



1952
Annotated Suggested Revision
of

MUNICIPAL PLANNING ENABLING ACT
STATE OF NEW JERSEY

Prepared By:

The Planning Legislation Subcommittee
of the

N.J. Legislative Advisory Committee on the Revision of the
Planning Act, Subcommittee on Planning Legislation.

Sponsored By

The State Planning Section

New Jersey Department of Conservation & Economic Development

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Preface

On the following pages there is presented a suggested complete revision of the Municipal Planning Enabling Act of the State of New Jersey. In order to explain the thoughts of the Subcommittee preparing this revision and to interpret the intent of the sections, annotated notes have been added. It is the feeling of the Subcommittee that the revised act as prepared is a clearer, more concise presentation that will aid the operation of municipal planning in New Jersey. It is recognized that no legislation can be drafted that will satisfy each individual but it is believed that the exchange of ideas among the various Subcommittee members has resulted in a general act that can be supported by most groups and interests. It is equally obvious that it is the desire of the Legislature and the municipalities of our State, acting for the people of New Jersey, to have effective and meaningful planning legislation and to assure our municipalities every reasonable means to protect their future growth. This has been emphasized by the adoption of our new Constitution granting broadened powers to our municipalities under appropriate legislation. This revision is presented as being appropriate legislation which gives equal rights to all and at the same time carries out the expressed will of our people. We cannot afford to have our communities subjected to haphazard, uncontrolled growth.

The revision was initiated by the New Jersey State Department of Conservation and Economic Development by the formation of a Legislative Advisory Committee on May 1, 1952. The work of the Committee assumed even greater importance when Governor Driscoll found it necessary to veto Assembly Bill 463 of 1952 and urged a comprehensive study of the planning law. He further suggested that the Legislative Advisory Committee undertake such a study and report to the 1953 Legislature. The Committee in turn asked an already existing group of lawyers, planners, and engineers to serve as a Subcommittee on Planning Legislation and to submit its recommendations. Your Subcommittee has held many meetings and spent much time in discussion of the planning act. The comprehensive revision that follows is now submitted as a subcommittee recommendation and it is further recommended that every group and agency concerned study the act with the view toward securing its passage in the forthcoming Legislature.

In general the Subcommittee took several basic points as its objectives in the revision. These can be summarized as follows:

1. To remove conflicting, vague or contradictory elements in present legislation.
2. To remove procedures of questionable legality.
3. To strengthen the planning statute and to clarify the responsibilities of planning boards.
4. To rearrange the elements of the legislation in logical fashion.
5. To introduce improvements and new features where needed.
6. To make the working procedures as clear as possible.
7. To adhere to the principle of home rule with an entirely permissive set of legislation.

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September 22, 1952
Revised October 17, 1952
Revised November 13, 1952

Suggested Revision Of

MUNICIPAL PLANNING ENABLING ACT, STATE OF NEW JERSEY

Prepared Under the Direction of

THE LEGISLATIVE ADVISORY COMMITTEE ON THE REVISION OF THE PLANNING ACT

40:55-1 Definitions

Whenever used in this article the following words shall have the meanings hereinafter prescribed:

"Mayor" means the elected official who serves as the chief executive of the municipality, whatever his official designation may be.

"Governing body" means the chief legislative body of the municipality. In cities having a board of public works such board shall be considered the "governing body" for the purposes of this article.

"Plat" means the map of a subdivision.

"Subdivision" means the division of a lot, tract, or parcel of land into two or more lots, sites or other divisions of land for the purpose, whether immediate or future, of sale or building development; except that the following divisions shall not be considered subdivisions within the meaning of this act provided, however, that no new streets or roads are involved: divisions of land for agricultural purposes where the resulting parcels are three (3) acres or larger in size, divisions of property by testamentary or intestate provisions, divisions of property upon court order or divisions of property among members of a family. Subdivision also includes resubdivision, and where appropriate to the context, relates to the process of subdividing or to the lands or territory divided.

"Performance-guarantee" means any security which may be accepted under section 40:55-14 in lieu of a requirement that certain improvements be made before the planning board or other approving body approve a plat, including performance bonds, escrow agreements, and other similar collateral or surety agreements.

"Street" includes any street, avenue, boulevard, road, lane, parkway and viaduct which is an existing state, county or municipal roadway, or a street shown upon a plat approved by official action as provided in 40:55-10 of this article, as in effect at the time such plat was approved, or a street on a plat duly filed and recorded in the office of the county recording officer prior to the appointment of a planning board and the grant to such board of the power to review plats. The street includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, sidewalks, parking areas and other areas within the street lines.

The "official map" is a map adopted in accordance with 40:55-X1, which is deemed to be conclusive with respect to the location and width of the streets, public parks and playgrounds, and drainage rights of way shown thereon.

The "master plan" is a composite of the mapped and written proposals recommending the physical development of the municipality that have been duly adopted by the planning board under section 40:55-6.

"Drainage right of way" is a water way established to accommodate a stream or stream bed.

"Circulation" means provision for the movement of people, goods, water, sewage, or power by means of streets, highways, railways, waterways, airways, pipes, conduits, or other means; and includes facilities for transit, transportation and communication.

Editorial Note:

Definitions have been enlarged to present a clearer meaning of terms. Particular attention is called to the revision of the definition of the term "subdivision". An effort has been made to offer a more equitable definition in order to cause as little inconvenience to individuals as

possible and yet maintain the desirable requirement of protection to our communities. The exceptions provided are those which experience has shown to create the greatest problems in connection with the present definition.

40:55-2 Construction

In construing the provisions of this article all courts shall construe the same most favorable to municipalities, it being the intention hereof to give all municipalities the fullest and most complete powers possible concerning the matters provided for under this article.

