P U B L I C H E A R I N G

ON

SECOND TENTATIVE DRAFT
TITLE 40A. MUNICIPALITIES AND COUNTIES
CHAPTER 7. LOCAL LAND USE LAW
(ZONING AND PLANNING LAW)

Before

COUNTY AND MUNICIPAL LAW REVISION COMMISSION

Held:
Senate Chamber
State House
Trenton, New Jersey
July 13, 1961

MEMBERS OF COMMISSION PRESENT:

Fred G. Stickel, III (Presiding)
Senator Richard R. Stout (Chairman of Commission)
Senator Joseph Wm. Cowgill
Assemblyman Vincent R. Panaro

Also:

Clive Cummis (Counsel to the Commission)
Leonard Etz (Assistant Counsel)

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I N D E X

FRED G. STICKEL, III (Acting Chairman): This, as you all know, is the second hearing on the Municipal Planning and Zoning Law, the tentative draft prepared by the Sub-Committee for presentation ultimately to the Law Revision Commission.

I am Fred Stickel, III, Secretary of the Commission and I am also Chairman of the Sub-Committee on this revision of the Planning and Zoning Law.

I regret to announce that Senator Stout, Senator Cowgill, and Assemblyman Panaro, who were here a few minutes ago, had to leave. They are dedicating a Labor Building. They will be back shortly because they do want to participate in this proceeding. But any of you who speak before they return - we are having a transcript made of the entire hearing, as we did the previous hearing, and copies of these transcripts will be made available to every member of the Commission even though they are not present. So whatever you have to say will reach the members of the Commission.

I think we ought to set the ground rules a little bit. We have a list up here of those who have asked to be heard. If there is anyone who has come in who wants to be heard whose name isn't on this list, we would appreciate your coming up and giving your name and whom you represent to Mr. Cummis, Counsel for the Commission.

Now I don't want to limit anybody; however, the last hearing went all day and I would like you to confine yourselves to 15 minutes, if you possibly can. If you have a prepared statement and would rather submit the prepared statement than give it orally, you may do so and it will be incorporated in

the transcript of the hearing.

The first person I would like to call on is Mr. Gaffney from Petroleum Industries. Give your full name and who you represent, please.

WILLIAM J. GAFFNEY: My name is William J. Gaffney, Executive Secretary of the New Jersey Petroleum Industries Committee which includes in its membership oil companies, large and small, engaged in the sale and distribution of products to meet the petroleum requirements of the residents of New Jersey, including home heating, industrial and commercial needs as well as motor vehicle needs through service stations.

We have submitted to the Law Revision Commission on June 30, 1961, our memorandum letter setting forth our detailed comments and recommendations on the Second Tentative Draft which is before us. Rather than take the time of this Commission to review all of the comments of our letter, I would like to restate at this hearing our position on several of these matters which we believe to be of particular importance, although we consider all the matters set forth in our letter to be important.

Section 40A:7-35 permits a municipality to deny a building permit when the proposed structure is to be erected in the bed of a mapped street. Since this prohibition continues indefinitely so long as the property remains in the bed of a mapped street, real harm may be done to a property owner by freezing his property for many years. As a matter of practice, properties have been so mapped for long periods

of time without any condemnation proceedings instituted therefor. Accordingly, we suggest that the prohibition should be limited to a definite period of time, such as one year, commencing with the date when the property is first mapped. The burden then imposed upon the property would not be as harsh as a prohibition of indefinite duration as now permitted in this Section.

We, again, recommend that there be no change in the present procedure of appeals to the Superior Court from decisions of the planning board or board of adjustment. Sections 40A:7-50 through 40A:7-53 deal with the establishment and procedures of a county zoning board of appeals as a new administrative agency. The principal questions usually presented in such appeals are questions of law and we submit that a court is the proper forum to decide those issues. Also, a court will probably be more independent from possible political influence than an appointed board. Moreover, the proposed provisions would not require the zoning board of appeals to observe established rules of evidence. Instead of relieving the courts of any work load, these provisions seem to merely add a new administrative agency to which appeals must be brought before judicial review can be sought.

Section 40A:7-54 a. prohibits the enlargement or extension of a non-conforming activity use or structure unless permitted by ordinance. Although the strictness of this prohibition is somewhat relieved by the opportunity to apply for a variance in accordance with Section 40A:7-47, we submit that where there is a request for renewal of a variance or permit previously granted, that provision should be made for such renewal or extension in accordance with the standards in effect when the variance or permit was originally granted. Also, an exception should

be made to allow for an application to alter, extend, expand, restrict or modernize to meet changing conditions.

Section 40A:7-55 would prevent a property owner from resuming a non-conforming use after the use had been suspended for more than twelve months due to causes beyond the owner's control. We are particularly concerned about major road and highway changes which often last over a long period of time and which require discontinuance of an existing business or other use. On page 10 of our letter of March 14, 1961, commenting upon this same provision as it appeared in the first tentative draft, we suggested language for a saving clause which would prevent hardship in such cases. We recommend that you consider including such a clause in this Section 40A:7-55.

Section 40A:7-56 provides for the elimination of certain non-conforming uses in any residential district. We find this provision a considerable improvement over the provisions set forth in the first tentative draft in that the limitations now imposed will substantially reduce the number of hardship instances which we believe could have resulted under the first draft. We do object, however, on principle to the concept of amortization of non-conforming uses as involving confiscation of property without compensation.

Subparagraph b. of Section 40A:7-56 provides for the elimination of a non-conforming sign or billboard. It is not clear, but we assume that this was not intended to eliminate an appropriate business sign used with a lawful business use. We suggest, therefore, that after the words "sign or billboard" the following be added, "advertising a product, service or business other than that served at the premises."

CLIVE S. CUMMIS: Mr. Gaffney, could I just interrupt you for a moment. You are aware, I take it, in terms of your comments on the elimination of the non-conforming use - what you charge to be confiscation as a matter of principle - that the language contained in this draft is the language which has been carried over from a reported case in the State of New York, which State upheld the validity of this provision as to its constitutionality.

MR. GAFFNEY: I will have to refer to my Attorney for an answer to that question.

BENJAMIN MOSHER: That case only dealt with junk yards, as I recall. The Buffalo case?

MR. CUMMIS: Yes.

MR. MOSHER: That dealt with junk yards and it was quite a split vote, as well.

MR. GAFFNEY: Mr. Mosher, Benjamin Mosher, is Attorney for the Cities Service Oil Company and is acting today in the capacity of Counsel to the Petroleum Industries Committee at these hearings.

MR. STICKEL: You also appreciate - I think Mr. Mosher does - that present law eliminates all non-conforming uses under all circumstances.

MR. GAFFNEY: That's right.

MR. MOSHER: Well our position on this, although we still think it's wrong in principle we have no objection to the way this provision has been reworded provided that the sign sub-division is confined to advertizing signs, so as not

to apply to business signs.

MR. STICKEL: Actually the language of this revision, relating to non-conforming uses, is much more liberal than the present law.

MR. MOSHER: Well, what's the present law?

MR. STICKEL: That you can extend or enlarge a non-conforming use under any circumstances.

MR. MOSHER: You are referring to another aspect now; you're not dealing with amortization.

MR. STICKEL: No, I'm not dealing with amortization.

MR. MOSHER: Oh, I thought you were referring to amortization.

MR. STICKEL: No. I am dealing with your objection to --

MR. MOSHER: Well, our point is that there is no provision whereby you can apply for permission to reconstruct or modernize to meet changing conditions.

MR. STICKEL: You can. You can do it by grant.

MR. MOSHER: Only if you show hardship. Only in the case of hardship.

MR. STICKEL: Well you can't do it today.

MR. MOSHER: In New Jersey you can't do it.

MR. STICKEL: Yes.

MR. MOSHER: Well, I'm not familiar with that aspect.

MR. STICKEL: What we're doing here is giving the municipality the power to provide by ordinance.

MR. MOSHER: Well, New York City is just considering and just passed a new zoning ordinance which will take effect next year, and they permit you to come in to reconstruct.

MR. STICKEL: Only in the event of destruction.

MR. MOSHER: Oh, I think it goes beyond that. This would be within discretion of the Board of Adjustment. It doesn't necessarily mean it would have to be granted. This would be within the discretion of the Board whether to grant or not to grant depending on --

MR. STICKEL: Well, that still can be done by the municipality providing for it.

MR. MOSHER: Only if you show hardship.

MR. STICKEL: No. They can provide for it in their own ordinance.

MR. MOSHER: Well, I don't think -- you don't have an enabling act or a covering act.

MR. STICKEL: Well, it says" "A nonconforming activity, use or structure, unless permitted by ordinance, may not." They could provide in their ordinance that a nonconforming use could be expanded.

MR. MOSHER: Well, we thought it would be better to have a clear provision, clearly stated that an ordinance may permit enlargements, reconstruction, etc., upon application to the Board of Adjustment.

MR. STICKEL: Well, that's what this language says.

MR. MOSHER: It doesn't say that clearly - I beg your pardon.

MR. STICKEL: All right, go ahead.

MR. GAFFNEY: Well, that concludes our statement and, as stated at the outset, we have submitted a letter and we hope that the Commission will have an opportunity to review

it in detail.

MR. CUMMIS: We have your letter and statement, Mr. Gaffney, and thank you for it.

MR. STICKEL: Mr. Erber from the Regional Plan Association.

ERNEST ERBER: My name is Ernest Erber. I am Areas Director for the Regional Plan Association and serve as staff to its New Jersey Committee with offices at 605 Broad Street, Newark, New Jersey.

Mr. C. McKim Norton, the Executive Vice President of the Regional Plan Association, regrets that he is not able to appear here on behalf of the Association. Mr. Norton, who also serves on your Planning and Advisory Committee, is also on the National Capital Planning Commission and is in Washington today attending a meeting of that body.

I was privileged to appear before your Commission at its public hearing on March 22 to make some comments and observations on the first draft of the proposed revision of Title 40. Subsequent to that hearing the staff of the Regional Plan Association prepared some suggested amendments which I filed with your Commission for its consideration under date of May 31, 1961. These suggested amendments were designed to strengthen the powers of municipalities (1) in planning for improved community appearance; and (2) in planning for the preservation of open space.

I wish to submit herewith a slightly revised and corrected version of those suggested amendments. (See p. 101)

The staff of the Regional Plan Association feels that the addition of more specific powers in the area of the preservation and acquisition of open space would be a helpful addition. The specific proposals we would like to see incorporated might be contained by implication under the broad purposes and objectives already written into the statute. However, the incorporation of these or similar explicit provisions would do much to define clearly what the legislature has in mind.

The proposals we suggest would grant specific authority to municipalities to acquire less than fee interests in real property.

Many states have already enacted legislation permitting municipalities to purchase interests and rights in real property. Such legislation declares that certain open spaces "constitute important physical, social, esthetic and economic assets to existing or impending urban metropolitan development". It then goes on to say that it is in the public interest to expend or advance public funds for the purchase, lease or otherwise, of the fee or lesser interest or right in real property. Chap. 12, Division 7 of Title I of the California Govt. Code, Secs. 6950-51 and New York Genl. Municipal Law Sec. 247 are outstanding examples of such legislation, usually cited, permitting control of open space for public purposes with less than outright purchase.

The integration of community appearance in the development plan and in the zoning ordinance is sound, both in theory and in practice. Community appearance has never actually been excluded from planning and zoning in the past. What was done was to bury it under ordinance language of the sort that referred to "Harmonious and orderly development". What else were we talking about but improved community appearance? In the light of the imposing list of cases that validate community appearance as a purpose of zoning we can now be explicit rather than implicit in our language. The U.S. Supreme Court in the famous urban renewal case in Washington, D. C. Berman vs. Parker (1954)/used language that left no doubt on this score. "The concept of the public welfare is broad and inclusive...The values it represents are spiritual as well as physical, esthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled".

Among the purposes of the development plan, therefore, should be the creation of a community which, among other things, is pleasing to the eye. It is our opinion that this can be achieved more successfully when community appearance is an integral part of the development plan, rather than made the function of a separate civic design plan. It is important to preserve an historic square, a scenic vista or a tree-lined boulevard. But if we do no more than this we shall do to our communities what is done so often to basically ugly buildings when a

few decorative details are pasted on the facade as an afterthought.

Community appearance proposals contained in the development plan should have the same relationship to community appearance regulations contained in the zoning ordinance as is the case with land use, densities, etc.; i.e. the development plan or the general plan or the master plan, however it shall be known finally, sets forth the general concept and the broad proposal, while the zoning ordinance spells out the specific criteria and the standards that must be observed by property owners if the broad proposal is to be realized. Our suggested amendments, which I have submitted to your Commission, provide for such a relationship of planning to zoning for community appearance.

Since all zoning regulations are subject to variance procedure by Boards of Adjustment and since the latter are often lax in safeguarding community appearance, we are proposing a special committee to advise the Board of Adjustment on variances involving community appearance.

This special committee which we provide for in our suggested amendments would be an advisory committee to the Board of Adjustment in each municipality which enacted any part of its master plan or zoning ordinance to control community appearance.

It is hoped that governing bodies will bear in mind the special area of concern of such a community appearance advisory committee and appoint to it persons with special

sensitivity to aesthetic concepts and with training and experience in fields requiring the exercise of design judgment. Though its power is solely advisory, such a committee can perform an important function in (1) making the Board of Adjustment aware of the possible consequences to community appearance which are present in the granting of a variance which involved community appearance regulations and (2) in crystalizing public opinion on such an issue.

Our suggested amendments are not innovations, neither in the theory and practice of planning nor in the law of planning and zoning. The Regional Plan Association, together with many other organizations and individuals, has in recent years devoted a considerable effort to restore community appearance to the important place it once occupied in the practice of planning in this country. We should recall, in this connection, that Col. L'Enfant, in designing the national capital of our country, successfully combined function with beauty. The revival of interest in city planning which swept the country early in this century featured "The City Beautiful" as its leading motto.

Somewhere in the development of our cities since then, we lost sight of this important ingredient in city planning. Duringthe booming 1920's we were concerned mainly with planning adequate utility installations and sewage disposal occupied a central place in the master plan. During the depressed 1930's we discovered the relevance of economics to urban development and we began to concentrate on the fiscal aspects of the plan.

Since World War II we have been planning to preserve our communities from the automobile and arterial routes and off-street parking lots became central considerations. If planning is the answer to the wastefulness of haphazard development, it must be comprehensive in scope and must include provisions for all aspects of the physical form of the community, including our earlier concern for community appearance.

The growing concern for the improved appearance of our communities has caused a number of states to enact legislation specifically authorizing municipalities to exercise planning powers to preserve and extend urban development which enhances community appearance. In our neighboring state of New York, there was enacted in 1956 an amendment to the General City Law, Chapter 216 N.Y. State Laws, drafted by Albert Bard, venerable champion of civic beauty, which reads as follows:

> "...To provide, for places, buildings, structures, works of art, and other objects having a special character or special historical or esthetic interest or value, special conditions or regulations for their protection, enhancement, perpetuation or use, which may include appropriate and reasonable control of the use or appearance of neighboring private property within public view, or both. In any such instance such measures, if adopted in the exercise of the police power, shall be reasonable

and appropriate to the purpose, or if constituting a taking of private property shall provide for due compensation, which may include the limitation or remission of taxes".

