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# Control of Land Subdivision by Municipal Planning Boards

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# CONTROL OF LAND SUBDIVISION BY MUNICIPAL PLANNING BOARDS

*John W. Reps**

## INTRODUCTION

Every year thousands of acres of vacant land at the fringe of American cities are subdivided into building sites. Streets are laid out, lot boundaries are fixed, utility lines are constructed, and buildings are erected. A new pattern is stamped on the land—a pattern which in all likelihood will remain for as long as the city endures. The degree to which this new pattern of development results in a sound neighborhood environment depends largely on the skill and wisdom with which municipal control of the subdivision process is exercised.

This article is concerned with the legal basis of municipal subdivision review and control. Many of the conclusions suggested herein should be regarded as tentative. Unlike the field of zoning—that other important regulatory device of city planning—there are comparatively few court decisions on the subject of subdivision control. More positive generalizations on certain of the important issues in this field must await the outcome of further litigation.

## SUBDIVISION CONTROL LEGISLATION

Municipal control of land subdivision is not new. A number of enabling statutes or charter provisions authorized some form of regulation in the last century. Real estate subdividers were required to obtain approval from some local official or commission before the subdivision plat could be recorded. The purposes of these early laws, however, were quite different from modern subdivision control legislation. Plats were reviewed chiefly to determine if adequate engineering data were supplied and to prevent uncertainty with respect to land titles. The concept of integrating the subdivision into a general city plan was almost entirely lacking. Even after the establishment of the first official city planning commissions, beginning with Hartford in 1907, the limited powers of review were still usually exercised by boards of street commissioners, the city engineer, or authorities other than the planning agency.

After the first world war, two changes in subdivision control legislation became apparent. First, advisory or final authority to review subdivision plats was given to local planning commissions or boards. Second, there was increasing emphasis on the concept of subdivision review as a device

* See Contributors' Section, Masthead, p. 326, for biographical data.

to ensure sound standards of land development and to provide for the orderly growth of established communities.

In 1924 Herbert Hoover, then Secretary of Commerce, appointed an advisory committee on city planning and zoning to undertake the preparation of a model city planning enabling act. The results of this study were published in 1928, and a number of states passed enabling statutes closely patterned after the federal model. A survey in 1934 indicated there were over 700 official planning boards in the United States. Of these, 269 boards in 29 states had been given the power of subdivision control, while an additional 156 boards acted as subdivision advisory agencies to some other municipal department or official having final control powers.[1]

In the last twenty years new statutes have been enacted, and hundreds of planning boards throughout the country are exercising these subdivision review powers. In 1952, 509 planning boards in cities over 10,000 population had been given this authority.[2] This tabulation does not include many smaller villages and cities or townships in which planning boards are also active.

Most of these planning boards operate under statutes which are similar to the 1928 Standard City Planning Enabling Act. The subdivision control provisions of that model statute can be briefly summarized.[3] The planning commission is designated as the subdivision control agency, with jurisdiction over the city and all land within five miles of the corporate boundary. After the commission has adopted a major street plan, no subdivision plat may be filed or recorded until it has been approved by the commission. Before exercising this authority the planning commission must adopt regulations establishing acceptable standards of subdivision design. These regulations may also specify the utility and street improvements which must be installed by the subdivider before approval will be granted. A performance bond may be accepted in lieu of completion of all of these improvements before approval. Approval of the plat does not constitute acceptance by the public of any street or open space.

The model act provides for three methods of enforcement of these controls: sale of lots by reference to an unapproved plat is punishable by fine; no public improvement may be made in any street which is not

1 National Planning Board, Federal Emergency Administration of Public Works, Status of City and Regional Planning in the United States, Appendix H (Eleventh Circular Letter, May 15, 1934).

2 International City Managers' Association, The Municipal Year Book 286 (1953).

3 Advisory Committee on City Planning and Zoning, U.S. Dep't of Commerce, A Standard City Planning Enabling Act, tit. H, §§ 12-20 (1928).

part of an approved subdivision, unless the street shall have been accepted by the legislative body; and no building permit can be issued for a structure not having access from an approved street.

While most state subdivision control enabling acts are essentially the same, they differ in some important details. Not all of the statutes require the existence of a major street plan before plats may be reviewed. Some require the planning commission to submit their subdivision regulations to the legislative body for approval, while in other states the regulations must be enacted by ordinance. Not all states permit extra-territorial control of subdivisions. There are differences, too, in the methods provided for enforcement of controls. Some of these variations will become apparent in the discussion of court decisions.