Should any section or provision of this act be held to be unconstitutional or invalid, the same shall not affect the validity of this act as a whole or any part thereof other than the part so held to be unconstitutional.

The governing body may by ordinance grant any of the powers described in the sections of this act as exercisable by a planning board to a planning board to be created as stated in 40:55-3, but no particular power may be exercised until expressly granted by ordinance and until compliance is made with the conditions, standards, procedures and regulations enumerated in the sections describing that power.

Editorial Note:

Every attempt has been made to establish a logical sequence throughout this legislation. Items related have been placed together with the planning process carried step by step from the definitions to the creation of the official map. Attention is called to the last paragraph above which makes the entire act permissive but requires special action by the legislative body and establishes conditions that must be met before powers can be granted to the planning board. This insures that basic planning surveys will be accomplished by the board to provide guidance before mandatory referral of public improvements to the planning board is required.

40:55-3 Creation of Planning Board

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

Class I - mayor

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

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

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

When the board consists of less than seven members Class II shall be omitted.

All members of the board shall serve without compensation, and the members of Class IV shall hold no other municipal office, except that one of such members may be a member of the zoning board of adjustment and one may be a member of the board of education. The terms of the members composing Classes I and III shall correspond to their respective official tenures. The term of the member composing Class II shall terminate with the term of the mayor appointing him. The term of one member of Class IV first appointed shall expire at the end of each year beginning at the end of the first year. Thereafter the term of each shall be the same number of years as there are members of Class IV on the board. If a vacancy in any class shall occur otherwise than by expiration of term, it shall be filled by appointment as above provided for the unexpired term. No member of the planning board shall be permitted to act on any matter in which he has, either directly or indirectly, any personal or financial interest. Members may, after a public hearing, be removed for inefficiency, neglect of duty, or malfeasance in office by the officer or body appointing them.

Editorial Note:

The clause referring to matter of personal interest was included by agreement of the subcommittee in order to prevent any member from being subjected to criticism for taking part in action concerning any private work done by them. Since professional skills are valuable to the planning body it was felt that such persons should be permitted to be members if possible.

In order to clarify a question that has arisen it has been specifically stated that a member of the board of education can be a member of the planning board. This permits a close liaison between these two agencies.

40:55-4 Administration of Planning Board

The planning board shall elect a chairman from the members of Class IV and

create and fill such other offices as it may determine. It may employ experts and a staff, and pay for their services and for such other expenses as may be necessary and proper, not exceeding in all, exclusive of gifts the amount appropriated by the governing body for its uses.

The governing body of any municipality creating a planning board shall appropriate in the same manner as other appropriations are made, such money as in its discretion is necessary for the work of the planning board for the year in which the appropriation is made. The amount so appropriated shall be assessed, levied and collected in the same manner as moneys appropriated for other current expenses in the municipality.

Whenever a hearing is required under any section of this chapter before action by a planning board, notice of the hearing shall be published in the official newspaper of the municipality or in a newspaper of general circulation in the municipality at least ten days prior to the hearing. In cases dealing with plat approval, notice of the hearing shall be mailed at least five days prior to the hearing to the owners, as appearing on the municipal tax record, of adjoining property and property directly across any and all streets from the property involved.

The notice of hearing shall contain a description of the property involved if any, a statement as to its location and a summary statement of the matters to be taken up at the hearing. Copies of the maps and other documents to be taken up at the hearing shall be filed in the office of the municipal clerk, shall be available at such office for public inspection, and shall be enumerated in the notice of hearing.

At such hearing, minutes shall be kept, including a summary statement of all arguments advanced, identified to the speaker and his affiliation, and a record of all actions and findings, and the reasons thereof. The minutes shall thereafter be made available for inspection at the office of the municipal clerk. The failure of the planning board or the secretary thereof to make a record of or file with the municipal clerk the minutes as herein set forth shall not be ground for

setting aside any action of the planning board, provided that the actions taken are duly recorded in the records of the planning board and are made available at request, to any person or persons desiring to examine such record.

★ Wherever a planning board exists, it shall be given the additional authority and duty of acting as the zoning commission under article 3 of this chapter.

Editorial Note:

The subcommittee felt that all nearby property owners should be entitled to notification even though living in an adjacent municipality. This is in keeping with the amendment to the zoning act enacted this year.

Notification has been simplified by permitting reference to maps and detailed material which will be on file and available for public observation. This conforms to modern municipal notification procedures and practices.

★ It was felt that duplication of municipal boards could be avoided by requiring that a planning board be given the additional duties of the zoning commission.

40:55-5 Citizens' Advisory Committee

After the appointment of a planning board, the mayor may appoint a citizens' advisory committee to represent the civic and other organizations and groups of the municipality and to collaborate with the planning board in its studies. The committee shall elect its own officers and determine its own procedure.

40:55-6 Master Plan

The planning board may prepare, adopt and from time to time amend a master plan for the physical development of the municipality which generally shall comprise the following three elements: Land use, circulation, and a report presenting the objectives, assumptions, standards and principles which are embodied in the various interlocking portions of the master plan. The master plan shall be a composite of the one or more mapped and written proposals recommending the physical development of the municipality which the planning board shall have adopted either as a whole or severally after public hearing. It may include proposals for various stages in the future development of the municipality.

In scope the master plan may cover proposals for: the use of land and buildings -- residential, commercial, industrial, mining, agricultural, park, and other like matters; services -- water supply, utilities, sewerage, and other like matters; transportation -- streets, parking, public transit, freight facilities, airports, and other like matter; housing -- residential standards, slum clearance and redevelopment, and other like matters; conservation -- water, forest, soil, flood control, and other like matters; public and semi-public facilities -- civic center, schools, libraries, parks, playgrounds, fire houses, police structures, hospitals, and other like matters; the distribution of population; and other elements of municipal growth and development.