Those of us in New Jersey who are concerned with community appearance have been inspired anew by the addition of an eloquent and powerful voice to our cause -- that of Dr. Mason Gross, President of Rutgers -- The State University and a member of the Board of Directors of the Regional Plan Association. I wish to read into the record several pertinent paragraphs from Dr. Gross' recent commencement address at Rutgers; which is very much in point with the community appearance sections of the legislation now being considered. Dr. Gross, I should say by way of explanation, prefaced these paragraphs with the reference to the need of Rutgers being the cultural conscience of the State, and emphasizing, not only for the students but the citizens at large, the importance of the cultural and scenic values that must be created if we are to be a mature community, speaking here of the community of the State of New Jersey.

"But I feel that in my suggested role as cultural conscience we have a real responsibility to be the leaders to declaring open war on one aspect of our society, namely ugliness. Although not many of the people who merely travel along the corridor of the State realize it, New Jersey is richly endowed with natural beauty - the hills of Sussex County, the varied landscape of the Delaware Valley, the rich plains of southern

> Middlesex, the inland waterways, the glorious fruit-trees in the spring, and so many other sources of enhantment. But too often it is a beauty which we are doing, it would seem, everything in our power to spoil, by imposing one form or another of hideous ugliness upon it. We are ruining our landscapes as we have already ruined our cities, by permitting the destructive blight of ugliness to spread without check. The creeping, crawling hideousness of so many of the newer housing developments is justified on the ground that they get people out of the even more hideous city slums, as if they were not our deliberate creation too. The nauseous dumps, the automobile graveyards, the polluted air, and the all-too-frequent atmosphere of carelessness and neglect have turned much of a beautiful state into a monstrosity of ugliness. Someone must declare open war on this ugliness.
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> The chief reason for all this is sheer insensitivity and I firmly believe that insensitivity is amenable to education. In our educational programs we assume that insensitivity to falsehoods and unreason is not incorrigible, and that we can induce receptivity to moral and ethical values. Is there any reason to assume that we cannot induce receptiveness to beauty as the first step in our assault upon ugliness?
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> The whole business makes no sense. For example, our neighbors at Johnson and Johnson know that there is no necessity for industrial plants to be ugly, and the errors of the past they are rapidly replacing with some of the handsomest buildings in the State. In Newark the great architect Mies van der Rohe has been given the opportunity to demonstrate that publicly inspired housing projects can be exciting and gay. And conversely we are certainly learning the cost of encouraging ugliness. We shall be spending millions upon millions of dollars here in New Jersey because we thought that we could get by with the drab and the repulsive. Need we be so stupid again?

In the interest of time I will forego some other pertinent paragraphs in that speech but those interested in the subject will do well to write to Rutgers and get a copy of Dr. Gross' commencement address.

On the occasion of my previous testimony before your commission, I emphasized the growth of regional concepts in planning and zoning and complimented your commission for advancing the proposal for a county board of zoning appeals. I dwelt upon the provisions of the Van Lare Act in New York (General Municipal Law Section 239-L and 239-m) which became effective at the beginning of this year. The Van Lare Act provides for mandatory review by a County Planning Board of new or revised municipal zoning ordinances which effect certain classes of property as follows: land or buildings within 500 feet (1) of every city, town, or village boundary; (2) of any county or state park or other recreation area; (3) of a right of way of any county or state parkway, thruway, etc; (4) the right of way of any stream, etc; and (5) the boundary of any county or state-owned land on which a public building or institution is situated.

The Regional Plan Association regrets to note that your second draft fails to contain any provisions for county review of municipal zoning changes which effect neighboring municipalities and county and state facilities. I wish to urge your commission to take under advisement the need for such zoning review powers to be vested in the county.

In my letter of transmittal accompanying the

suggested amendments I made reference to the revived interest in the "cluster principle" in subdivision of land for development. We are not sure whether the language of your zoning sections is sufficiently inclusive to permit the drafting of local zoning ordinances which provide for flexible lot sizes related to a constant density for a larger area in which is reserved permanent open space available to the residents. We suggest that your staff review the draft to ascertain the adequacy of your language to permit such "cluster zoning".

The Regional Plan Association is deeply appreciative of the vast amount of time and effort which your commission has invested in this law revision project. Our own staff resources have not permitted us to date to review your drafts in detail. We hope that we shall be able to do so and to file a more complete review. However, recent projects on community appearance and open space have enabled our staff to treat with those subjects in relation to your draft and we hope that you will find our efforts to be constructive.

I wish to thank the commission for giving me this opportunity to appear here on behalf of the Regional Plan Association.

MR. STICKEL: Thank you, Mr. Erber.

I would like to welcome back Assemblyman Panaro of Mercer County, who is also a member of the Commission.

Charlie Pike, President of the County Planners Association, would you like to take the stand now.

CHARLES M. PIKE: I am Charles M. Pike, Director of Planning for Monmouth County. I am appearing here today as President of the County Planners Association, the New Jersey County Planners Association.

The County Planners Association has long been interested in revision of the County Planning Acts to improve, modernize and clarify the existing law.

The Association was formed in 1956 and one of the first orders of business was to review the existing legislation. In 1957 our Legislative Committee met with a sub-committee on county planning of the Planning Advisory Commission, and at that time we were urged not only to consider some of the more important aspects of the law, which were pressing at the time, but to consider a comprehensive and complete revision of the Act.

In 1958 this work was completed by our Legislative Committee. It was submitted to the various County Planning Boards in the State for suggestions and these suggestions were refined and incorporated into a revised draft.

In 1959 efforts were made to get the support and cooperation of the County Engineers Association and the Freeholders Association.

At that time, a nine member committee with three members

from each organization was formed to see if we could come up with something that would be agreed upon by all three groups. Mr. Roach, who is Chairman of the Legislative Committee of the County Planners Association, has transmitted to the Commission copies of the proposals that were prepared and endorsed by the County Planners Association. And I think, to eliminate some confusion which might exist, this is titled: "The Proposed Revision of County Planning Provisions of the New Jersey County and Regional Planning Enabling Act RS40:27-1 to 40:27-12, inclusive." - dated January 14, 1960.

This is the final recommendation for the revision by the County Planners Association with one addition of a memorandum that provided for the establishment of a County Planning Department in lieu of a County Planning Board.

Along with this, Mr. Roach has submitted the recommendations which were made by the County Engineers Association. These recommendations were never endorsed by the County Planners Association.

In reviewing the existing second draft, on which this hearing is being held today, the County Planners Association would like to recommend and urge that, rather than incorporate the County Planning provisions in with the municipal planning regulations, they be separated and included in a separate act.

MR. STICKEL: May I interrupt you there, Charlie?

MR. PIKE: Yes.

MR. STICKEL: It was my thought that this particular provision, relating to county planning, would be more appropriate in the county powers section. By a separate act

you don't mean entirely separate, you mean in another place?

MR. PIKE: That's right. Of course, they should be cross-referenced but not intermingled with each other. I think there is a certain amount of confusion and particularly in connection withdefinitions and other things that you are referring back to that might be clarified if they were separate.

The recommendations of the County Planning Association, that are contained in the draft that was submitted to the Commission, in summary form include additional powers to control development along county roads to insure the carrying capacity and the safety of the county road system; the second major addition is control over development with extensive clarification of the existing law where a development would affect drainage on a county road or a county drainage structure; the third major addition would be the establishment of procedure for review and report to local authorities on zoning changes along county roads or along municipal boundaries.

And, incidentally, we are very glad that the Regional Plan Association noted that these provisions have been enacted in New York State and are a very desirable thing.

In conclusion I would like to point out that this proposal is based on the accumulated experience of the 15 operating Planning Boards in the State of New Jersey, and that we have tried to coordinate our efforts with all other Statewide associations and groups that would be directly or indirectly affected by the revision of the County Planning Enabling Act, including the Legislative Committee of the New Jersey Federation of Official Planning Boards, the

Freeholders Association, and the County Engineers Association.

This proposal has been endorsed, in some cases with minor recommendations, by the following County Planning Boards in the State: Bergen County, Passaic County, Hunterdon County, Somerset County, Monmouth County, Ocean County, and Cape May County.

We would like to strongly urge that the Commission give serious and careful consideration to this proposal which is based on years of work by the County Planners Association.

Thank you.

MR. STICKEL: Mr. Alex Fineberg. Will you state your full name and who you represent, please?

ALEXANDER FINEBERG: My name is Alexander Fineberg and I represent the New Jersey Home Builders Association.

The New Jersey Home Builders Association represents the majority of the residential builders throughout the entire 21 counties of the State of New Jersey.

We have read and have examined the proposed draft and revision of this Commission and wish to compliment this Commission on the Herculean task which it has undertaken in the revision of this problem, and recognize that there are many and vast and sundry aspects and factors and interests that are conflicting constantly in trying to reach a happy solution to try to satisfy everybody. That, of course, is impossible. But I wish to point out just two or three points that I think are vital in respect to the Association that I represent and to the very aspect of the progressive development of this State in the course of pursuing our business and our industry.

I refer the Commission to page 15, first, at the top of the page, Section 23, 40A:7-23 - County approval of drainage. I wish to point out that in its present form, as proposed now, we feel that it would be very dangerous, very cumbersome and very complex, and would serve no useful purpose to extend to the county planning board any greater power than it now has under the present enabling act of 1953. And if I may suggest to this Commission now - Mr. Stickel, of course, is cognizant of the fact, - that I had the privilege of serving on the original Committee, with Mr. Stickel as Chairman, in the original draft of the enabling act of 1953.

We feel that a community, a municipality within itself, a self-contained sub-division of our government, is perfectly capable, with its own technicians, its engineer, of approving or disapproving a plan for a sub-division that may be submitted without the interference or offer of any other suggestions, so far as the county planning board is concerned, purely dualizing the job of review and approval or disapproval, by extending them any greater powers than they now have except that wherein it may affect a county road or county property then obviously they should have something to say about it.

MR. STICKEL: In other words, Mr. Fineberg, if this Section 23 were limited to county roads, lands or streets, you would not be opposed to it.

MR. FINEBERG: No, we would not be opposed to it but it goes beyond that, Mr. Stickel. Our opposition is just one aspect but we honestly urge this because we think it would serve no useful purpose in this present form as it is now

proposed.

Now, at the bottom of the page, 40A:7-25 - Conditional approval, which heretofore has been known and commonly called "tentative approval."

We think that the one year of conditional approval is insufficient and the reason for that is based upon actual experience.

When a developer goes into a community the first thing he must find out is - What are the ground rules? - before he undertakes the project, whether it be large or small, of the tremendous investment that's involved. A one-year conditional approval is insufficient to give him the necessary time to prepare his plans, his engineering, his financing, and all the other aspects that go hand in hand with the project of a residential development. Ofttimes weather interferes; ofttimes economic conditions, particularly in the financial field, interfere, which deter him and delay him probably 8 to 9 or 10 months. Even when all conditions are favorable it takes anywhere from 8 months to a year for a developer for, say, a project of 200 houses or more, - it takes that much time to just get the preliminary data together before he can actually put something into being before he is ready to come in and ask for final approval.

Now the thought that a community or a planning board might, upon application, extend that time to one year and not to exceed two years, is wishful thinking, if I may say that, because our experience has been that the resistance to the developer and the resistance to progress of residential

construction has been almost insurmountable throughout the entire State, and there is very little hope or very little - shall I say, well, hope, yes, of anticipating that a community, whether it be the planning board or the municipal governing body, of extending the time beyond the one year.

I respectfully submit that I can see no harm, I can see no danger to the municipality in restricting a municipality if a three-year approval is given, as does the present law provide for now.

I cannot conceive in my mind, and I humbly say this to this Commission, that the progress or the development of a community will be with such rapidity that a three-year conditional approval given by that governing body or by the planning board to a developer would in anyway restrict the municipality to the extent that they could not foresee what might happen with respect, particularly, to zoning, which we are talking about now, for the next three years.

I don't think that a community develops with such rapidity or such acceleration that it cannot foresee for the next 3, 4, or even 5 years what may take place in that community, and I don't see where any great harm would result if the present provision of a three-year approval or a three-year period were granted under conditional approval.

I find no fault with final approval and I think it's an excellent idea because of the void that has been created in the enabling act of 1953, no provision having been made.

We have one other point and that is on page 9, section 13, in respect to municipal design plan. And I suggest to this Commission that we are fearful that if paragraph "a" and

paragraph "d" are permitted to stand that it might result in a very catastrophic economic set-back to building industry, and that adds to the control of the power of the municipality to specifically provide for a special design in a particular area for a building project.

Those are the only points, Mr. Stickel and members of the Commission, that we have that we wish to bring to the attention of this Commission.

MR. STICKEL: Thank you, Mr. Fineberg. Are there any questions? (No questions.)

Mr. Jacobi, New Jersey Association of Real Estate Boards..

SEWARD H. JACOBI: My name is Seward H. Jacobi. I am Executive Vice President of the New Jersey Association of Real Estate Boards and I appear before this Commission at this time to explain why we are not here with specific recommendations with respect to the revised draft, although we do have a live interest in this subject. And I would like to put in the record a letter addressed to Mr. Cummis as Counsel to the Commission, from our President, Mr. William F. Bertschinger. The letter is as follows:

NEW JERSEY ASSOCIATION OF REAL ESTATE BOARDS

OFFICE OF THE PRESIDENT

July 11, 1961

Mr. Clive S. Cummis, Counsel
County & Municipal Law Revision Committee
Room 71
State House
Trenton, New Jersey

Dear Mr. Cummis:

The New Jersey Association of Real Estate Boards' Zoning & Planning Committee has reviewed the second tentative draft of Title 40A, Municipalities & Counties, Chapter 7, Local Land Use Law.

Due to the fact that our Executive Committee will not meet until September, I cannot speak in behalf of the Association as a whole.

However, it is the opinion of those who have reviewed this draft that it requires many changes and modifications and that its language should be clarified so as to prevent the great amount of litigation which has taken place since the original laws, under revision, were adopted.

We would respectfully request that we be kept advised of any further changes or modifications made in this proposed law before a bill is actually presented in its final form.

Since the real estate industry will be material affected by the adoption of any such law, it seems strange that members of the real estate association, home builders association or others directly affected by this law were not part of the Commission.

We wish the opinion of this committee to be a matter of record at your Public Hearing on Thursday, July 13, 1961.

Sincerely,

Wm F Bertschinger

William F. Bertschinger
President

WFB:lt

MR. STICKEL: All right, Mr. Jacobi. Are you going to give us anything that we can operate on?

MR. JACOBI: Oh, yes, we will.

