman what he believed to be the best way of notifying the municipalities of the financial problem in which they might be placed were such methods to be continued.

At this time the Vice-Chairman pointed out that, if the many municipalities that are charging fees were called upon to reimburse the subdivider, retroactively, (such as the case in Illinois) it would involve millions of dollars. He stated further that although the agreement between the subdivider and the municipality might have been 'voluntary' on the part of the subdivider, it might not hold up in court.

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The Chairman remarked at this time that he believed it to be the duty of this Commission to inform the Division of Local Government of the dangerous results which might accrue and suggested that the Division of Local Government so inform the municipalities.

Mr. Skillman stated that he had heard of this imposition of fees practiced in some municipalities by the way of 'voluntary' or 'gentlemen's' agreement, but that he was not completely aware of just how many municipalities were practicing this procedure and inquired of the Chairman if legislation could be drawn which would be general enough or sufficiently broad enough to cover this situation by the way of regulatory or revenue legislation. The Chairman replied that this would involve a constitutional question, and wondered how this could be applied uniformly. The Chairman stated that amending the Local Assessment Act to permit the levying of assessments before the improvements were actually started could be one solution, but stated that a plan must have been formulated as to which area is to be benefited. He also questioned the policy of collecting in advance for a 'general' improvement pointing out that the developer who pays a fee for community facilities places the burden on the buyer, who pays again if taxed for such facilities.

At this time Mr. Chavooshian mentioned a California case wherein it was held that a municipality cannot require any money from a subdivider other than that which is necessary for the installation of facilities within his own subdivision, such as roads, streets, sewerage, etc.

A lengthy discussion followed as to how fees for schools, parks and other necessary community facilities could be acquired. The question arose as to whether or not some of the fees collected from the various licenses, building permits, occupancy fees, parking authorities, etc. could be used for capital improvements. Mr. Skillman informed those

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present that much of the revenue collected by the municipalities by the above-mentioned means was turned over to the Board of Education. The Chairman inquired at this time if there might be a possibility of getting these moneys back from the Board of Education should the municipality find itself in need at some later date. Mr. Skillman informed the members of this Commission that he believed the moneys would be frozen.

After the above discussion, the Chairman expressed his belief that it might be wise, before proceeding in this matter, to get an opinion from the Attorney General's office on the legality of the imposition of fees by the way of subdivision ordinances or otherwise, in order to have some definite standard set up. Mr. Skillman stated that he would talk to Mr. Thomas P. Cook, Deputy Attorney General, and request an opinion.

The Chairman inquired of Mr. Skillman whether or not the imposition of fees by planning boards, by the way of ordinances, would be indicated on the budget, to which Mr. Skillman replied in the affirmative, stating that it would be noted under the heading of Fees and Permits; however, there would be no breakdown.

In this connection Mr. Skillman remarked that the Municipal Accountants should be informed of this situation, who, in turn, he thought, could so advise the municipalities. Mr. Skillman stated that he would draft a letter to the Municipal Accountants - copy of which to be forwarded to the Chairman for accuracy in point before sending - informing them of the danger involved by the imposition of such fees and inquiring therein if such procedure is carried out in their respective municipalities. At this point Mr. Chavooshian informed Mr. Skillman that he would check the files of his Bureau and would forward him a list of those Municipalities which were imposing fees by ordinance. Mr. Skillman stated that there are no local laws "spelling out" how to use

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these moneys; however, he stated further that he was very much concerned about the possible manipulation of funds and that the municipalities' breakdown of fees ought to be done by way of an ordinance.

The Chairman stated that under the present Planning Act it is permitted to charge fees for the processing of subdivision layouts, to which statement the Vice-Chairman remarked that the fee must be a reasonable one.

At this time the Chairman handed Mr. Skillman the June issue of Public Health News, a publication issued monthly by the State Department of Health, in which an article appears (p. 185) on Berkeley Heights', Sanitary Sewerage Facilities and the proposed plan for financing the program. The Chairman believed this to be of interest in connection with the imposition of fees and suggested that copies of this article be requested from the Health Department so that they may be forwarded to the entire membership of this Commission.

Upon completion of review and discussion of the imposition of fees at this session Mr. Skillman retired from this meeting at 3:10 p.m.

The Chairman then discussed the regular business of the Advisory Planning Commission informing the members present that he had been in touch with Assemblyman Martin Kesselhaut (D) from Essex County, who informed him that the Bills (recommendations mentioned in the First Annual Report) had been introduced at the last session of the Legislature and are being printed; copies of which will be forwarded to this Commission -- no action as yet; to be discussed prior to the next session of the Legislature.

The Chairman also informed the Commission that he had received a letter from Mr. Robert H. Fust regarding the second article on planning by Thomas F. Cook, Deputy Attorney General, Counsel to the New Jersey Department of Education, which will appear in this month's issue of

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NEW JERSEY MUNICIPALITIES; a copy is to be forwarded to each member of this Commission and also members of planning boards and school boards, which raised the question of the money involved for reprinting this article. It was suggested at this time that Mr. Fust be requested to supply the number of copies needed for which the League will be reimbursed at a later date.

In connection with finances for reprints of material, etc. necessary for each member of this Commission to have in his possession, and also material which should be brought to the attention of planning and zoning boards, the Chairman inquired as to ways and means of getting reprints of the Kelber Case (the California subdivision case mentioned above) or copies typed in sufficient number to be distributed among the members of this Commission, it was suggested that the Chairman should get in touch with Senator Stout regarding funds for this and other expenses which shall be incurred. Mr. Chavooshian reported at this time that the members of his staff were in the process of reviewing the Kelber Case after which a digest will be made and submitted to each member of the AFC.

The revision of the County Planning Act was then discussed, at which time Mr. Chavooshian reported that he had met with the members of the County Planners Association at their conference in Atlantic City and reviewed the Association's Preliminary Draft of the County Planning Act. Mr. Chavooshian informed the Commission that after the review it was decided by the County Planners Association that it would be further revised by their administrative committee in light of the comments made at the conference in Atlantic City, after which a meeting will be held with Dr. Wilkens and his subcommittee of this Commission. After that meeting the draft will be finalized by the Planners Association and submitted to this Commission in September. Following the review and approval by this Commission, the revision will be set up for a public hearing.

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The Vice-Chairman remarked that he believed the Preliminary Draft was well organized and appeared to be in accordance with what had been discussed previously. It was mentioned that Mr. George M. Rogers, Executive Secretary of the Burlington County Planning Board had the Burlington County Solicitor's office review it and that the report was, that the attorney was well satisfied with the draft.

In speaking of the various legislation received from other States, the Chairman remarked that he believed, after studying and reviewing such legislation, that New Jersey has one of the best Planning Acts in the country, which opinion has also been expressed by a number of persons in other States. The Chairman further stated that with all the material which has been received from other States, nothing has been found to be an improvement over New Jersey's planning legislation.

At the close of the meeting the Chairman announced that Mr. Feinberg informed him that he had sent a letter to the Governor informing him of the action taken by the Advisory Planning Commission in regard to the complaint by the New Jersey (State) Home Builders Association and that a copy of this letter will be forwarded to the Commission.

The Commission was reminded that the cut-off date for material to be included in the next Annual Report will be in August. Public Hearings, if necessary, are to be held in September.

There will be no meetings during the months of July and August.  
The next regular monthly meeting of this Commission will be held on  
Wednesday, September 24, 1958, at 1:30 p.m. in the conference room at  
520 East State Street, Trenton, New Jersey.