The master plan shall include in its scope areas outside the boundaries of the Municipality which, in the planning board's judgment, bear essential relation to the planning of the municipality, to be conducted wherever possible with the cooperation of adjacent planning agencies. In the preparation of the master plan the planning board shall give due consideration to the probable ability of the municipality to carry out, over a period of years, the various public or quasi-public projects embraced in the plan without the imposition of unreasonable financial burdens.

In the preparation of the master plan, the planning board shall cause to be made careful and comprehensive surveys and studies of present conditions and the prospects for future growth of the municipality. The master plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the municipality and its environs which will, in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity and general welfare, as well as efficiency and economy in the process of development. To this end, the master plan shall take into account, among other things, adequate provision for traffic and recreation, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of good civic design and arrangement, wise and efficient expenditure of pub-

lic funds, and the adequate provision of public utilities and other public requirements.

The mandatory requirements that certain matters designated in the sections of this Act be referred to the planning board before action by other governmental bodies shall take effect only upon adoption by the planning board of the respective portions of the master plan pertaining to the specific matter or class of matters subject to referral.

Editorial Note:

A minimum master plan is defined in order to prevent adoption of inconsequential parts in an effort to take advantage of powers that can be granted only after plan adoption. Clearer definition is also provided as to the elements that the plan may cover. Planning boards can be provided with a more complete picture of their duties and other governmental agencies given a more definite picture of the scope and purpose of the plan. Mandatory referral is effected only after serious planning studies have been made and adopted as parts of the official plan.

40:55-7 Planning Board Advisory Functions

Whenever the planning board after public hearing shall have adopted any portion of the master plan dealing with any of the specific matters legally applicable to the master plan, the governing body or other public agency having jurisdiction over the said specific subject matter before taking action necessitating the expenditure of any public funds regarding the location, character or extent of one or more projects thereof, shall refer action involving such specific project or projects to the planning board for review and recommendation, and shall not act thereon without such recommendation or until 45 days after such reference have elapsed without such recommendation. This requirement shall apply to action by a housing, parking, highway or other authority, redevelopment agency, school board, or other similar public agency, federal, state, county or municipal.

The governing body may by ordinance provide for the reference of any other matter or class of matters to the planning board before final action thereon by the public body or officer having final authority thereon, with or without the provision that final action thereon shall not be taken until the planning board has

submitted its report, or until a specified amount of time has elapsed without such report having been made.

Whenever the planning board, pursuant to this act shall have made a recommendation to another body, such recommendation shall be overridden only by a majority of the full membership of such other body.

The planning board shall have full power and authority to make such investigations, maps and reports and recommendations in connection therewith relating to the planning and physical development of the municipality as it seems desirable provided the total expenditures of said board shall not exceed the appropriation for its expenses.

Editorial Note:

Referral provision is provided to assure coordination of various municipal activities. Planning boards can thus be informed and will have the right to study and report on various projects. Recommendation of the board has been made advisory only with over-ruling possible on a simple majority vote of the full membership of the original referring agency. This replaces the provision of over-rule by a two-thirds vote.

40:55-8 Jurisdiction In Respect to Subdivisions

The governing body may by ordinance provide for the regulation of subdivisions within the jurisdiction of the municipality by requiring the approval of the governing body; by resolution, on all plats after favorable referral by the planning board before plats may be filed with the county recording officer and may authorize and empower the planning board to review plats in accordance with regulations, requirements and standards established by the governing body.

Alternatively in the ordinance which creates the planning board the governing body may provide for the regulation of subdivisions within the jurisdiction of the municipality by requiring the approval of the planning board acting in lieu of the governing body on all plats before plats may be filed with the county recording officer, provided such ordinance empowering and authorizing the planning board to act on plats establishes regulations, requirements, and standards for plat approval by the planning board. If such power of approval in lieu of the approval of the

governing body is granted to the planning board, the procedures required of the planning board in the sections of this act hereunder in connection with favorable referral shall be required in connection with approval and the signature of the chairman of the planning board shall be deemed to have the same force in connection with the approval of plats as the signature of the mayor.

The ordinance may exempt from local municipal approval either subdivisions involving designated minimum numbers of new lots, or plats that do not involve new streets or both, or such other classes of subdivision as the governing body may designate for exemption. In all cases involving subdivisions within such exempted classes, the mayor or planning board chairman in lieu of the mayor if so authorized by ordinance and the municipal clerk shall so certify on the plat, if any, or deed, or instrument to be filed with the county recording officer.

Planning boards which otherwise are required to act on plats of subdivisions after hearing, may, by ordinance, be empowered to waive full notice and hearing and favorable referral by a majority of the board on a subdivision if no new street is shown and if a subdivision committee of the planning board appointed by the chairman with the approval of the board unanimously find no cause for review by the entire board or for unfavorable action upon the subdivision and such finding shall be deemed to be favorable referral by the planning board; provided that notice is sent by mail to owners of property adjacent to and directly across any and all streets from the land shown on the plat, and none of such owners in writing requests a hearing and review by the full planning board, and provided that notice of the right to request a hearing is published in the same manner as is required for notice of a hearing without any citizen or property owner of the municipality requesting a hearing.