MR. STICKEL: We are keeping everyone advised from time to time as changes are made but unless you give us specific recommendations --

MR. JACOBI: We were here at the first hearing, I believe, and--

MR. STICKEL: But there were no specific recommendations made at that time.

MR. JACOBI: There were none?

MR. STICKEL: No. I think it behooves your Association to get on the ball and give us some specific recommendations.

MR. JACOBI: I am sure we will do that.

MR. CUMMIS: As a matter of fact, the appearance at the first hearing was coupled with a plea much like the plea that you are making now, that you didn't know about it and you haven't had time to --

MR. JACOBI: Oh, we were not advised. We asked to be advised. We did not get a copy of the second draft.

MR. CUMMIS: We sent it out. I don't know why.

MR. JACOBI: We did not receive it. We had to come down here and get it when we first learned of it. And because of the summer vacation we do not have the means where we can take official action.

MR. STICKEL: Well, we have had wide publicity on this, in the Jersey Law Journal, newspapers, etc. We've sent out 2500 copies of this draft and I know Mr. Robert Scott --

MR. JACOBI: Bob Scott has it. He called it to our attention. That's right.

MR. STICKEL: Well, he appeared at one of the dicussions before the Union County Bar, on behalf of the Real Estate group. So far as representation of real estate people on the Commission, this is a legislative commission which was appointed in accordance with a Joint Resolution of the Legislature consisting of three Senators, three Assemblymen and three private citizens. So there was no provision for any other representation other than as provided in that bill. And representation on the sub-committees has consisted of real estate people.

Well, we hope that you will give us your recommendations as soon as possible because we --

MR. JACOBI: We will.

MR. STICKEL: -- have been at this now for about two years --

MR. JACOBI: I know.

MR. STICKEL: -- and we want to get it finalized in some form.

MR. CUMMIS: I think you will find from the many people who have spoken here and who will speak after you that when recommendations have come in we have listened to them, where different groups have sought private meetings with the staff we have given them the opportunity to have such private meetings so that these problems could be thrashed out at great length, sometimes for two or three hours these have been discussed and this discussion couldn't possibly take place

at a public hearing like this because of the length of time involved. And many of the changes that have occurred in the second draft from the first draft were directly as a result of recommendations made by groups like Mr. Gaffney's, from the Petroleum Association, etc. And, frankly, we would be most happy to have your recommendations and they have not been forthcoming.

MR. JACOBI: I'm sure you would. Thank you.

MR. STICKEL: Samuel Owen, Legislative Chairman of the Federation of Official Planning Boards.

Mr. Owen, I might say at the outset that I have been over your recommendations and I assume that so far as your statement is concerned you are not going to go through the detailed criticisms because I don't think it would mean much to --

SAMUEL P. OWEN: I was not going through the last two pages. I was going to say that we had gone through each item very carefully.

MR. STICKEL: All right. We will turn that over to the staff. I've been through it. I don't think it would mean much to anyone here unless they had the law in front of them.

MR. OWEN: No. I agree with you there.

I am Samuel P. Owen. I'm the Legislative Chairman of the New Jersey Federation of Official Planning Boards, the organization that represents the lay planning boards of the State of New Jersey.

The New Jersey Federation of Official Planning Boards has always supported legislation which strengthens and promotes planning on the state, county and municipal levels. The Federation believes in the principle of home rule and favors legislation which is permissive in nature and allows latitude to local boards in solving their problems. It endorses the combining of all laws pertaining to municipal zoning, planning, subdivision control, official maps and boards of adjustment into one act. It also approves of the introduction of the municipal design plan and the strengthening of rules pertaining to the granting of use variances.

The second tentative draft of the revision of the zoning and planning laws has corrected many of the defects of the first draft, and we note that many of our suggestions were incorporated into the writing of the second draft. However, certain omissions have occurred and certain changes have been made which may confuse rather than clarify and which may weaken rather than strengthen the planning function. The Federation would like to make the following comments and recommendations:

1. The sections of the act referring to subdivisions appear to divide authority between the governing body and the planning board. The wording of sections 40A:7-25 and 40A:7-26 seems to be confusion. In the former section conditional approval is vested in the governing body while in the latter section final approval is placed under the jurisdiction of the planning board.

MR. STICKEL: May I stop you there a minute, Mr. Owen. I read your statement coming down on the train and I don't believe I understand that objection because you direct your objection to Section 25. It says: "The governing body shall provide for conditional approval of subdivisions." That means they must do it by ordinance. That doesn't say that they have the power to give conditional approval, they must provide for it in their ordinances. So that it would be a choice of either the planning board, in the case of a strong planning board, or in the case of a weak planning board it would be the governing body.

MR. OWEN: Then to be consistent in describing the final approval shouldn't it be worded in somewhat the same way? You do not mention the governing body in the section applying to final approval.

MR. STICKEL: Yes. There was no intention on the part of the Commission or the sub-committee to make any changes in the present set-up. We still want a municipality to be able to have the type of planning board they want, whether it's weak or strong or in between.

MR. OWEN: We assumed that but we did feel that the wording was somewhat confusing and we just wanted to call that to your attention.

A public hearing is required for final approval but not for conditional approval. Conditional approval grants certain rights that should be continued under final approval. Therefore, we feel that the public hearing should occur at the time of conditional approval rather than at the time of final approval.

MR. STICKEL: I agree with you on that.

MR. OWEN: It is the recommendation of the Federation that the planning board grant conditional approval and that the public hearing be held at the time of granting conditional approval and not at the time of granting final approval.

2. The wording of sections 40A:7-21 to 40A:7-31 seems to eliminate the strong or non-referral type of planning board. We feel that this is definitely a backward step in planning. The governing body which has the responsibility of supervising all of the municipal services should not be required to burden itself with all of the details of subdivision control. The planning board whose major function is to regulate the growth and character of a community and which works closely with the engineer and the planner is in a much more knowledgeable position to pass upon subdivisions and to control their impact upon the community. The Federation recommends that the non-referral type of planning board be continued.

MR. STICKEL: Well, we agree with you on that. There was no intention -- it was an oversight on our part, on the part of the staff. We intend to leave the existing language alone .

MR. OWEN: We thought it was our duty to call it to your attention.

MR. STICKEL: We are glad you did.

MR. OWEN: 3. The Federation recommends the elimination of a planning department to perform the duties of a planning board. While such a department may perform staff functions and furnish expert advice, it cannot act as a substitute for

the experience of five to nine residents of a community in determining policymaking decisions. The planning department should not be a substitute for a planning board.

MR. STICKEL: We're in agreement with that and I might say for the record that at a meeting of the Planning Advisers Commission of the State of New Jersey yesterday, of which Mr. Owen is a member, by unanimous vote of the Commission we endorsed this recommendation. We do feel, however, that a municipality, particularly large cities, should be able to create a planning department and a planning staff which should serve as a staff of the planning board. We feel that planning should still be in the hands of the citizens with the assistance of municipal officials.

MR. OWEN: Yes, well, that's our feeling too. We are not against planning departments to perform staff work but not to make policy.

The 4th item: The Federation believes that verified transcripts should not be required for conditional approval in subdivision hearings or in board of adjustment hearings unless the case is to be contested in court. To require verified transcripts for every hearing would add considerably to the cost of the hearings.

MR. STICKEL: I don't read that sentence as you do, then. It says: "The board of adjustment shall require the taking or transcribing of the testimony. Verified transcripts of the testimony at the hearing shall be provided upon request." It doesn't mean that you must have a verified transcript unless someone requests it and then they have to pay for it.

But we feel, in the light of decisions of the courts of our State in the last five years, that you should have at least the taking of the testimony stenographically and if there is no appeal within the 45 days required then, of course, there would be no necessity for transcribing it, verifying it and all of that. And I don't believe the section does require a verified transcript. It does require the taking or transcribing of the testimony.

MR. OWEN: Perhaps I am not familiar with the costs that --

MR. STICKEL: Then we further provide that that transcript or the taking of it may be done away with at the end of a year if there is no appeal.

MR. OWEN: Our fifth recommendation: The Federation recommends that the act allow for the creation of an advisory committee such as exists in the present law, section 40:55-1.9 and which was included in the first tentative draft.

MR. STICKEL: That should be in. I don't know why that was taken out.

MR. OWEN: Well, I think the previous section --

MR. STICKEL: It was in the original draft.

MR. OWEN: Yes but, I mean, in your second draft, the previous section, I imagine you were discussing rather carefully and I can see why you might have unconsciously, accidentally have eliminated that.

MR. STICKEL: That will definitely be in.

MR. OWEN: All right. Thank you.

7. The Federation favors the elimination of sections 40A:7-16 to 40A:7-19 inclusive, which describe the appointment

and duties of a county planning board and for the adoption of a county general plan and county official map. The Federation approves of county planning boards but we believe that its organization and duties should be described in the County Planning Act. Since this act is undergoing revision it would not be good policy to define its organization and duties in the Municipal Act.

MR. STICKEL: We agree with you. I do think, however, that if there is any requirement - if ultimately there is any requirement for referral to the county planning board of zoning amendments or subdivisions, such sections ought to be in this law or at least cross-referenced.

MR. OWEN: Yes, that's right.

MR. STICKEL: But I agree with you that the form and structure of the county planning board is more appropriately located in the county powers act.

MR. OWEN: Mr. Brennan reminds me that I skipped number 6 here: The Federation recommends that provision be made to allow for the removal of a member for neglect of duty. This provision appears both in the present law and in the first tentative draft.

MR. STICKEL: That's going to be in the general section.

MR. OWEN: O.K., fine.

Then our last recommendation: The Federation approves of the zoning board of appeals as outlined in the act only if decisions are to be made on the records submitted to the local boards of adjustment. If this is not done, an applicant for appeal might submit only one witness at the local

level and the county appeal board might have to hear entirely new cases.

MR. STICKEL: I can't personally agree with you. I think we would be defeating the whole purpose of the zoning board of appeals if that were the situation because the very design of the zoning board of appeals is to prepare an adequate record for submission to the court in the event there is an appeal to the court. Under the present setup all we get is, you go before the court on the record below, the court will not consider anything but the record below, the record is inadequate, there's a remand, another hearing or supplemental findings and back to the court again. And we don't feel that it's fair to the property owner or to the municipality to be bouncing back and forth in that way. So that the county zoning board of appeals is designed to supplement and act as an administrative agency of the state, staffed by lawyers, to see to it that before the matter gets into the court itself there is an adequate record.

Now, it's possible that a person will do as you have indicated, put on one witness and let it go at that, but that same situation applies today in any proceeding before the municipal court because if you have a drunken driving case you can let the state put its own case in and then rest and then take an appeal and there's a trial de novo at the county level.

Now, I appreciate that that's an objection but I think it's one that you will have to overlook in light of the advantage on the other end.

MR. OWEN: Well, I assume one of the reasons you put this zoning board of appeals in is to try to lighten the load of cases going to court.

MR. STICKEL: That's right.

MR. OWEN: And we felt that you might find the zoning board of appeals being overloaded with a case at the local level saying we want to get this out of the local level over into the county level and, therefore, we will only submit one witness or no witness and then perhaps the county board may --

MR. STICKEL: Maybe we could work something out whereby it would go up on the record below plus such additional evidence as the county board requires to be produced - something of that nature. But I don't want the county board to be in a position where they can only consider the record below because then we've accomplished nothing. We've merely substituted the board of appeals for the Superior Court.

MR. CUMMIS: Because of the character of a hearing before a municipal body sometimes it is almost impossible to get an adequate record. There are uproars. You don't have the decorum that you would expect before an administrative body or court. And, as Mr. Stickel points out, ideally you might be able to get the same kind of record but practically, knowing what happens in many communities throughout the State, you can have a record that doesn't really reflect what actually happens. And if you have the opportunity of going back to the county board and renewing your record, if necessary, I think it will save appeals.

That's really the biggest problem that you face in

making it more rigid, as you would suggest.

MR. PANARO: If a man improperly tries a case or a matter before the local planning board or zoning board, he would have another crack at it, so to speak. And it might be that that might precipitate a good many more appeals than we have now.

MR. STICKEL: But by the same token, suppose a property owner who receives notice doesn't have an attorney and isn't properly represented, he should be given an opportunity to have his side of it. And the only thing, as I see it, there are many advantages and many disadvantages but as an over-all proposition it seems to me that you will put a stop or an end to the remanding by the courts for rehearings which result in so much delay and so much expense both to the property owners and to the public.

MR. OWEN: Our reason for making this suggestion is we were thinking in terms of whether there would be a log jam created at the new level and we wanted to call it to your attention.

The only item I wanted to bring up on that 4th page is the definition of "subdivision."

I think what you did there --

MR. STICKEL: Well that's wrong. We've taken care of that. That was a boo-boo.

MR. OWEN: O.K. Well, I do the same.

MR. STICKEL: I would like to call to your attention that we have two of our illustrious Senators up here - Senator Cowgill and Senator Stout, both members of the Commission.

Mr. Bertini?

CHARLES L. BERTINI: My name is Charles L. Bertini, Chairman of the Municipal and School Law Committee of the New Jersey State Bar Association.

I would like to just indicate on the record on behalf of my Committee that we have studied the second tentative draft and we had the benefit of the presence of Leonard Etz, your Assistant Counsel, at our meeting. He is fully aware of the suggestions and recommendations that were discussed by our Committee and I intend to submit a written report making some suggestions and recommendations to the Committee, most of them mainly technical.

The area which you just discussed was considered by us and I might say, off the cuff, that we were considering and we plan to recommend that the appeal be on the record, however, that permission be granted either party to supplement the record before the court even, if necessary.

So you will get a report in writing from this Committee.

MR. STICKEL: Well, you see, Mr. Bertini, what this is designed to do is to by-pass the Superior Court altogether and only go -- in other words, from the County Board of Appeals you would go directly to the Appellate Division as you do from the State Board of Taxation right to the Appellate Division. Because at the present time the Superior Court on appeals from Boards of Adjustment will not consider anything, any new testimony, affidavits or anything, except what was before the Board of Adjustment. And 99 out of 100 times they

say the record is inadequate and they won't consider and back it goes.

Now, I don't think by amending this law we can get the Superior Court to permit the introduction of additional testimony. So what we are trying to do is to get the record straight at the administrative level so that the Appellate Division, as someone indicated here earlier, is strictly a matter of law - does the record support the action or doesn't it? That's what this is designed to do.

MR. BERTINI: Well, we are toying with the thought of possibly permitting that and if it is necessary to have the rules, the court rules consider that factor, we may make the recommendation in the right place on that score because we think the goal of law, statutory and all law, is justice and if we can bring about essential justice more quickly, that's the thing to try to achieve.

I want to say on behalf of the Committee that the work that your Counsel has done, and your Commission is doing, represents a fine job. We think it's a tremendous improvement over the conditions that exist in zoning and planning today, and we are hopeful that you succeed in your objective in simplifying and making things better all the way around.

MR. STICKEL: Thank you, Mr. Bertini.

Mr. Brokaw.