Before the planning board may take the action of favorable referral and the governing body may approve subdivisions after a planning board has been created, the governing body shall adopt by ordinance, for the guidance of the planning board and subdividers, standards for approving the design of subdivisions and the required

street improvements, requirements for the submission of subdivision plats, and a statement of the procedure to be followed by subdividers. Where there is a municipal zoning ordinance, the standards set forth in the subdivision ordinance with respect to minimum lot sizes and lot area requirements shall not be in excess of similar provisions contained within said zoning ordinance. Where a zoning ordinance contains no such provision or where no zoning ordinance exists, such standards shall be specifically stated in the subdivision ordinance and shall clearly define the minimum lot sizes and lot area requirements deemed necessary within the municipality. Copies of the subdivision ordinance and regulations shall be made available to the public and shall be filed with the county recording officer. A reasonable charge may be made for such copies. A plat shall be deemed to have been submitted when an application for approval has been filed with the municipal clerk in conformance with the printed requirements governing the submission of subdivision plats.

If any owner or agent of any owner of any land transfers or sells or agrees to sell any land which forms a part of a subdivision upon which by ordinance the planning board has been required to give favorable referral and which the governing body has been required to approve by ordinance, before such favorable referral and approval have been obtained, the municipality, in addition to any other remedy shall be entitled to prosecute the owner or agent of the owner for a separate violation for each parcel, plat, or lot sold in violation of the ordinance, with a maximum fine for each violation of \$200 or 30 days imprisonment.

Editorial Note:

The principle of home rule has been closely followed here. A local governing body can use the planning board for recommendation only in connection with subdivisions or can have them act with complete authority, as it wishes. In either case, subdivision standards must be adopted by ordinance action of the governing body. Possible delegation of legislative authority is therefore avoided.

Minor subdivisions that would not adversely affect the overall growth can be waived from the necessity of local approval. The local agency would still be informed of subdivision action but no undue hardship would be placed on any individual. A waiver clause is also provided for use by the planning board where no new streets are involved if

authorized by the creative ordinance. Standards are set to guide the board in such action.

A general penalty clause is introduced here in addition to other remedies available under 40:55-15 where a building permit cannot be granted due to illegal sale. This clause is general in nature and is necessary in order to provide overall protection.

40:55-9 Filing

No plat shall be accepted by the county recording officer until it has been approved by the governing body of the municipality in which the land lies, if such approval is required by local ordinance, and such approval be endorsed on the instrument in such manner as the governing body may designate. If the municipality has established a planning board, plats whose approval by the governing body is not required, shall be endorsed by one or more designated officials of the municipality.

It shall be the duty of the county recording officer to notify the planning board in writing within three days of the filing or recording of any plat approved by the governing body, identifying such plat by its title, date of filing or recording, and official number.

The record plat shall be drawn in conformance with the standards required by N. J. Revised Statutes 46:23, or if such statute be repealed and not replaced, in accordance with standards enacted by local ordinance.

Editorial Note:

Most of this wording has been carried over from present legislation. The last paragraph is intended to coordinate the planning legislation with legislation establishing engineering standards. It was the feeling of the subcommittee that the present 46:23 might be revised by engineers and others interested and closely related to this planning act.

40:55-10 Procedure in Regard to Subdivisions

The planning board, after hearing, may approve the plat, if so authorized, or may recommend approval by giving favorable referral to the governing body or may reject it. If the planning board rejects any plat, the findings and reasons for such rejection shall be stated upon the records of the planning board and the applicant shall be provided with a copy. In the event that the planning board should

require any substantial amendment in the layout or improvements proposed by the subdivider that have been the subject of a hearing, the amended plat must thereafter be resubmitted, and the same procedures followed as for the original plat.

Where approval of a plat, map or plan of land is required by any officer or body of a municipality, including a board of health under the provisions of other law, or ordinance, such approval shall be certified on the plat before the final plat shall be favorably referred by the planning agency as a prerequisite to its acceptance for filing by the County recording officer.

The planning board shall take action under this section within forty-five days after the submission of the final plat for approval, or within such further time as the applying party may agree to. Otherwise such plat shall be deemed to have been given favorable referral to the governing body, and the certificate of the municipal clerk as to the date of the submission of the plat for approval and of the failure of the planning board to report action thereon within the aforesaid forty-five days or such further time as agreed to by the applying party shall be issued on demand of the owner or his agent and shall be sufficient, in lieu of the written endorsement or other evidence of favorable referral herein required.

Following favorable referral by the planning board, the plat shall be submitted to the governing body for approval. The governing body shall take action under this section at the next regular meeting after the planning board submits the plat to the municipal clerk for transmission to the governing body, or within such further time as the applying party may agree to. Otherwise such plat shall be deemed to have been approved, and the certificate of the municipal clerk as to the date of the submission of the plat for approval by the governing body, and of the failure of the governing body to act thereon at the next regular meeting or such further time as agreed to by the applying party, shall be issued on demand of the owner or his agent and shall be sufficient, in lieu of the written endorsement or other evidence of approval herein required. If the governing body disapproves any plat, the findings and reasons for such action shall be stated upon the records of

the governing body, and the applicant shall be provided with a copy.

The governing body or the planning board as authorized by ordinance may tentatively approve a plat showing new streets or roads or the resubdivision of land along a mapped street. This tentative approval shall confer upon the applicant the following rights for a three year period from the date of the tentative approval:

- 1) that the general terms and conditions upon which the tentative approval was granted will not be changed.
- 2) that the said applicant may submit on or before the expiration date the whole or part or parts of said plat for final approval.

The final approval by the governing body or the planning board as authorized by ordinance of a plat showing a new street or the resubdivision of land along a mapped street shall expire ninety days from the date of such adoption, unless within the period such plat shall have been duly filed or recorded by the owner or his agent with the county recording officer. In appropriate cases the governing body may extend the time for plat filing over an additional period not to exceed ninety days.

Editorial Note:

This section establishes the procedure necessary for plat approval. A flow chart showing the steps diagrammatically is presented on the last page of this report. Attention is called to this chart in order to clearly understand the procedure.