ARTHUR T. BROKAW: My name is Arthur T. Brokaw, Borough Engineer of Princeton, Secretary of the Princeton Borough Planning Board and Chairman of the Legislative Committee of the

Building Officials of the State of New Jersey.

I have already submitted to your Counsel a series of questions and analyses of the proposed changes. I wanted to emphasize briefly, and not read the whole document, that we have not had an opportunity in the Building Officials Association to review this in committee and the Executive Board does not meet until the fall. However, this analysis is from the Engineering Department and reflects some of the questions that we have in dealing with the application of the laws.

I have had also some comment from one member of the Planning Board, the Vice Chairman, who raised a series of questions about the wording, and there might be some clarification particularly where there is a series of sub-sections that might apply, a,b,c, or 1,2,3, that these be made clear whether they are all-inclusive or mutually exclusive; that the "and" be repeated and the "ors", if they are applied, be repeated.

I think too that I would like to ask for an opportunity, as we receive more information from our Association, to meet with the staff and perhaps go over this draft bit by bit rather than going through it all here today.

There was one question that our members raised, on page 32, the last section on "Notice to owners." The question was the action required by the governing body - does this refer to the passage of an ordinance, of the zoning ordinance itself, or is it some action not mentioned in the chapter here as submitted?

MR. STICKEL: Well, I agree with you that that ought to be spelled out. I think what is anticipated there is that you would have a zoning ordinance and in your zoning ordinance you would specify what types of non-conforming uses within the framework of Section 56 you were going to eliminate; and that before establishing the actual period of time as to each non-conforming use, within which each non-conforming use had to be eliminated, you would have a public hearing with the property owner.

MR. BROKAW: This is without a zoning ordinance.

MR. STICKEL: No. The zoning ordinance would set up the enabling aspect of it, then as to each non-conforming use within the municipality that was to be eliminated you would have to have a hearing with the property owner to establish the economic life and so forth and so on.

MR. BROKAW: I see. The governing body would do that then.

MR. STICKEL: Yes.

MR. BROKAW: Not the zoning board or the planning board.

MR. STICKEL: The governing body would do that.

MR. BROKAW: I think that might be clarified then.

MR. STICKEL: I think so too.

MR. BROKAW: Thank you very much.

MR. STICKEL: Thank you.

Tom Cook.

T H O M A S C O O K: Gentleman, my name is Thomas Cook. I am a member of the Princeton Township Committee and I am also a member of the State Bar Association Committee on Municipal Law. Our Chairman, Mr. Bartini, has just addressed you, I think representing all of us in that capacity. But I and our township are particularly interested in this open space proposition that the Regional Plan Association representative was talking about a little earlier. In fact, we have already prepared a preliminary plan for the acquisition of open space in our township to preserve some country for future generations, and I want very strongly to second or to endorse the proposals, or the general principle of the proposals -

MR. STICKEL: Have you seen the language of those proposals?

MR. COOK: No, I have not seen the language of the proposals submitted by the Regional Plan Association, but -

MR. STICKEL: I wish you would take a look at them and write us and let us know what you think of them. I think they are pretty well done.

MR. COOK: I would appreciate seeing them. I just noticed, for instance, in your Sections 22 and 24 here, on pages 14 and 15 of this draft, it would seem to me that in subsection b. of 22 you could add in after "reservation of park, playground and school sites" - "and open spaces." I mean, maybe you could put the words right in there. And then again, in Section 24, there are a couple of places where you could put it in.

Now, I assume that you gentlemen are familiar with

Senate Bill 92, which we introduced this year and which would amend the statute which already authorizes municipalities to acquire open spaces. And this would define "open spaces" in a broad way to include all the purposes which the Regional Plan Association is interested in.

Now, I assume that this draft does not affect that section because that has to do with the powers of the municipality to acquire property, and I assume that some other section would include that.

MR. STICKEL: We are including the same definition as an open space definition in this act, supplementing what the RPA has recommended. I would appreciate it if you would look at their recommendations, because I think they are well done and, if you have any comments or additions or subtractions from their language, I would appreciate it and the whole staff would appreciate getting it.

MR. COOK: Thank you very much.

MR. STICKEL: We will give you one right now, Tom.

Next, I will call Mr. Robert S. Greenbaum.

R O B E R T S. G R E E N B A U M: Mr. Chairman, Senators, and Members of the Commission: My name is Robert S. Greenbaum. I am an Attorney and Counsellor-at-Law of this State, and I appear here - really I have a trifold purpose in being here this morning.

During the past 11 years, I have been practising law in the City of Newark and during that period have been primarily occupied in a representation of builders, developers, mortgagees and investors in real estate - generally in all facets of the real estate field. My appearance here this morning in one sense is in behalf of our builder clients who have at this

time in various stages of production - that is, between land acquisition and planning, and construction and actual delivery of the completed dwelling units, not less than 2,000 to 2,500 dwellings in various counties throughout the State, all of which are programmed for delivery within the next three years.

These clients that I represent here this morning are: Alexander Caplan and his Rolling Hill communities in Morris, Essex, Union and Monmouth counties; Jack Denhols and Joe Deutch, recently completed Heights of Edison in Middlesex County; Martin Sobol and Charles Elin of Essex County; Hounanien & Company, just completing a subdivision in Ocean County - Holidays Estates - and starting in Monmouth County; Kokes and Finkel, also in Ocean County; and Sanford Nauitt in Union and Monmouth counties.

The dwellings that these men have been producing range in price between $8,000 and $70,000, so they pretty well straddle the residential field.

I have been directed by Robert E. Scott, President of the Mortgage Bankers Association of New Jersey, who regrets that he cannot be here this morning, to read his own statement, to read his statement to the Commission.

In the third sense, I appear here as an individual deeply interested in the promulgation of realistic, workable, and equitable legislation in the zoning and planning fields.

Generally, before I get into the specific recommendations which I have, I ask you gentlemen in your deliberations to bear in mind the context of the times in which you are considering this revision. We are now on the verge of the greatest pressure for new housing accommodations ever to be felt in this State - and for that matter, perhaps in the region and the nation.

This is a fact which has been forecast without exception or objection by all information sources conversant with the situation, including the United States Government.

Our national economy is now under great pressure, both internal and international in scope, to expand in order to provide the production and opportunities which our growing population will demand during the next decade. There is a great need now and apparently there will continue to be a great need for housing in the range of $15,000 and below.

Now, the draft under review appears to indicate a preoccupation with new substance in the nature of further restrictions on the development of real estate. In all candor I can't say that it actually sets forth needed solutions to the acute problems in the realm of clarification of the Planning Act which have arisen since its enactment.

Now, I desire to be specific and constructive, and I will be. And since it would be an imposition upon the time of everyone here to take up every provision, I am going to try to eliminate those which are least important and confine my further remarks to an analysis of the salient features.

MR. STICKEL: Don't you have a written statement?

MR. GREENBAUM: No, I don't from this point on, except for Mr. Scott's statement.

The first one I would like to invite attention to is 40A:7-2. Now, in this particular provision, it states the purpose of the chapter. I submit, gentlemen, that the purpose is far broader. And the purpose is most important. I don't think we should gloss over that. It is more important than to provide for harmonious and aesthetic development in the

manner that you have stated, and I suggest, gentlemen, that all of the legitimate purposes of zoning as set in the present law under 40:55-32 be incorporated in some sense in this provision which is in essence a preamble to the Planning Act as it may be revised. And along that line, I suggest the following: that the provision be"to encourage and stimulate free enterprise in the development of land and to permit the highest and best use of real estate in a manner best calculated to achieve the following purposes: to lessen congestion in the streets, secure safety from fire and other dangers; promote health, morals and the general welfare; provide adequate light and air; prevent the overcrowding of land and buildings; avoid undue concentration of population. Such regulations as shall be enacted pursuant hereto shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses; conservation of the value of property and encouragement of the most appropriate use of land."

I think that any reference to the aesthetic purpose that the planners may have or the zoning bodies may have is implicit in all of those things. It is not necessary to set something forth in this particular provision which could be construed as a blank check to go into aesthetic regulations, because you have other provisions later which I think cover that adequately.

Now, as to 40A:7-7 and 8, in connection with the public meetings of the Planning Board and Planning Board procedures, I think it would be constructive to provide that any interested party at any Planning Board proceeding should have the right

to furnish the services of a Certified Shorthand Reporter or a Notary Public for the purpose of recording a verbatim transcript of the proceedings. Now, in most cases, even if such a provision were not included in your statute, perhaps this right would be afforded, but I don't think there could be any harm in removing any doubt as to the right of any party to obtain a verbatim transcript of any Planning Board meeting.

As to 40A:7-9 regarding the Planning Department - although it is not clearly stated in this draft - at least it was not apparent to me - it is evident that this agency, if it is created by an ordinance of the governing body, would exist in addition to the Planning Board. Apparently that is the intention.

MR. STICKEL: It says in the very next section, "The planning board or the planning department."

MR. GREENBAUM: Well, that may be your next section, but under "Planning Department," that is not clear. That may be your intention, but I submit to you that under the revision as it now stands, you can have both. Is it your intention to have only one?

MR. STICKEL: Either one.

MR. GREENBAUM: Either one. But not both?

MR. STICKEL: Yes.

MR. GREENBAUM: I submit, sir, that that is not clear. That might require revision in certain other provisions because many of your other provisions refer only to the Planning Board, I believe - I am not sure. But I am happy to hear the clarification on the point.

As to 40A:7-10, 11 and 12, concerning the general plan provisions, I believe, sir, that there is nothing stated in those provisions which is not already within the scope of the Master Plan provisions in existing law. I may be wrong about that, but, as I read them, I couldn't see that there was anything that was not included already within the scope of that provision.

MR. STICKEL: That is correct.

MR. GREENBAUM: Then it appears to me, if that is correct, that 10, 11 and 12 are unnecessary - if the provisions already exist.

MR. STICKEL: Well, this is a revision of the entire law. Would you have us eliminate it entirely?

MR. GREENBAUM: I would like to know what - no, I think we need clarification and we need revision, of course.

MR. STICKEL: What clarification would you have?

MR. GREENBAUM: Well, I say if it exists in the Planning Act now, I say incorporate the exact, same provisions. This has been referred to as a Master Plan - the aggregate of these provisions has been referred to as a Master Plan.

MR. STICKEL: We have changed the terminology.

MR. GREENBAUM: I realize that. In my opinion, this only leads to complication. I think it was simpler as originally stated.

Now, 40A:7-13, under the Municipal Design Plan, the same comment, of course, would apply, except I do believe that some special mention should be made of subparagraph a. concerning aesthetics. Now, there is no question in my mind, and I think in the mind of anyone who does work in this field, that zoning

for aesthetics has come and is here to stay. The only question which remains to be solved is how to do it in a manner which is in accordance with judicially imposed standards. I submit to you, gentlemen, that the act which you have set forth here does not meet that problem. It merely provides that the so-called look-alike ordinances which exist in great profusion throughout the State today - some of which are clearly unconstitutional and some of which are doubtfully unconstitutional, and very few of which may pass the test - may continue to be enacted.

If you are not already familiar with the Architectural Board of Control provisions of the City of Rye, New York, I will see that the Commission gets a copy of that ordinance.

MR. CUMMIS: I think we have reviewed every aesthetic ordinance and every aesthetic approach by law to zoning in the country.

MR. GREENBAUM: Well, I submit then that that which is primarily lacking in this statute is any reference to standards of any kind. I would be more than happy, as you suggested, Mr. Cummis, earlier, to devote whatever time with you is required if you would be willing to talk with me about this.

MR. CUMMIS: The problem that has been weighed with the Rye approach, the Board of Experts approach, is that many people who critize that approach have done so on the basis that a small group has the power to impose their aesthetics on the community at large.

MR. GREENBAUM: Well, in the Rye case there are five members and there must be a unanimous vote to turn down an application for a building permit. So I think there is some benefit of some safeguard there. It can't just be a majority,

but the members must unanimously find that such a structure would be deleterious to the public good, and they must make their findings in writing in accordance with the standards which are set up in the ordinance. I don't think there could be any objection to such an ordinance. I think it would be helpful, but I say that unless we at this time, or the Commission at this time, can attempt to clarify the situation so that any ordinances which are enacted are proper and workable ordinances, we are going to have a lot of trouble.

Now, as to 40A:7-16, 17, 18 and 19: You have existing law now under Title 40 - I think it is 40:27-9, is it? - 40:27-1. The County Planning Boards now are primarily recommendatory in nature, as I understand it. I think they should remain that way. I think that if the county planning boards have to come in and indicate their approval, if this becomes mandatory for a developer, as Mr. Fineberg said, the process for continuous development of this State, in so far as its natural land resources are concerned, is going to be halted in the extreme degree.

MR. CUMMIS: I think there is general agreement that that should be more limited in scope than the language presently indicates.

MR. GREENBAUM: Now, I feel with respect to 40A:7-20, with respect to Regional Planning Board consideration, that the same logic should apply to that. They clearly have a function, but the municipalities are most closely associated with the municipal problems and they should, in the final analysis, be permitted to determine whether or not the regional or county planning board recommendations should be followed,

except in certain instances which you have covered later.

I submit that the new provisions concerning Regional Planning Boards, or the existing provisions - excuse me, the existing provisions presently give the Regional Planning Boards more than recommendatory powers, and I submit they should be repealed in so far as they do.

Now, perhaps the most important and the heart of the revision under consideration from the point of view which I advocate concerns the regulation of subdivisions, starting with 40A:7-21.

Incidentally, I think the previous speaker mentioned that the word "plat" may have been left out of the first line in that section - I didn't notice. "Every municipality may provide that no subdivision may be received" - I assume the word "plat" belongs in there. I didn't hear whether that was noticed.

MR. CUMMIS: Yes.

MR. GREENBAUM: Thank you. Now, in connection with the provisions in so far as subdivisions are concerned, the approval mentioned at the end of that paragraph is not clearly defined. I assume there that you mean final subdivision approval. If so, I would suggest that it be inserted or in some respect clarified, since we are dealing with two types of approval.

ASSEMBLYMAN PANARO: What section?

MR. GREENBAUM: That's 40A:7-21, the last line.

Now, as to 40A:7-22 - standards for the regulation of subdivisions - there is reference to a future land use plan in the event that a general plan has not been adopted. Now,

as I understand the definition of your terms as set forth in this revision, a land use plan is a part of a general plan, and if a general plan hasn't been adopted there is no land use plan, so what does this particular provision mean?

MR. STICKEL: Yes, there is.

MR. GREENBAUM: It's not clear to me, sir.

MR. STICKEL: Well, a comprehensive plan may be a series - a general plan may be a series of plans. They may have a plan as to schools; they may have a plan as to land use; they may have a plan as to circulation; they may have a plan as to capital improvements - all of which make up a total of the general plan. But there are many elements of the general plan. What we are defining here is - we are dealing with subdivisions and we are primarily interested in the land use plan and not capital improvements or something else.

MR. GREENBAUM: You are referring then to the land use plan as defined in your definitions.

MR. STICKEL: That's right.