40:55-11 Appeals

If the owner of any land whereof a plat is submitted to the planning board shall be aggrieved by the action of the planning board, appeal in writing to the governing body may be taken within ten (10) days of the decision of the planning board after notice. A hearing shall be held at which all parties shall be afforded an opportunity to present their views upon the matter. After such hearing the governing body may over-rule the decision of the planning board by a recorded vote of a majority of the members present. The findings and reasons for the action on appeal by the governing body shall be stated on the records of the governing body, and the applying party shall be provided with a copy.

Nothing in this Act shall be construed as to restrict the right of any party to appeal to any court of competent jurisdiction, in accordance with the procedures otherwise established by law.

40:55-12 Standards Controlling Subdivision Layout

In acting upon plats the planning board shall require, among other conditions in the public interest, that the tract shall be adequately drained, the streets shall be of sufficient width and suitable grade and suitably located to accommodate the prospective traffic, to provide access for fire-fighting equipment to buildings and to be coordinated so as to compose a convenient system, conforming to the official map, or if there is no official map, relating properly to the existing street system. Where the planning board after hearing has adopted portions of the master plan with proposals regarding the street system within the proposed subdivision, the board may require that the streets shown conform in design and in width to the proposals shown on the master plan. No street of a width greater than fifty feet within the right of way lines may be required unless said street already has been shown on such master plan at the greater width, or already has been shown in greater width on the official map.

The planning agency shall further require that all lots shown on the plats shall be adaptable for the intended purposes without danger to health or peril from flood, fire, erosion, or other menace.

If portions of the master plan contain proposals for drainage rights of way, schools, parks, or playgrounds within the proposed subdivision or in its vicinity, or if standards for the allocation of portions of subdivisions for drainage rights of way, school 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 or playgrounds be shown in locations and of sizes suitable to their intended uses. The governing body or the planning board shall be permitted to reserve the location and extent of school sites, public parks and playgrounds shown on the master plan or any part thereof for a period of one year

after the approval of the final plat or within such further time as agreed to by the applying party. During this one year period or extension thereof the municipality must have entered into a contract to purchase or instituted acquisition proceedings for said school site, park or playground under due processes of law, otherwise such final plat shall not be bound by the proposals for such areas shown on the master plan. This provision for purchase does not apply to the streets and roads or drainage rights of way required for final approval of any plat and deemed essential to the public welfare.

Editorial Note:

The standards for approval have been related to the adopted work of the planning board again requiring that studies be made to provide guidance. A clearer statement of the overall standards is presented with requirements distinguished between subdivision layout and subdivision improvements (40:55-13). Coordination with other agencies such as health board is required.

40:55-13 Standards for Control of Subdivision Improvements

Before final approval of plats the governing body may require, in accordance with the standards adopted by ordinance, the installation, or furnishing of a performance guarantee in lieu thereof, of any or all of the following improvements it may deem to be necessary or appropriate: street grading, pavement, gutters, curbs, sidewalks, street lighting, shade trees, surveyor's monuments, water mains, culverts, storm sewers, sanitary sewers or other acceptable means of sewage disposal, drainage structures, and such other subdivision improvements as the municipal governing body may find necessary in the public interest.

Editorial Note:

* } This is accepted practice in all municipal planning acts in the various states of this Country.

40:55-14 Performance Guarantee

The governing body may accept performance guarantees, as defined in Section 1, for the purpose of assuring improvements, as provided in Sections 40:55-13 and 40:55-X3 after approving the collateral, or surety company, if any.

The amount of the performance guarantee may be reduced by the governing body

when portions of the improvements have been completed, and the time allowed for installation of the improvements for which the performance guarantee has been provided may be extended by said body.

In the event that the required improvements have not been installed as provided in the contract for the performance guarantee, the guarantor shall be liable thereon to the municipality for the reasonable cost of the improvements not so installed and upon the receipt of the proceeds thereof the municipality shall install such improvements as are covered by the performance guarantee.

40:55-15 Penalties

If any owner or agent of any owner of any land transfers or sells any land which forms a part of a subdivision upon which the planning board has been required to give favorable referral and which the governing body has been required to approve, before such favorable referral and approval has been obtained; and if the streets in the subdivision are not such that a structure on said land in the subdivision would qualify for a building permit under Section 40:55-X3 of the Official Map and Building Permit Act, the municipality may, for such violation of this statute:

- 1) Enjoin the transfer or sale or agreement to sell by action for injunction brought in any court of equity jurisdiction.
- 2) Set aside and invalidate any conveyance made pursuant to such a transfer or sale provided a certificate of compliance has not been issued in accordance with Section 16 of this act. This remedy shall be available only to municipalities which have a planning board or a committee thereof with power to act which:
 - a) meets regularly on a monthly basis or more frequently.
 - b) and whose governing body has adopted standards and procedures as described in 40:55-12.

Pursuant to this action the transferee, purchaser or grantee shall be entitled to a lien upon the portion of the land from which the subdivision was made that remains in the possession of the subdivider or his successor to secure the return of any deposit made or purchase price paid, and also a reasonable search fee, survey expense and the title closing expense if any. The right to bring any such action

shall expire two years after the date of the recording of the instrument of transfer, when sale or conveyance of said land, or six years after the transfer has been made if the transaction has not been recorded.

Editorial Note:

These penalties are available only where projected buildings would not qualify for a building permit due to improper land subdivision. Standards are also set before certain penalties would be applicable. Each of these possibilities has been presented with the basic thought in mind of protecting the individual purchaser and the municipality. Land developers should be expected to conform to reasonable municipal requirements and transfer titles that are legally in keeping with sound development principles. These penalties would in no way interfere with the transfer of land of individuals as covered in the exemptions and waivers in the preceding sections.