MR. GREENBAUM: The word "future" then was somewhat confusing to me, "future land use plan." You meant --

MR. STICKEL: "Future land use plan" indicates what your future ideas for the use of the land are over what the present land use is.

MR. GREENBAUM: Now, with respect to subparagraph c, the second sentence, which reads: The municipality may require the subdivider to pay all or any part of the cost of the development..." Now, the definition of "cost of development" in subparagraph c., in 40A:7-22, should, I think, require some clarification.

MR. STICKEL: Really, I don't even know what it means.

MR. GREENBAUM: Well, that's the question - I don't either. I have a large question mark opposite that. It could mean only on site; it could mean on site and off site.

MR. STICKEL: It means improvements. It should be the cost of the improvements.

MR. GREENBAUM: Does it mean only on-site improvements or off-site improvements?

MR. STICKEL: To the amount of the benefit to the subdivision. That would be on-site improvements to the extent -

MR. GREENBAUM: Well, Mr. Stickel, I am sure you have run into the situation where in processing a subdivision, a planning board has, let's say, correctly required certain off-site, off the property, improvements in the nature of drainage from a subdivider, because wherever the problem is it could only be taken care of by off-site improvement. Now I suggest that this is the time that the power of the planning boards to impose cost on a developer for off-site improvements be in some way considered, clarified and limited.

MR. STICKEL: That's the reason for the language "up to the benefit."

MR. GREENBAUM: I understand that that is the purpose, in line with your special assessment type provision. Well, this may or may not be the way to do it. I understand your goal and it is something that must be achieved, but I suggest -

MR. STICKEL: Do you know of any other way that you would suggest doing it?

MR. GREENBAUM: Well, you're right. I said I would be specific, and I will be, but unfortunately not today. I can't

give you something along that line, but I promise you that I will, because I think this is a problem which results in great cost.

Now, in so far as that subdivision e. is concerned, I suggest that the County Planning Board be deleted as an agency whose approval is required except as you may state in a subsequent provision as to these subdivisions.

MR. STICKEL: Well, do you agree that there ought to be county approval as to county facilities?

MR. GREENBAUM: Yes, sir, I do. I think the law presently provides that.

MR. STICKEL: It does. Well, it isn't too clear.

MR. GREENBAUM: I do agree with you - anything affecting a county road or drainage facility is properly within county jurisdiction.

Now, in connection with 40A:7-23 - I just discussed that one. Now, 40A:7-24 -

MR. STICKEL: Let me ask you this, Mr. Greenbaum: How would you feel or what is your reaction to a zoning amendment which involves land within a certain number of feet of a county facility or road or a municipal boundary?

MR. GREENBAUM: I believe that the county - I am answering this without great reflection now -

MR. STICKEL: As a matter of review.

MR. GREENBAUM: I feel that the zoning power should be primarily within municipal control and I think, if anything, the County Planning Board should have recommendatory duties with respect to that - only recommendatory.

MR. STICKEL: We are only talking about recommendations. The argument is that if a municipality zones along a county road, it is necessarily going to affect the use of that road and, therefore, before the ordinance becomes final the county ought to have an opportunity to say what ideas they have as to it.

MR. GREENBAUM: As to zoning amendments, you are referring to now, not variances. Amendments - I agree with you. I see no objection to that. But on the variance point, I would disagree. Say, if the county has a stake in the granting of a variance, the county should have a representative present at the hearing.

Now, as to 40A:7-24, with respect to reservation of school sites, etc. The thing I would suggest, gentlemen, that we do in connection with that, or that you do in connection with that, would be to cover the situation where, on a plat an area has been reserved for a municipal use of some kind under this provision and, within the time provided, the municipality does nothing. Now, very often the subdivision plat would be such that the developer or the owner would be left with a land-locked piece of ground. I suggest that at the time of the approval of the original subdivision a provisional layout be approved as part of the layout which is approved, so that in the event the municipal use does not come into being within the time prescribed, the developer would be able to use that property without the necessity of going through the entire Planning Board procedure. I can see no difficulty or no adverse results

in the municipal situation under such a procedure.

Now, 40A:7-25 and 26, gentlemen - conditionaland final approvals are also of the essence in this situation in so far as builders are concerned. I note - and this is one thing which hasn't been brought up to you this morning - I note that you do not provide for public hearing at the time of conditional approval, but that the public hearing is limited to the final approval. I should suggest -

MR. STICKEL: We have agreed that it will be conditional and not final.

MR. GREENBAUM: Oh, you have. Further with respect to that, I say to you gentlemen, as Mr. Fineberg did, and for the reasons that he stated, that a one-year guarantee of the terms and conditions to a developer is grossly inadequate, because when a developer checks his ground rules, as was said here, he is primarily interested in his cost - he must know what the sum total of his cost will be before he can determine the price of his product. And if the subdivision entails two hundred or three hundred houses, such a program can never be completed in one year.

MR. STICKEL: Why don't they have this problem elsewhere? We are the only state in the Union that has conditional approval.

MR. GREENBAUM: You may have much greater knowledge about what goes on elsewhere; I have intimate knowledge of what goes on in this State, and I submit to you that one year would be grossly inadequate and unreasonable. And I am sure that the Commission here has considered a case which is now pending in the Supreme Court - there are two

of them - the Hilton Acres case and the Levin case. The Levin case was argued in March and the decision has not come down yet on it. The Hilton Acres case has not been set for argument. My guess is they may be rendered at the same time, I don't know.

MR. CUMMIS: Now, you say that one year is grossly inadequate. What figure do you think is adequate?

MR. GREENBAUM: I think a developer can live with three years.

MR. STICKEL: Then the question is three for conditional. The problem is this: You have three for conditional and nothing for final, as it stands now.

MR. GREENBAUM: That doesn't bother me too much.

MR. STICKEL: Well, it bothers Fineberg and all the other developers.

MR. GREENBAUM: I'll tell you why it doesn't bother me, and it may make sense or it may not. The conditional is the period before which the spade is turned in the ground generally. After final, the builder has his green light.

MR. STICKEL: On what section?

MR. GREENBAUM: He can go ahead with any section he wants after he gets the final.

MR. STICKEL: Suppose there is a change in the zoning ordinance immediately after final approval.

MR. GREENBAUM: If it is within the three-year period, the three years continues - he is not cut off by a final.

MR. STICKEL: Oh, yes, he is.

MR. GREENBAUM: That's your interpretation. I don't

think it appears in the law, sir. I think that three years -

MR. STICKEL: Suppose he takes his full three years and he gets final and then there's a change.

MR. GREENBAUM: Then he's in trouble.

MR. STICKEL: Yes. I think he is entitled to more protection after final than he is on conditional.

MR. GREENBAUM: Fine, but I said that the important period is in the tentative stage.

MR. STICKEL: What we tried to do here was to have a minimum of three - one on preliminary, two on final. Now, it's up to a maximum of six with three on preliminary and three on final.

MR. GREENBAUM: Mr. Stickel, I think the six-year possibility is illusory. I don't think it will happen.

MR. STICKEL: It is. We made that on a permissive basis so that if there are peculiar circumstances that arise, the Planning Board and the Developer can work it out, because in the Hilton Acres case there is no authority under the present law to extend.

MR. GREENBAUM: I agree, sir. That is under review now.

MR? STICKEL: You would recommend three on preliminary and leave final the way we have it?

MR. GREENBAUM: No, I didn't say I would recommend that. I said it didn't bother me too much. I would recommend some protection on final, but I don't think it is nearly as important as the three-year conditional approval.

MR. CUMMIS: It seems strange that you say that, because all of the criticism that has been leveled from

your side of the fence has been on final.

MR. GREENBAUM: I haven't heard any before.

MR. CUMMIS: There has been none here this morning, but I can take you downstairs to our office and show you the letters and the arguments that have been made that our first draft and the existing law is completely wanting in that it gives no protection on final, and the argument is that that is where the protection is needed most.

MR. GREENBAUM: Perhaps I can crystallize this and save some of your time. If Mr. Stickel is correct that, upon the granting of final and the filing of the map, any protection under the tentative or conditional dies, I agree that there must be some protection thereafter. My interpretation of the existing law is that the developer has three years from tentative regardless of whether he obtains final or not.

MR. CUMMIS: It would appear to me that the premise that most of the arguments are based upon is the premise which Mr. Stickel asserts and that you disagree with.

MR. GREENBAUM: It's as yet untested; there has been no judicial pronouncement on it. You have heard my position -

MR. CUMMIS: This is a difficult problem of policy that we are faced with here. I can tell you this, the Sub-Committee which weighed this problem prior to the drafting of this second draft - there were interests represented on both sides, both the municipal interests and the builder interests, and argument was made by many people on the municipal side that there should be no rights to the builder, that the municipality should have absolute discretion in

and what we tried to do -

MR. GREENBAUM: In an attempt to accommodate both -

MR. CUMMIS: Not an accommodation, but some intelligent compromise.

MR. GREENBAUM: Well, in an attempted objective estimate of the situation - and it is difficult for me to be objective - I admit that to you, because I am an advocate - but I do say -

MR. CUMMIS: I think that the purpose of this hearing is more than advocacy. It's to try to arrive at a sound approach to legislation which would benefit not only the people you represent but both sides of the fence.

MR. GREENBAUM: Well, there has not been demonstrated to me at any time any great hardship to a municipality by virtue of the three-year lock as to tentative, but it can easily be demonstrated and is clearly manifest that a lack of protection to a developer who has invested vast sums of money can be catastrophic. If you look at the simple situation -

MR. STICKEL: It could be worse if it's imposed after final.

[illegible]: Well, at least a builder after final knows he has a three-year period. If he has had his three years and he's got his final approval, he's got his improvements in and his lots all set -

MR. GREENBAUM: If he has his improvements in and his lots all set, sir, there are other applications of law which I think might protect the builder.

MR. STICKEL: Builders don't want to have to go to

court on every darn case. What we are trying to do, and the Supreme Court in the Lake-Intervale case said that we should try to cover this by legislation.

MR. GREENBAUM: I agree with you. I don't want to get into a position where I am trying to say we shouldn't have any protection for final, because I don't believe it. I am satisfied to adopt your position on that, but I urge -

MR. CUMMIS: Mr. Greenbaum, in terms of time, what do you think would be responsible for both tentative and final?

MR. GREENBAUM: Three years on tentative and one year on final.

MR. STICKEL: We're giving you six.

MR. GREENBAUM: I don't think you're giving me six. If you give us six, then we have something. I say we have three under your provision, with two after the final, and only one when the protection is needed.

Now, in so far as the provisions of this particular section as they appear on page 16, which is a slight modification of existing law, which now reads that the general terms and conditions shall not be changed, I note expressly that the word "general" has been removed from that provision. I don't know why, and that subsection -

MR. STICKEL: Nobody knows what it means.

MR. GREENBAUM: Well, at least we are having cases which will tell us what it means, but those cases which are now under review will be meaningless if you change this law and if the word "general" will be taken out of the statute.

MR. STICKEL: These cases will not resolve what "general" means. The Levin case will merely resolve

whether it applies to road specifications. In that case -

MR. GREENBAUM: Zoning.

MR. STICKEL: Now, what the builders have indicated to us, through Fineberg as their representative, is that they are primarily interested in zoning, use, sideyards, setbacks, and those restrictions. They can live with the other stuff.

MR. GREENBAUM: Well, Mr. Fineberg speaks only for the people he represents. I feel, and I think it's an economic fact, that anything which goes into the total cost to a developer, be it land, road specifications, lumber, cost of selling a house - it all amounts to dollars.

MR. STICKEL: Will you spell out what you mean by "general conditions"?

MR. GREENBAUM: I say, sir, that we are beginning to get to an area where the law is beginning to have some meaning and that we will lose the benefit obtained from the judicial decisions if we change the verbiage.

MR. STICKEL: We have only had one case since 1953 on what is meant by general terms and conditions.

MR. GREENBAUM: There are two now.

MR. STICKEL: One.

MR. GREENBAUM: Well, the Levin case and Hilton Acres.

MR. STICKEL: Well, Hilton Acres has nothing to do with general conditions.

MR. GREENBAUM: Well, it provides for the zoning lock for three years; there's no question about that.

MR. STICKEL: Well, I know -

MR. GREENBAUM: I think it does mention that.

MR. STICKEL: It doesn't spell out what "general conditions" are.

MR. GREENBAUM: Well, specifically the court says, "We don't presume here to try to define what they all mean but there is good cause to believe it means at least zoning." Those are the words of the court.

MR. STICKEL: We feel that our job as a recommendation to the Legislature is to spell out general terms so that everybody knows what it means and not leave everything up to the courts.

MR. GREENBAUM: I am all with you on that, Mr. Stickel, but I submit that you haven't done it here. You have merely codified the zoning requirement, which is already law. You haven't set forth what the other general conditions are.

MR. STICKEL: No, because this is what was agreed upon. If you want other general conditions to be spelled out, I say spell them out to us.

MR. GREENBAUM: Fair enough.

MR. CUMMIS: This is a policy decision that was made in terms of zoning as a result of discussions, because this is what they felt they wanted protection on.

MR. GREENBAUM: In other words, at this point it is the purpose of this revision to limit the guarantee to zoning.

MR. STICKEL: Yes. Now, if you want it to go behond zoning, then submit what you want so that it can be fully discussed.

MR. GREENBAUM: I will. Offhand, I certainly think

the drainage requirements should remain the same unless there is a compelling reason. As I have stated here on this score, I think that once the approval is had on the tentative, there should be the guarantee for whatever period you agree on, with all items reasonably considered and the cost estimates in the planning stage to be locked in the absence of a compelling reason to supersede such conditions by the exercise of a police power.

MR. STICKEL: You see, what we want to do is to spell out what is meant by general conditions, because what this has produced statewide is an agreement between the municipality and the developer - the so-called developer's agreement - which the courts have now said are ultra vires because there is no consideration, and what we are trying to do is to put in the law what you get when you get tentative approval or conditional approval - what it applies to. Now, as far as we've gone it's zoning. If you want to go beyond zoning, let us know what it is.

MR. GREENBAUM: I agree with you, it's up to the building industry to make its voice heard here.

MR. STICKEL: Right.

MR. GREENBAUM: Now, there is only one other thing, sir, in connection with these particular provisions as to final approval. The laws generally provide that if these boards don't act within a specific period of time, this shall be considered a denial. No one has mentioned that. I consider that to be unfair. If the developers are going to have to sit and wait out the full period, to wait for action which is completely within control of the agency to

which he has gone, and he's had to wait that period out and the time period expires, I think there should be an automatic approval, not a denial. I realize there probably isn't much chance of your agreeing with me, but I say, from the basic standpoint of fairness, it's not fair to have such a provision with respect to these things.

MR. STICKEL: You are not correct in that, because if you submit your application and there is no action on it within 45 days, it is assumed that it be approved under the present law. Now, have they changed that here?

MR. GREENBAUM: Well, how about the preliminary, tentative? You don't have it here. I am referring primarily to that. There may not be any provision here concerning that.

MR. STICKEL: There isn't.

MR. GREENBAUM: What are you going to do about that? What are you going to do if there is no conditional approval given within a certain period of time.

MR. ETZ: I have a note here to put in the same provision on that.

MR. GREENBAUM: I see. That would take care of that.

MR. STICKEL: But then you run into the problem where the county recording officer will refuse to take the map anyway, and you can bring a mandamus proceeding -

MR. GREENBAUM: Well, why shouldn't the Law Revision take care of that situation? I note that you have eliminated the provisions about certificates of subdivision approval, which do not appear here. Are they eliminated for any specific purpose?

MR. STICKEL: No.

MR. GREENBAUM: Can they be included?

MR. STICKEL: They are going to be included in another section. Do you mean the search idea?

MR. GREENBAUM: Right.

Now, as to 40A:7-27, my understanding of that particular provision is that it's meant to avoid the necessity of a developer running to a Board of Adjustment if he has some non-conforming lots, for example.

MR. STICKEL: That's right.

MR. GREENBAUM: I submit to you, and I think in fairness to all points of view, that that should be limited to changes which are not changes in use.

MR. STICKEL: It should be. I agree with you.

MR. GREENBAUM: It should be. It is not so limited here.

Now, in so far as 40A:7-31 - Effect of final approval: That again goes back to the matter that we spoke of before where you give zoning protection only after the final. No other guarantees are included at this time.

MR. STICKEL: That's right.

MR. GREENBAUM: Now, in connection with 40A:7-42, this may have been an inadvertent change from the previous law, but it's an anomalous one. The previous law provided that in the event owners of 20 per cent or more of the lots or land - excuse me - that's 40:55-35 - provided that in the event owners of 20 per cent or more of the area of the lots or land encompassed within a proposed zoning change object, a two-thirds vote should be required to pass it over such

objection. The present law says that in the event owners of 20 per cent or more of the lots or the land object, it shall require two-thirds vote. This could result in the grossly inequitable situation where the land could be re-districted to comprise one large tract of 40 acres and perhaps 40 100-foot lots. Now, you can see that the lot owners could easily out-vote the land owners. I don't know whether that was your intention in the change which appears. If so, I don't think it's fair. I think the law should remain as it presently exists. In other words, this could clearly prevent a change by virtue of a protest without any relation to the area ownership.

MR. STICKEL: Well, why voice it as long as you've got two-thirds vote at the end anyway - what's the difference?

MR. GREENBAUM: Well, the standards which would require a two-thirds vote are different. Ordinarily, a majority is sufficient unless there is a clear public opinion against it. That apparently was the policy of the original statute. That particular policy is not implemented by the revision - it may not be implemented; that's the point.

In connection with 40A:7-50 - Zoning board of appeals. In so far as I am concerned, such a body would be workable, realistic and practical if you eliminated the local boards, but to have both, under the concept as you have already stated, Mr. Stickel, of having the county board of appeals being an agency to set up an appeal so that it can go further on review, I don't think is necessary. I think it's a waste. I say that it's up to every litigant to see that he presents the matter before the local board in the

manner that can be reviewed properly by the courts. For the county board of appeals to undertake to mold the record, so to speak, in a manner which will prevent a remand, I think goes beyond the proper function of a board of adjustment or a county board of appeals for that matter.

MR. CUMMIS: Mr. Greenbaum, are you saying that you would recommend that the county board be eliminated and the appeal to the Superior Court be eliminated?

MR. GREENBAUM: No.

MR. CUMMIS: Or are you saying that existing law be -

MR. GREENBAUM: No, I think the Superior Court is always required.

MR. CUMMIS: Well, it isn't here - the whole purpose -

MR. GREENBAUM: Is that stated here? It's not stated.

MR. STICKEL: No. In the rules, when you appeal, in 4:88-8, from any State administrative agency you must go to the Appellate Division, on the record.

MR. GREENBAUM: Well, is there any reason why -- you feel there is no doubt about that, that from the county board you go directly to the Appellate Division.

MR. STICKEL: I don't think there's any question about that. And what would be their point in going to the Superior Court from the County Board? There would be no point in having a county board of appeals if you're going to the Superior Court.

MR. GREENBAUM: Your first step in judicial review -- it would seem to me if you have a county board of appeals, as you do have here - for example, take the county of Essex

or any populous county, - I don't know what kind of a backlog is going to be built up before this body but I can foresee a tremendous period of time elapsing between the initial application on an appeal to the local board of adjustment and an ultimate judicial determination. I think it could be years. You are going to have one board of three men. They could be backlogged for three or four years on the basis of this setup.

MR. STICKEL: They can't be anymore backlogged than the courts are now.

MR. GREENBAUM: But, Mr. Stickel, I think you are creating one more obstacle to get to the courts. You're going to get there anyway.

MR. STICKEL: You are not creating an obstacle, you are making it easier. You are bypassing the Superior Court where all the bottleneck is.

MR. GREENBAUM: Well, I don't know what the statistics are.

MR. STICKEL: We've taken this up with the Supreme Court and the Rules Committee. They think this is one way of eliminating that bottleneck.

MR. GREENBAUM: You may eliminate the bottleneck in the Superior Court but you are going to have one tremendous log-jam in the county board of appeals.

MR. STICKEL: Well, you may and you may not. I don't know.

MR. GREENBAUM: There has been some sentiment voiced concerning the fact that the three members of the county

board of appeals are all to be lawyers and all to serve at compensation stated in the revision, and those are the only officials in the Municipal Planning Act or under the Local Land Use Law who will be paid. I don't think the objection is out of order because the mere fact that a man is a lawyer doesn't qualify him to sit on a county board of appeals unless he has some special experience on zoning. There may be men far more qualified than lawyers to sit on that. I agree that perhaps the chairman should be a lawyer but certainly the real estate industry should be represented.

MR. STICKEL: That would apply to any judge too, wouldn't it?

MR. GREENBAUM: But we are not dealing with the appointment of judges here, Mr. Stickel. I don't want to get into that.

MR. STICKEL: With a state administrative agency its --

MR. CUMMIS: It's a quasi judicial function.

MR. GREENBAUM: That may be.

MR. CUMMIS: You're talking about an administrative court. One of the major criticisms leveled against the hearings before the board of adjustments now is that it is not a good administrative hearing.

MR. GREENBAUM: Well, I realize that ideally and theoretically from that point of view you will have a much speedier administration of justice but when the salaries are $6500 and $7000 a year, these are going to be political appointments not particularly, I believe, based upon

knowledge of the field which is required. At least it's open to that abuse. That's the point.

Now that completes my own remarks on behalf of my builder clients whom I represent.

Mr. Robert E. Scott has sent this following statement down. Mr. Scott is President of The Mortgage Bankers Association.

MR. STICKEL: How long is this going to take?

MR. GREENBAUM: I've been on for quite a while. I think what I should do under these circumstances is to submit it and not take any more of your time.

Thank you very much.

(Mr. Robert E. Scott's statement follows)

STATEMENT OF: ROBERT E. SCOTT

Mr. Chairman and Members of the Commission:

I am Robert E. Scott of Elizabeth, New Jersey, where I have been engaged in the real estate and mortgage banking business for almost 30 years. The Mortgage Bankers Association of New Jersey comprises nearly 100 life insurance companies, commercial banks, savings banks, national banks and mortgage companies. Unfortunately, the Board of Governors of our Association has not had an opportunity to meet since I received a copy of this second draft, but I believe that I reflect the views of our Association when I testify today as an individual familiar with zoning and planning. I am one of those who participated in the drafting of the present Planning Act of 1953, following more than a year of conferences and study by representatives of the entire industry.

It is not surprising that this second draft contains so many objectionable provisions when it is realized that 8 of the 9 members of the Commission responsible are municipal attorneys, and that the Realtors, Home Builders, Mortgage Bankers, Bankers, Savings & Loan Associations, and other organizations directly affected by this proposed revision were not represented.

The introduction states, "It has been estimated that almost 30% of the Superior Court litigation in New Jersey involves zoning and planning matters". While this may be true, I believe it is attributable to faulty interpretation and administration of the present planning law, and certainly does not justify the far reaching changes contemplated by this second draft. I have no objection to the codification of existing laws pertaining to land use, but if a bill incorporating substantially these provisions is enacted into law, it will drastically curtail and sharply increase the cost of building, seriously inhibit the industry's ability to provide vitally needed housing, adversely affect the entire real estate business, and impair the economy of the State. Many of the provisions violate private property rights and amount to virtual confiscation without just compensation. Any such bill might properly be labeled the "Land Grab and Graft Act of 1961".

I will discuss the provisions in order:

1. "Subdivision" (page 2) is defined as the division of a parcel of land into two or more lots. No mention is made of the frequent problem of combining two or more lots into one, which under present procedure requires Planning Board approval. It is unnecessarily burdensome and expensive to require a property owner to obtain approval to combine two or more lots on a filed map before he may build on a substantially larger lot; it should be permitted to combine lots without the necessity of planning board approval.

2. *40 A:7-13 (page 9) would vest the Planning Board or Planning Department with authority to rule on "the general design, arrangement, texture, material and color of buildings and structures . . . . .". It is unlikely that many, if any Planning authorities would have the qualifications for competently judging within this category, but even if they did I would object strongly to granting any such power. Adoption of this provision could spell the end of large scale building which has been the means of providing more and better housing at less cost for the bulk of our citizens. Even in the case of individual houses and other structures, this is a dangerous weapon to place in the hands of municipal officials all too prone, in many instances, to hinder new construction for a variety of fiscal or other reasons. The same objection is leveled at subparagraph C (pp. 9-10), which would force the developer to provide exceptional treatment for "entrance districts and thorofares whose appearance is of unusual interest to the municipality".*

3. *40 A:7-16 (page 11) would permit the creation of County Planning Boards, which could constitute an additional stumbling block to the growth of communities. There is nothing to prevent separate municipalities from collaborating in the preparation of their respective master plans. County Planning Boards would violate the principle*

of home rule, and the same arguments advanced in favor of same could lead to State, Regional and Federal Planning Boards, multiplying the problems and expense of the developer and property owner, with dubious value to the taxpayers who would be forced to support these additional agencies. In fact, Regional Planning Boards are provided for in 40 A:7-20 (page 13).

4. 40 A:7-22c (page 14) would permit a municipality to "require the subdivider to pay all or any part of the cost of the development up to the amount of the benefit to the subdivision:." There is a question in my mind whether this would authorize towns to force the developer to drag utilities considerable distances past other properties, without compensation, in lieu of permitting individual wells and disposal systems. If so, this could cause the subdivider to abandon his plans for the tract.

5. 40 A:7-22d (page 14) provides that "streets within the subdivision will be of such width and grade and will be in such locations that they will accomodate prospective traffic and provide a convenient and safe system". This is wide open; there should be some limitation on the municipality's right to require excessive street widths and arbitrary locations of streets.

6. One of the most serious provisions is that contained in 40 A:7-24 (page 15), which provides for "con-

ditional" approval of subdivisions for a period of only one year. The present law protects the subdivider for three years, and this should be a minimum period. Under the present procedure, a subdivider presents the Planning Board with his proposed subdivision lay-out, and if the proposal meets all of the requirements then in force, the Planning Board, after public hearing, grants tentative (or conditional as it would now be called) approval good for three years. This three year period affords the subdivider the opportunity of completing his detailed engineering work, posting a performance bond, etc., and filing for final approval either in sections or on the entire tract. To limit the subdivider to one year would subject him to the "second look" a Planning Board might take at the expiration of the year, and the imposition of additional requirements so costly and time consuming as to constitute the virtual confiscation of the balance of his tract. While under "d" the applicant may apply for and the Governing Body may grant two one year extensions, there is no assurance that Planning Boards would in fact grant such extensions, and few developers could afford to run the risk - unless they could be

certain that following final approval they could build, sell, finance, and close all of their houses within the first one year. Further, I find no time limit within which the Planning Board would be required to approve or disapprove of the subdivider's request for conditional approval; under existing law a period of 45 days is specified.

40 A:7-26 (pp. 16-17) provides for a public hearing upon the application for final approval, gives the Planning Board 45 days to approve or disapprove the subdivision, and "if the Planning Board requires any substantial amendment in the lay-out of improvements proposed by the subdivider, an amended plat must be submitted and proceeded upon as in the case of the original plat". I see no purpose in holding a public hearing at this stage, and certainly the Planning Board should have no authority to impose new restrictions and requirements after the subdivider has spent the substantial sums necessary to place his subdivision in position for final approval. The effect of this paragraph is to negate the entire conditional approval procedure, which is the vital and essential heart of successful subdivision development.

7. 40 A:7-31 (page 18) would limit final approval to two years, although "the Governing Body may extend such period of protection AGAINST CHANGES IN ZONING RESTRICTIONS for a period of one year". This is ridiculous; once final approval is granted, and the map is filed, the subdivider has a right to rely upon the arrangement whereby he is guaranteed the right to obtain building permits in accordance with the terms upon which approval was granted. If a time limit must be set, then it should not be less than 10 years to protect not only the subdivider, but the interest of subsequent lot purchasers as well.

8. 40 A:7-32 (page 19) grants every municipality the right to adopt an official map, without imposing any restriction on the width and location of streets, drainage rights of way, and the location and extent of parks, playgrounds and school sites. If this applies only to existing facilities I have no objection, but if it applies to future facilities then there should be some limitation on capricious requirements.

9. 40 A:7-39 (page 22) would permit the adoption of zoning ordinances regulating the "height, number of stories, and size of buildings and other structures and their relationship to one another, the percentage of lot that may be occupied, floor

area ratios and adequate light and air". I can see where municipalities unfriendly to new construction could have a field day at the expense of the property owner if this provision is adopted. Regulating the height, number of stories, the percentage of lot that may be occupied and adequate light and air is all right, but to arm the municipalities with the power of regulating the SIZE of buildings, the FLOOR AREA RATIOS, and the RELATIONSHIP OF ONE BUILDING TO ANOTHER is a dangerous weapon to place in the hands of those who might use it as a means of discouraging or forestalling any construction. Municipalities could for example, require sizes and floor ratios in excess of the demand in the case of residential buildings; or in the case of commercial or industrial buildings, sizes and ratios so small that the buildings would be economically unprofitable.

10. 40 A:7-45 (page 25) provides that the meetings of the Board of Adjustment "shall be held at the call of the Chairman and at such other times as the Board may determine". I feel that this should go on to say "but not less than once each month".

11. 40 A:7-46 (page 26) provides for the taking of transcripts by the Board of Adjustment but does not say who shall pay for the same.

The applicant should not be burdened with the expense of transcripts for which he may have no use.

12. 40 A:7-50 (page 28) would require that all three members of the Zoning Board of Appeals shall be attorneys. In some municipalities it might be difficult to find three qualified attorneys willing to serve, but in any event the interest of the public and the municipality would be better served if at least two of the three appointees were vested with the special qualifications, knowledge and experience in matters relating to zoning and planning, such as architects, engineers, realtors, mortgage bankers, builders, or others intimately familiar with problems affecting zoning.