40:55-16 Certificates of Approval

The prospective purchaser, or any prospective mortgagee, of any land which forms part of a subdivision, or which, since the thirteenth day of June, one thousand nine hundred and fifty-one, formed part of such a subdivision, may make written application to the official hereinafter mentioned, or, if said official is unknown to the applicant, then to the clerk of the municipality, for the issuance of a certificate certifying whether such subdivision has been approved by the planning board or governing body. Such application shall contain a diagram showing the location and dimension of the land to be covered by the certificate, and the name of the owner thereof.

The Governing body of the municipality shall, by resolution, designate the municipal clerk, municipal engineer or some other official as the official who shall make and issue such certificates, and the official so designated shall issue such certificate within fifteen days after the receipt of such written application and of the fees hereinafter provided. Said official shall keep a duplicate copy of each certificate, consecutively numbered, showing the fees charged, and bound in book form as a permanent record of his office.

Said certificate shall be called "certificates as to approval of subdivision of land", and shall certify;

OFFICIAL MAP AND BUILDING PERMIT ACT

40:55-X1 Official Map

The governing body may by ordinance after public hearing, establish an official map of the municipality or of any part or parts thereof. The official map is to be deemed conclusive with respect to the location and width of streets and drainage rights of way, and the location and extent of public parks and playgrounds shown thereon, whether such streets, drainage rights of way, parks or playgrounds are improved or unimproved. The municipality shall be permitted to reserve the location and extent of public parks and playgrounds shown on the official map or any part thereof for a period of one year after the approval of the final plat or within such further time as agreed to by the applying party. During this one year period or extension thereof the municipality must have entered into a contract to purchase or instituted acquisition proceedings for said park or playground under due processes of law, otherwise such final plat shall not be bound by the public parks or playgrounds shown on the official map.

The official map is hereby declared to be established to conserve and promote the public health, safety, morals and general welfare.

The governing body may by ordinance, when and as often as it may deem it for the public interest, amend the official map either by changing the extent, widths or locations of streets, parks or drainage rights of way already on the official map, by adding new ones or by closing existing ones.

If a planning board has been established and after public hearing has adopted portions of the master plan dealing with streets, with drainage rights of way, or with parks and playgrounds, before adopting an official map or amendments thereto dealing respectively with streets, drainage rights of way or parks and playgrounds, the governing body shall refer such action to the planning board for its recommendation, and the governing body shall not act thereon without such recommendation or

- a. Whether there exists in said municipality a duly established planning board which meets regularly on a monthly basis or more frequently.
- b. Whether the subdivision or resubdivision, as shown in said application, has been approved by the governing body, and, if so, the date of such approval; or, if such approval has not been given, whether the same has been waived, and the date of such waiver.
- c. Whether such subdivision or resubdivision, if the same has not been approved, is exempt from the provisions of Section 8 of this act.
(40:55-8)

The official appointed as herein provided shall be entitled to demand and receive for each such certificate issued by him a reasonable fee, not in excess of those provided in sections 54:5-14 and 54:5-15 of the Revised Statutes. The fees so collected by such official shall be paid by him to the Governing body of the municipality.

Any person who shall acquire for a valuable consideration an interest in the lands covered by any such certificate in reliance upon the information therein contained shall hold such interest free of the rights, remedies or actions which such municipality may have under and pursuant to Section 15 of this act. (40:55-15)

If the official designated to make and issue any such certificate fails to issue the same within fifteen days after receipt of an application therefor and the fees provided for herein, any person acquiring an interest in the lands described in such application shall hold such interest free of the rights, remedies or actions which such municipality may have pursuant to the provisions of Section 15 of this act. (40:55-15)

Any application as above mentioned addressed to the municipal clerk of any municipality shall be deemed to be addressed to the proper official named by the Governing body of such municipality and the municipality shall be bound thereby to the same extent as though same was addressed to the official designated by said Governing body to issue such certificates.

40:55-17 Application

This act shall apply only to municipalities having a planning board or that create such a board in accordance with the provisions as outlined herein.

in such street which will as little as practicable increase the cost of opening such street, or tend to cause a change of the official map, and the board shall impose reasonable requirements as a condition of granting the permit so as to promote the health, morals, safety and general welfare of the public and shall inure to the benefit of the municipality. In any municipality in which there is no board of adjustment, the governing body shall have the same powers and be subject to the same restrictions as provided in this section.

Before taking any action authorized in this section, the board of adjustment or governing body shall hold a public hearing at which parties in interest and others shall have an opportunity to be heard. At least ten days' notice of the time and place of the hearing shall be published in an official publication of the municipality or in a newspaper having general circulation therein.

40:55-X3 Building Permits

No permit for the erection of any building shall be issued unless the building lot abuts a street giving access to such proposed structure which has been duly placed on the official map, or if there be no official map unless such street is (a) an existing state, county or town highway, or (b) a street shown upon a plat adopted by the governing body or planning board as provided in 40:55-8 of the Municipal Planning Enabling Act, or by the planning board in corresponding sections of previous Municipal Planning Enabling Acts, or (c) a street on a plat duly filed and recorded in the office of the county recording official prior to the passage of an ordinance under the Municipal Planning Enabling Act which would require prior approval or adoption of plats by a governmental agency or the governing body. Before such permit shall be issued such street shall have been certified to be suitably improved to the satisfaction of the governing body, or such suitable improvement shall have been assured by means of a performance guarantee, in accordance with standards and specifications approved by the governing body, as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street.

until forty-five days after such reference without such recommendation.

Upon the receipt of the recommendation of the planning board or after the passage of forty-five days without such recommendation, the governing body shall hold a public hearing on the proposed adoption of the official map or amendment thereof and shall cause notice of the hearing to be published in the official newspaper of the municipality or in a newspaper of general circulation in the municipality, at least ten days prior to the hearing. A map showing the proposal shall be on file for public inspection in the office of the municipal clerk during this period and the notice shall so state. At the public hearing all interested parties shall be afforded an opportunity to present their views, prior to the final vote upon the ordinance.

The approval by the municipality by ordinance under the provisions of laws, other than those contained in this section, of the layout, widening or closing of any street, drainage right of way or area designated above as part of the official map shall be deemed to be a change or addition to the official map and shall be subject to all the provisions of this section.

Where the planning board has been empowered by ordinance to approve plats in lieu of the governing body, and the governing body has adopted an official map, new streets shown on approved plats shall become part of the official map upon being filed with the county recording officer.

40:55-X2 Building in the Bed of Mapped Streets and Drainage Rights of Way

For the purpose of preserving the integrity of the official map of a municipality, no permit shall be issued for any building in the bed of any street or drainage right of way on the official map, or on a plat filed pursuant to the Planning Enabling Act before adoption of the official map except that when the property of the applicant of which such reserved location forms a part, cannot yield a reasonable return to the owner unless such permit be granted, the board of adjustment, in any municipality which has established such a board, may, in a specific case by the vote of a majority of its members, grant a permit for a building

Where the enforcement of this section would entail practical difficulty or unnecessary hardship, or where the circumstances of the case do not require the structure to be related to a street, the applicant for the permit may appeal from the decision of the administrative officer having charge of the issuance of permits to the board of adjustment in any municipality which has established such a board, or, in municipalities where there is no board of adjustment to the governing body, and the same provisions shall apply to such appeals and to such board or body as are provided in cases of appeals on zoning regulations. The board may, in passing on such appeal, make any reasonable exception and issue the permit subject to conditions that will assure adequate access for firefighting equipment, ambulances and other emergency vehicles necessary for the protection of health and safety and will protect any future street layout shown on the official map or on a master plan of streets adopted by a planning board after public hearing. Where such master plan of streets exists, the board of appeals shall refer the application to the planning board for report before taking action.

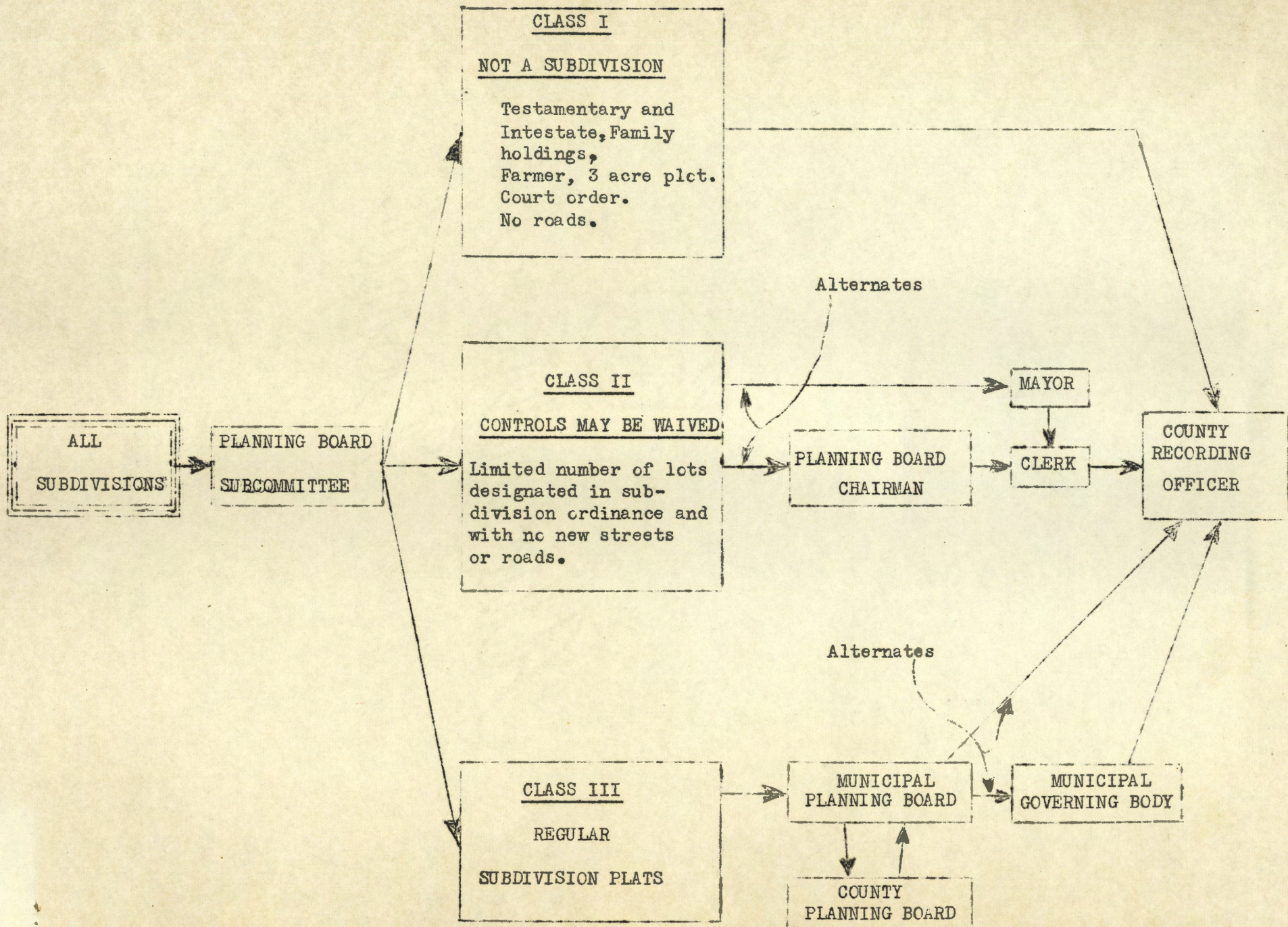
Editorial Note:

The intention here has been to provide a separation in legislation referring to the master plan and the official map. A clearer definition of the official map and its operation is provided. The subcommittee felt that the official map is a necessary adjunct to good planning, more limited in scope but more binding upon the municipality and therefore a logical tool of the governing body.