Subparagraph "c" provides for an annual salary of $6500 for each member, and $7000 for the Chairman. It is ironic that the attorneys who drafted this provision should write their fellow-lawyers in for these substantial salaries, when there are a multitude of other public servants who serve on a wide variety of local Boards and agencies without compensation. I see no reason why salaries should be provided for members of the Zoning Board of Appeals so long as there are civic minded experts willing to serve without fee.

Subparagraph "d" provides for a secretary and other assistants subject to the provisions of Title 11 - Civil Service. There are many municipalities not under Civil Service, and they should not be forced to go under Civil Service in order to hire such clerical and other services as may be required.

13. 40 A:7-56 (page 31) would permit municipalities to eliminate certain non-conforming uses within 5 years. This is actual confiscation of an owner's property, since there are few, if any, non-conforming uses which could be amortized completely within a 5 year period. If it is reasonable for an owner to derive a net income of 10% on his investment each year, complete amortization within 5 years would mean that the property would have to net, over and above all operating expenses at least 30% every year for 5 years if the owner were to net 10% in earnings and recapture his entire capital investment within the 5 year period. I am in sympathy with the desirable objective of eliminating those non-conforming uses which are undesirable, but I am also sympathetic to the plight of the property owner who created the use, or purchased a legally non-conforming use, and whose investment represents a substantial portion of his total assets. Strict enforcement of this provision could bankrupt any property owner whose mortgage or other indebtedness exceeded the amortized value of

the property at the end of 5 years, and would make it virtually impossible to sell any non-conforming use. I would suggest a 20 year term as reasonably equitable.

14. 40 A:7-57 (page 32) would not allow non-conforming uses to be restored "if the cost of restoration is more than 60% of its assessed valuation for taxing purposes based at 100% at time of destruction". If this means 60% of fair market value then this is not objectionable; however, if it means 60% of 40% (the ratio of assessment to true value) or 24% of true value, then it would work an undue hardship on the owner of the non-conforming use. It should be made clear that the non-conforming use may be rebuilt or restored if the cost thereof is less than 60% of true value, as reflected by the ratio of assessment to true value.

It is evident from a careful study of this so called Second Draft that a far more equitable and workable piece of legislation could have been developed if industry members had been represented on the Commission. It is equally obvious that unless the final draft is substantially modified to meet the foregoing objections, there will be an avalanche of protests when any such bill is introduced.

THANK YOU!

MR. STICKEL: I would like to call Mr. Alvin Gershin at this time.

ALVIN E. GERSHEN: My name is Alvin E. Gershen. I am here as Chairman of the Legislative Committee of the New Jersey Chapter of the American Institute of Planners.

As you know, Mr. Chairman, our Institute is working closely with your staff in trying to revise these draft copies. We will have for your staff a detailed critique of this draft in two weeks.

Specifically, if we can address ourselves just very briefly to three things: This is an improvement in terms of legal draftsmanship and clarity over the previous draft. However, we think that some things may have been over-simplified and in the urge to have few definitions some of the definitions may have been left out that should have been included.

We are concerned about the relationship of planning boards and planning departments, and that's not clear at all. We feel that in all cases there should be planning boards even where planning departments do exist.

The county planning provisions, which were discussed earlier, are something to be looked into and certainly the County Planning Association which has done some work and submitted some briefs here might very well provide the lead on that.

And lastly, which does not appear in this draft, the urban renewal features are something which we are quite concerned about. We are just hopeful that the legislative

revision concerning urban renewal does not lag too far behind but is kept abreast and is submitted to the Legislature for revision as well. That's quite important in the field of planning and zoning.

MR. CUMMIS: As you know, Mr. Gershen, it was a policy decision that was made because of the special aspect of the urban renewal section to review those sections in a small sub-committee which was appointed and of which you are a member.

MR. GERSHEN: We just don't want that to lag further behind than this and we would just like to remind everybody publicly.

MR. STICKEL: Well maybe you can get busy and get them going.

MR. GERSHEN: Will do, Fred.

That's the extent of our remarks if you have no questions, gentlemen.

Thank you.

MR. STICKEL: Thank you.

Mr. Joseph.

WILLIAM E. JOSEPH: Gentlemen of the Committee and Senators --

MR. STICKEL: I might say that we are going to adjourn at one o'clock if we can get everybody in at that time; if not, we'll come back.

MR. JOSEPH: My name is William E. Joseph, Assistant to the President, Houdaille Construction Materials, Inc., one of New Jersey's major extractive industries. Our Home office is in Morristown, New Jersey, and we have

a total of 32 locations in New Jersey and Eastern Pennsylvania, producing crushed stone, sand and gravel, ready-mix concrete, and bituminous concrete. Our New Jersey facilities are situated in nearly half of the state's counties: Essex, Hunterdon, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union and Warren.

Our company, as well as other members of the industry, was very pleased to note that you have greatly modified the proposal to "amortize" or eliminate nonconforming uses, by restricting its application to certain specified nonconforming uses, and to land and structures with a relatively low valuation.

Since this second draft is different in many respects from the one published in January, we have examined it carefully to appraise its effect upon community planning and upon a business such as ours. We appreciate your invitation to offer recommendations and criticisms of this draft and we gladly accept this opportunity by proposing several specific amendments, in the interest of sound planning and zoning. While we recognize their significance to our operations, we are also keenly aware of their importance to many other businesses, as well as to the general public. They deal with three subjects: 1) Adoption of new zoning ordinances and amendment of existing ordinances; 2) Notices of public hearings; and 3) The newly revised sections dealing with nonconforming uses. We have put these in written form to aid you in your consideration.

Adoption and Amendment of Zoning Ordinances

Section 40A:7-40 provides for adoption of a new zoning ordinance. The provision requiring public hearings by the planning board is ambiguous,

and we suggest that it be clarified. At present it provides for public hearings (plural) but does not state any specific minimum requirement. Our suggested text would provide for "one or more public hearings", in order to clarify the intent.

Section 40A:7-41 deals with the amendment of an existing zoning ordinance. Our proposal provides that the planning board shall hold one or more public hearings on any proposed amendment. As you know, many of the existing zoning ordinances were adopted a number of years ago and have become obsolete in the light of present-day conditions. Also, experience has revealed that many of the newer ordinances which were drafted and adopted hastily to meet some urgency have many weaknesses and inadequacies. As a result, a number of communities are completely overhauling their zoning plans--in some cases as the outcome of adoption of a community master plan. Very often the so-called "amendments" propose an entirely new ordinance. While in some cases the planning boards hold what they call "informational meetings", many of them apparently believe they are not required to hold advertised public hearings. We believe that even if just a single amendment is proposed, a public hearing should be required--since such a hearing provides an opportunity for public discussion, questions, and suggestions--something which should be the goal of all planning boards. We recommend that this section provide specifically that one or more public hearings be held by the planning board on all proposed amendments and also that such notice be given at least 10 days in advance of a hearing.

Notice of Public Hearing

Out of town owners of property are usually at a great disadvantage in keeping informed of proposed new zoning or zoning amendments. The requirement that proposals be advertised in newspapers circulating in the community is of very little value to companies who own business properties in communities other than their home offices. Frankly, we believe that planning boards and professional planners should make every effort to get the views of business enterprises and other property owners as part of their research in developing a land use and zoning plan. Very often the owner of a business enterprise is in a position to offer valuable suggestions to planners. This is especially true in view of changing technology which affects the type of operations and products of a business, and also provides opportunities for greater protection to neighboring properties.

Unfortunately, however, there are too many cases where planning boards and professional planners have kept their work completely "in the dark"--right up to the time their zoning proposals are submitted to the governing body for enactment. As a result, interested homeowners and business management have little or no opportunity to study such legislation until it is scheduled for enactment. Certainly this lack of public information violates the very principle of "community planning". To make matters worse, an out-of-town property owner may know nothing at all about a proposed zoning ordinance until after it has been approved by the governing body.

This means that if the owner has practical suggestions, the governing body either turns them down or must present them as amendments. This is costly and detrimental to development of public understanding and support of planning and zoning.

We recommend, therefore, that Section 40:7-4, be amended to require mail notice of zoning ordinances be given to out-of-town owners of property affected by such zoning. This will at least provide such owners with a reasonable opportunity to study the proposals and to prepare for the public hearing.

Nonconforming Uses

We note that the existing R.S. 40:55-48, which requires the continuance of nonconforming uses, has been eliminated entirely from the second draft, as it was from the first draft. Despite the express limitations in Section 40A:7-56, we believe the explicit protection of existing nonconforming uses is still very essential. Leaving out this section might encourage the belief on the part of some municipalities that they are not required to continue the nonconforming uses existing at the time of adoption of a new ordinance or amendments. As you undoubtedly are aware, there has been a great deal of litigation on this subject in other states, because of a tendency to try to eliminate nonconforming uses. We recommend, therefore, that wording of the existing 40:55-48 be reinstated, with the new proposals added as a modification. Our proposed text is not intended as an endorsement of the new proposals, but simply to show that the two ideas can be merged into a single section.

Finally, I wish to call attention to our letter of March 20, 1961, recommending that zoning of land which is underlain by valuable mineral resources be subject to review and revision by the Planning and Development Council of the State Department of Conservation and Economic Development. We urge your favorable consideration of this proposal. The mineral resources of New Jersey are essentially of a regional character, and have an economic

importance extending far beyond the borders of any one municipality. Land use regulations affecting these resources should be compatible with the economic interests of the entire community or region. We believe the adoption of this proposal would provide an important safeguard to assure the economic use of New Jersey's mineral deposits, wherever such use is in the best interests of the state or of the region in which they are located.

Thank you very much.

Proposed revisions:

40A:7-4. Notice of hearing.

Notice of hearing when required by this chapter shall be as follows:

a. Public notice. Such notice shall be published in a newspaper having circulation in the municipality not less than 10 nor more than 21 days prior to such public hearing. Such notice shall state the time and place of the hearing and the nature of matters to be considered.

b. Personal notice. Such notice shall be given not less than 10 nor more than 21 days in advance of any public hearing by

1. Handing a copy thereof to the property owner, or

2. Leaving a copy thereof at his usual place of abode with a person of suitable age and discretion, or

3. Sending a copy thereof to his usual place of abode by certified mail.

Whenever said owners are nonresidents of said municipality, such notice shall be given by sending written notice thereof by registered mail to the last known address of the property owner or owners as shown by the most recent tax lists of the municipality. Where the owner is a partnership, service upon any partner as above provided shall be sufficient. Where the owners are corporations, service upon any officer, as above set forth, shall be sufficient.

40A:7-40. Planning board referral.

Prior to adoption of a zoning ordinance, the planning board, or the planning department if so provided by the governing body, shall recommend boundaries of the various districts and the appropriate regulations to be enforced therein. Thereafter, the planning board or planning department shall make a preliminary report and hold one or more public hearings thereon before submitting its final report to the governing body. Public notice shall be given of such hearing, and personal notice shall be given to any property owner, individual or corporate, whose legal address, as shown on the latest tax list, is outside of the municipality. Such notice shall be given in accordance with the provisions of this chapter.

40A:7-41. Changes in zoning.

Any municipality that has a zoning ordinance may amend its zoning ordinance or adopt a new zoning ordinance at any time. Any such proposed amendment or new zoning ordinance shall be referred to the planning board or to the planning department if so provided by the governing body, and the planning board or planning department shall hold one or more public hearings thereon before submitting its final report to the governing body. Public notice shall be given to any property owner, individual or corporate, whose legal address, as shown on the latest tax list, is outside of the municipality. Such notice shall be given in accordance with the provisions of this chapter. In the case of an unfavorable referral by the planning board or planning department to the governing body, the proposed amendment or new zoning ordinance shall not be adopted except by favorable vote of 2/3 of the full membership of the governing body.

40A:7-54. Nonconforming uses and structures.

a. Except as provided in subsection (b), below, a nonconforming activity, use or structure existing at the time of enactment of an ordinance may be continued upon the lot or in the building so occupied, and may be restored or repaired in the event of partial destruction thereof. Such activity, use or structure:

1. Shall not be increased in area, scope or extent beyond the nonconformance existing at the time of enactment;

2. Shall not be changed to another nonconforming use unless the board of adjustment shall determine that such change shall be no more harmful or objectionable than the existing nonconformance;

3. May not be reinstated if the nonconformance is voluntarily abandoned or suspended for a period of one year or more;

4. Shall not revert to a nonconforming use after having once been made conforming.

b. Any municipality may, by zoning ordinance, provide that any of the following nonconforming uses in any residence district provided in such zoning ordinance shall cease or shall be converted to a conforming use. The municipality shall provide a reasonable formula, including amortization of investment in the property, to determine the period within which such nonconforming use shall cease or be converted to a conforming use, but in no event shall such period exceed 5 years:

1. Any such nonconforming use involving the use of land only or involving the use of land and accessory improvements which aggregate an assessed valuation for tax purposes of not more than $2,000;

2. Any such nonconforming use consisting of a sign or billboard;

3. Any such nonconforming use consisting of a junk yard, auto wrecking or dismantling establishment.

c. Any action by the governing body requiring the

1. Termination, removal or conversion of nonconforming activities or uses; or

2. Removal or conversion of nonconforming structures; or

3. The permitted restoration of a nonconforming use, activity or structure after destruction,

shall provide for the serving of notice to the owner or owners of the property stating the provisions and effective dates that affect the particular property.

MR. STICKEL: Thank you.

Mr. Schloeder.

NICHOLAS S. SCHLOEDER: I am Nicholas S. Schloeder, Union City, New Jersey.

Gentlemen of the Committee, I had not proposed to say anything except that as a member of the Committee of the New Jersey State Bar, as well as a member of the New Jersey League of Municipalities, Municipal Section, I had occasion to meet with Mr. Etz and also to participate in a little hearing we had in Trenton - I mean in Atlantic City.

However, Mr. Etz, I believe, took some notes at our meeting here in Trenton, and Mr. Bertini also took notes, the subject matter of which I have never seen.

I just want to say that my original letter to Mr. Cummis was written as an individual. I don't think I have to tell any member of the Commission that I have been active in this field, in the process not of planning anything or advocating anything but in fiercely protested cases which a great many of you know about.

The result is that I would like to have the opportunity to perhaps supplement anything that was done through the Municipal Section, to express my own personal views. There are a lot of things - for instance, on this question of -- I don't want to go into any of them but maybe one by way of illustration, a matter like the Zoning Board of Appeals, the county board. Now there the question was discussed as to whether it ought to be a trial de novo or not, and it was suggested here this morning that the appeal would be directly

to the Appellate Division. Now that would require a change in the rules of the Supreme Court because a county board is not a state body and the present rule on zoning provides for appeals to the Appellate Division in the case of State administrative boards.

Those things probably you members of the Committee are influential enough with the Supreme Court -- I am sure they would go along if any such legislation was adopted.

The only other thing I want to call attention to is on the question of nomenclature or language. Many of the objections were addressed to that very point.

Now I look at these things a little differently than the builder or planner. I look at them from the standpoint of litigation. And there is some very loose use of words. Even the nonconforming use remains undefined, completely. It's a half definition. And I am sure in considering that that you will undertake a clearer definition of such a term.

MR. CUMMIS: We will be most happy, as we have been in the past, to have your comments, Mr. Schloeder. As you know, we always give them consideration.

MR. SCHLOEDER: All right. Thank you.

MR. STICKEL: Mr. Stephens.

CHARLES W.STEPHENS: Mr. Chairman, my name is Charles W. Stephens. I am Vice President of the American Advertising Company at Long Branch, New Jersey, and presently President of the Outdoor Advertising Association of New Jersey.

In accordance with the suggestion of the Chairman, I am going to accept his suggestion that I file my paper with the clerk at this time, in the interest of time.

(Statement submitted by Mr. Stephens.)

Outdoor Advertising Association of New Jersey

354 PARK AVENUE - NEWARK 7, NEW JERSEY

MR. CHAIRMAN AND MEMBERS OF THE COMMISSION:

My name is Charles W. Stephens, vice president and general manager of the American Advertising Company, Long Branch, N.J., and president of the Outdoor Advertising Association of New Jersey with headquarters at 354 Park Avenue, Newark, N.J.

On March 20, 1961, in response to your invitation for recommendations and suggestions, we wrote to express the concern of our industry over certain sections included in the tentative draft of the proposed revision of Title 40, Chapter 7, New Jersey's basic planning and zoning law, dated January 1961.

Our Association has now reviewed the second tentative draft in accordance with your suggestion, and now reports that it views with apprehension the partial listings a-b-c-in Section 40A:7-56. It is our opinion that these are incomplete listings and therefore are discriminatory and capricious, and in the hands of local planning and zoning boards can give rise to misinterpretation or misunderstanding. Specifically, we should explain that the listing under b to which we object does not apply to our industry as it is our stated policy not to place billboards in residential areas. However, in New Jersey's Municipal Planning and Zoning Law, this listing may place a cloud upon our industry which we believe to be unfair and unreasonable. We are an ancient and well-tested advertising medium over the years which, with other advertising media, is considered throughout our nation as one of the important working partners of our free enterprise system.

The Outdoor Advertising Association of New Jersey therefore respectfully requests the deletion of the listings a-b-c in Section 40A:7-56.

MR. STICKEL: Now we have 15 minutes more. Is there anybody else who wants to be heard?

HARVEY MANDEL: My name is Harvey Mandel. I am Planning Director of the City of Trenton. Although I am here speaking for myself, and neither for the City nor for the Planning Board, my opinion reflects the thinking of all of the other -- at least five of the other Planning Directors, of the seven, in the State of New Jersey.

We have had several meetings, the five of us, - the cities of Newark, Paterson, Camden, Trenton and East Orange. We have met as a group several times to consider particularly the drafts as they have been submitted.

Although we are each submitting separate statements, point by point, on the Act reflecting our own thinking, there is one point on which we are all in strong agreement and support and that is the planning department provision of the Act, and we feel that such an option is long overdue in state enabling legislation.

I would just like to read into the record three paragraphs which have appeared in the July, 1961, issue of the ASPO Newsletter - American Society of Planning Officials Newsletter - which I just received on Monday, speaking of the planning department and planning commissions:

> "Since the end of the war planning departments, as contrasted with professionally staffed independent planning commissions, have been established in a great number of cities throughout the United States. The Planning Department is an administrative device that has particularly recommended itself to the newer types of municipal organization, the strong mayor and council-manager forms of government.

> "Briefly, the planning department has had appeal because it brought planning into the official family, integrated planning with the executive functions. The independent commission and staff had been apart and aloof from city government and, except for certain statutory review powers, had not been too effective.
>
> "The planning department is proving successful. We may expect to see it adopted in more and more cities. All questions on organization, however, have not been answered. The first question is: What do you do with the old lay planning commission? Has it completely outlived its usefulness? Do you throw it out completely? Is there any advantage at all in having a group of lay persons mixed up in planning? If you keep the lay commission, what status do you give it?"

The article goes on to cite one alternative that the American Society of Planning Officials feels may be offered.

Now, despite the lack of planning department option in the current enabling legislation, all the larger cities in New Jersey - Newark, Camden, Trenton to some extent, - have been operating as planning departments. The fact that the relationships between the staff and board have not been spelled out in the existing enabling legislation has led to a great deal of confusion, lack of effectiveness, lack of coordination of the planning function in municipal government.

I might say that all serious administrative studies undertaken of planning agency function in the large central cities have - and this is in Baltimore, Syracuse, Chicago - studies undertaken at great cost and by leading authorities in the field, as well as municipal charter studies in Newark and Camden, recently, and Trenton is undergoing a study, - have recommended the establishment of a planning department with a staff directly responsible to the chief executive.

As I said, the fact that the enabling legislation does not clarify the staff-board role has led to a great deal of confusion in New Jersey cities.

I think the second draft is a long step forward over the first draft, which was a beginning. I would like to say that we feel - all the planning directors in the State feel that as those people most familiar and most experienced with staff-board relationships, that we would be very happy to sit down with the staff to more clearly present in the State legislation the alternatives and staff-board relationships among those alternatives that we feel are necessary to be incorporated within the act.

I realize that our situations may be different than most of the 460 planning boards in the State but we feel this is a valid situation and it has to be clarified at this time.

Thank you.

MR. STICKEL: Mr. Pond, would you like to be heard.

HENRY O. POND: My name is Henry O. Pond, Consulting Engineer and Professional Planner, member of the Bergen County Planning Board.

I have a communication here from the Board which I will read:

(Communication follows)

COUNTY PLANNING BOARD

COUNTY OF BERGEN, N. J.

C. W. FLOYD COFFIN
Chairman

JOHN J. TRICH
Secretary

CASSIUS DALY, Jr.
EDWIN EMRICH
ROSCOE P. McCLAVE
ANTHONY PEPE
HENRY O. POND
JAMES R. SUTPHEN
CHARLES A. WINANS

GEORGE H. DIECKMANN
Planning Director

TELEPHONE
Diamond 2-4537

47 ESSEX STREET
HACKENSACK, N. J.

July 12, 1961

Mr. Clive S. Cummis, Counsel
County and Municipal Law Revision Commission
Room 71
State House
Trenton, New Jersey

Dear Mr. Cummis:

The consolidation of the provisions of State Law pertaining to zoning, municipal planning, county planning, regional planning, subdivision control, official maps, boards of adjustment and appeals, appears to have some merit.

However, we question the justification of the need for new legislation for the convenience of incorporating all phases of planning and zoning in one enabling act. Rather, an effort should be made to assemble the pertinent existing statutes into one publication for the convenience of lay board members and the public.

We recommend that, further, informal conferences be held to secure practical suggestions from officials of the - New Jersey League of Municipalities, New Jersey Federation of Official Planning Boards, New Jersey County Planners Association, New Jersey Chapter, American Institute of Planners, New Jersey Municipal Attorneys Association, New Jersey Municipal Engineers Association, New Jersey Building Inspectors Association and other groups whose members are daily called upon to function under these acts.

The study of and possible clarification, strenghtening and amending of existing legislation with the assistance of the above mentioned groups would be more acceptable and effective than the proposed act.

We oppose the proposed legislation as written.

Respectfully submitted,

COUNTY PLANNING BOARD
COUNTY OF BERGEN, NEW JERSEY

By: Henry O. Pond,
Member of the Board

MR. POND: I would also like to comment as follows: It is felt that the second draft, as submitted, is confusing in its references and its arrangement. Municipal and county functions are necessarily different and should be separately stated and treated.

The arrangement that appears in several places of stating exceptions - any exception stated tends to weaken the provision as originally stated and it is felt that it should be possible to state clearly what is wanted and that the statement of exception should be omitted.

The suggestion of establishing a county board of appeals does not appear to offer any improvement and would merely add another and unnecessary step in the procedure of handling appeals.

Thank you.

MR. STICKEL: If there is nobody else to be heard, I will entertain a motion to adjourn.

ASSEMBLYMAN PANARO: I so move.

MR. STICKEL: All right. Thank you for coming.

(Hearing adjourned.)

It was requested that it be noted on the record that Mr. Herman M. Jeffer of the Samuel Braen Industries, Wyckoff, New Jersey, was unable to appear at the hearing but that he was forwarding a written statement.

CHAPTER 7. LOCAL LAND USE LAW

Proposed amendments to draft by staff of Regional Plan Association, 605 Broad Street, Newark, N. J., prepared by Ernest Erber, city planner and Arnold Mays, attorney.
(Only amended paragraphs are given below. New language is underlined.)

40A:7-101 PURPOSE AND SCOPE OF THE ACT.

Requirements of this act shall be for one or more of the following purposes: the guiding and accomplishing of a coordinated, adjusted and harmonious development of a municipality and its environs in accordance with present and future needs which may promote health, morals, safety from fire, flood, panic and other dangers; prevent overcrowding of land or buildings; provide adequate light and air; avoid undue concentration of population; promote improved community appearance through good civic design and arrangement; preserve open space...

In order to promote and accomplish these purposes, any municipality may provide for and guide their governmental...growth, as well as the expansion of their governmental functions...to provide through the expenditure of public funds for the acquisition by purchase, fee or lesser interest or rights in real property.

40A:7-102 DEFINITIONS

"Open space" means any space or area characterized by (1) great natural scenic beauty, (2) whose existing openess, natural condition or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources.

"Community appearance" means to give visual expression to the character of the community and its separate sections through the arrangement and design of structures, open spaces and public ways in a designed interrelationship; the protection of vistas and views; the preservation of historic and topographic features and stands of trees; and safeguarding the appearance of gateway thoroughfares and the roadside generally.

40A:7-206 POWERS OF PLANNING BOARD

The planning board may:

j. Determine what areas, including those bearing significant scenic or esthetic values which if preserved in their present open state would constitute important physical, social, esthetic, economic assets to existing or impending urban or metropolitan development, and recommend to the governing body the purchase of the fee or lesser interest or right therein.

40A:7-300 OBJECTIVES OF DEVELOPMENT PLAN

...The development plan shall also include adequate provision for traffic and recreation, the preservation of open space, the wise and efficient expenditure of public funds to accomplish the same...

40A:7-301 SCOPE OF DEVELOPMENT PLAN

In scope, the development plan may cover proposals for:

a. the use of land and buildings - residential, commercial, industrial, mining, agricultural, park, and other like matters;
b. services - water supply, utilities, sewerage, and other like matters;
c. transportation - streets, parking, public transit, freight facilities, airports, and other like matters;

d. housing - residential standards, slum clearance, redevelopment, rehabilitation, conservation and other like matters;
e. conservation - water, forest, soil, flood control, and other like matters;
f. public and semi-public facilities - civic center, schools, libraries, parks, playgrounds, fire houses, police structures, hospitals, and other like matters;
g. the distribution and density of population;
h. community appearance;
i. other elements of municipal growth and development.

40A:7-302 EFFECT OF ADOPTION OF DEVELOPMENT PLAN

If portions of the development plan contain proposals for drainage rights-of-way, schools, parks, playgrounds, or community appearance within the proposed subdivisions for drainage rights-of-way, schools sites, park and playground purposes have been adopted, before approving subdivisions the planning board may further require that such drainage rights-of-way, school sites, parks, playgrounds, or community appearance proposals be shown in locations and of sizes suitable to their intended uses.

40A:7-500 GENERAL PURPOSES AND POWERS

Any municipality may by ordinance

c - To expend or advance public funds upon recommendation of the planning board in accordance with Sec. 7-206j, for the purchase, lease or otherwise of the fee or any lesser interest or right in real property in order to acquire, maintain, improve, protect or limit the future use of or otherwise conserve open spaces and areas within their respective jurisdictions.

40A:7-501 CREATION OF DISTRICTS: UNIFORMITY OF REGULATIONS

No portion of a municipality may be left undistricted or unzoned. Additional classifications may be made within any district

for the purpose of regulating nonconforming activities; uses or structures and for the regulation, restriction or prohibition of uses and structures at or near:

1. the boundary of one or more districts of completely dissimilar uses;
2. major arterial thoroughfares;
3. natural or artificial bodies of water or water courses;
4. areas subject to flooding;
5. aircraft facilities;
6. places of relatively steep slope or grade;
7. public buildings, grounds, parks, reservations or historic and patriotic sites;
8. places having unique topographical characteristics which would affect their surroundings;
9. areas delineated upon a duly adopted development plan for purposes of community appearance.

40A:7-502 PURPOSES OF ZONING: ESSENTIAL CONSIDERATIONS

Such regulations shall be in accordance with a future land use plan, and to facilitate adequate provision for transportation, water, sewerage, schools, parks, community appearance, open space, and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view of protecting the value of property and encouraging the most appropriate use of land throughout such municipality. Standards of performance may be required of any activity, use or structure permitted by ordinance and the economic and aesthetic consequences to the municipality of the spatial distribution of such activity, use or structure may be taken into consideration for said purposes.

40A:7-510 MUNICIPAL DESIGN PLAN ORDINANCE.

(delete)

40A:7-511 PREPARATION OF MUNICIPAL DESIGN PLAN

(delete)

40A:7-512 CONTENTS OF MUNICIPAL DESIGN PLAN

(delete)

40A:7-513 PROCEDURES FOR ADOPTION OF MUNICIPAL DESIGN PLAN ORDINANCE

(delete)

40A:7-514 LIMITATION ON MUNICIPAL DESIGN PLAN ORDINANCE

(delete)

40A:7-521 POWERS AND FUNCTIONS

The board of adjustment shall have the power to:

a. Hear and decide appeals where it is alleged by the appellant that there is error in any order, action, requirement, decision, interpretation, refusal or omission made by an administrative official or agency based on or made in the enforcement of the zoning ordinance. (delete as underlined) or municipal design plan ordinance.

40A:7-528(B) COMMUNITY APPEARANCE ADVISORY COMMITTEE

After the adoption of a zoning ordinance which contains community appearance regulations as provided for in 40A:7-501 (9) the governing body shall appoint an advisory committee of at least three persons, none of whom shall be a member of the board of adjustment. Where such a community appearance committee exists, the board of adjustment shall not act on any appeal or application for relief from the community appearance regulations until it has referred such appeal or application to the community appearance advisory committee and has received a written report thereon or 30 days shall have elapsed from date of referral without such a report having been filed. A duly authorized representative of the community appearance advisory committee shall be considered a party in interest at any hearing before the board of adjustment involving regulations affecting community appearance.

40a:7-700 ESTABLISHMENT AND PURPOSE OF OFFICIAL MAP

The governing body may, by ordinance, after public hearing, establish an official map ...The official map shall be deemed conclusive with respect to...the location and extent of public parks, open spaces and areas for public use and enjoyment...Unless within such one year period of extension thereof the municipality shall have entered into a contract to purchase, or instituted condemnation proceedings, either of which may be for a less than fee interest or right...