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Editorial Note:

The intention here has been to provide a separation in legislation referring to the master plan and the official map. A clearer definition of the official map and its operation is provided. The subcommittee felt that the official map as it necessarily related to zoning was limited in scope but was binding upon the municipality and therefore a logical board of the governing body.



CLASS I

NOT A SUBDIVISION

Testamentary and Intestate, Family holdings,
Farmer, 3 acre plct.
Court order.
No roads.

CLASS II

CONTROLS MAY BE WAIVED

Limited number of lots designated in sub-
division ordinance and with no new streets
or roads.

CLASS III

REGULAR
SUBDIVISION PLATS

Alternates

MAYOR

PLANNING BOARD
CHAIRMAN

CLERK

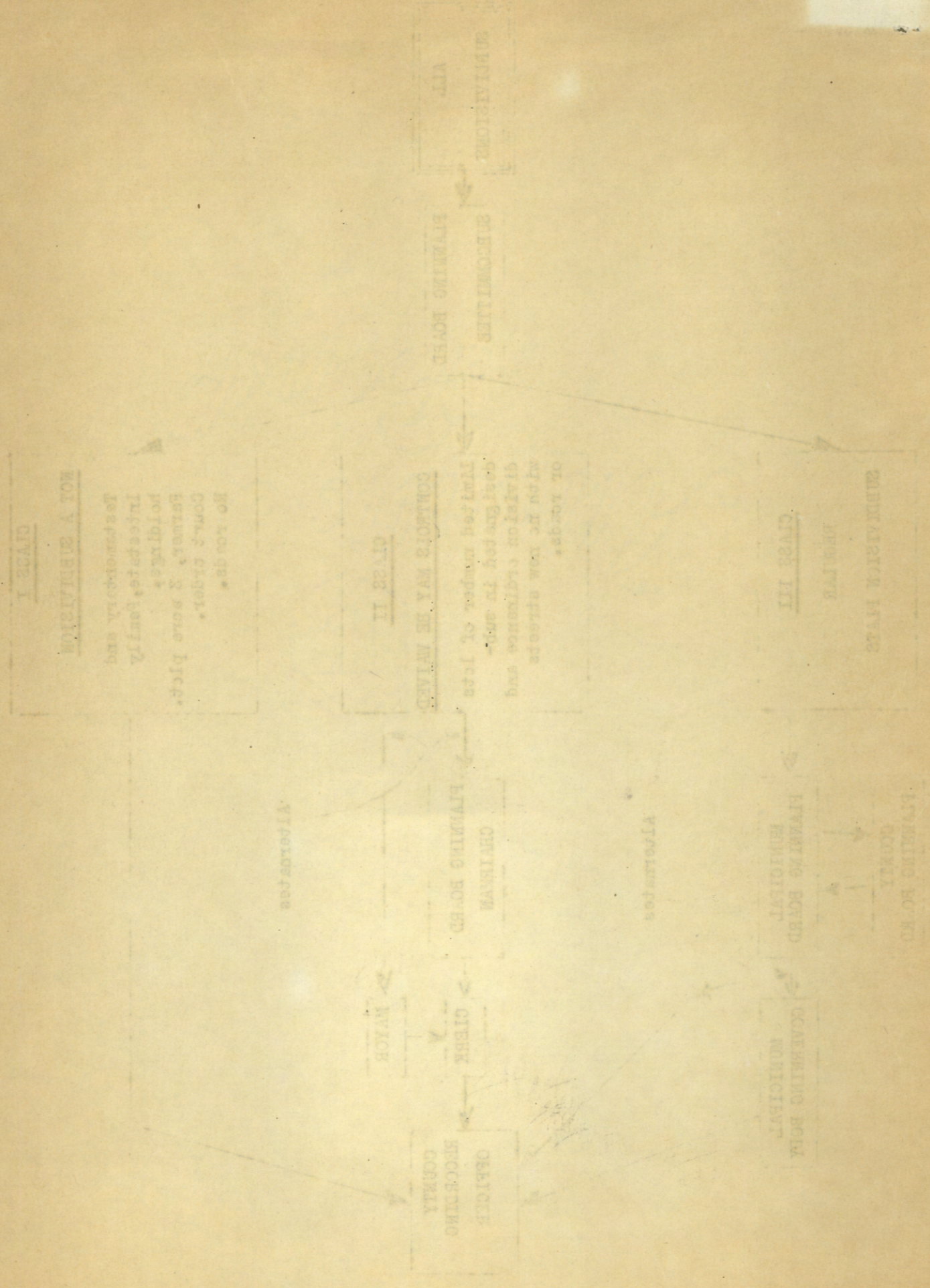
COUNTY
RECORDING
OFFICER

Alternates

MUNICIPAL
PLANNING BOARD

MUNICIPAL
GOVERNING BODY

COUNTY
PLANNING BOARD



SUBDIVISIONS

CLASS III

CLASS II

NOT A SUBDIVISION

CLASS I

PLANNING BOARD COUNTY

PLANNING BOARD MUNICIPAL

PLANNING BOARD MUNICIPAL

PLANNING BOARD MUNICIPAL

CLERK

WATCH

OFFICE RECORDING COUNTY

ALTERNATES

ALTERNATES

CHIEF

PLANNING BOARD MUNICIPAL

CLERK

WATCH

OFFICE RECORDING COUNTY