### Purposes of Subdivision Control

Through control over the process of land subdivision the community seeks to avoid the mistakes of the past. It is inevitable that such regulation will at times conflict with the wishes of the landowner. But, as the court stated in *Mansfield & Swett, Inc. v. West Orange*:[4]

> The state possesses the inherent authority—it antedates the constitution—to resort, in the building and expansion of its community life, to such measures as may be necessary to secure the essential common material and moral needs. The public welfare is of prime importance; and the correlative restrictions upon individual rights—either of person or of property—are incidents of the social order, considered a negligible loss compared with the resultant advantages to the community as a whole. Planning confined to the common need is inherent in the authority to create the municipality itself. It is as old as government itself; it is of the very essence of civilized society. A comprehensive scheme of physical development is requisite to community efficiency and progress.

In *Village of Lynbrook v. Cadoo*[5] the New York Court of Appeals commented on the practical reasons for the subdivision control statute:

> Its purpose is to preserve through a governmental agency a uniform and harmonious development of the growth of a village and to prevent the individual owner from laying out streets according to his own sweet will without official approval.

The reasons for the enactment of subdivision control regulations are now widely accepted, and courts generally have upheld the exercise of this authority. But in the application of general principles to specific situations there is the inevitable conflict over whether the activities of the landowner are merely made subject to reasonable regulations or are so circumscribed that his property is being taken without compensation.

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[4] 120 N.J.L. 145, 198 Atl. 225 (1938).

[5] 252 N.Y. 308, 169 N.E. 394 (1929).

THE PLANNING BOARD AS THE AGENCY OF PLAT REVIEW

Delegation of subdivision review powers to the planning board by the local legislative body is constitutional where such delegation is provided for by statute.[6] But there must be a standard or a rule of conduct to guide the planning board in its actions. A statute which specified that certain enforcement provisions, ". . . shall not apply in any case in which the planning board shall have waived the requirements of its approval of the subdivision . . . ," was invalidated by the court for lack of sufficient standards.[7]

Once review authority has been conferred in conformity with the provisions of a proper enabling statute, the legislative body may not substitute its action for that of the planning board.[8] Where the statute authorizes subdivision approval procedure by the planning board only, the legislative body cannot use the same powers even if it has failed to create such a board.[9] However, when such a planning board is authorized by statute the failure to create a board to review plats cannot be used as an excuse by a legislative body for refusing to approve a plat which meets all the requirements of the statute and which cannot be recorded

[6] Gore v. Hicks, 115 N.Y.S.2d 187 (N.Y. Sup. Ct. Nassau County 1952); Maness v. City of Jackson and Jackson Regional Planning Commission (Chancery Court, Madison County, Tenn., August, 1954) (Unreported). Discussion of the Jackson case may be found in Miller, "Jackson Case Points Way to Better Subdivision Regulation," 15 Tenn. Planner, No. 2, pp. 42-46 (1944).

[7] Borough of Oakland v. Roth, 28 N.J. Super. 321, 100 A.2d 698 (1953):

> The trial judge was unable to discover in the statute any basic standard, policy or guiding rule in the observance of which the municipal bodies should perform that exceedingly critical function, and we perceive none. It would appear that those administrative agencies are not only empowered by the section of the statute to nullify inhibited conveyances, but also when deemed by them desirable to nullify the application of the statutes. In the law there is a distinction between the delegation of legislative power and the abdication of it.

[8] Hollis v. Parkland Corporation, 120 Tex. 531, 40 S.W.2d 53 (1931). Here the planning board had approved the plat. Property owners protested to the city council, which then adopted a resolution disapproving the plat, and the county clerk refused to record it. The court held that the council lacked jurisdiction, saying:

> The plat appears to be duly acknowledged as required by law, and bears the approval of the city planning commission. This is all that the act calls for as a prerequisite to the recording of the plat in the office of the county clerk. With reference to the approval, or disapproval, of such plats as are contemplated by the act, at least as regards the recording of the plats, the city council . . . has nothing to do; nor does the act purport to give the city council any authority in that respect, except in case there were no city planning commission.

[9] Magnolia Development Company, Inc. v. Coles, 10 N.J. 223, 89 A.2d 664 (1952); City of Rahway v. Raritan Homes, Inc., 21 N.J. Super. 541, 91 A.2d 409 (1952). However, see Hilbol Realty, Inc. v. Barnhart, 205 Misc. 187, 126 N.Y.S.2d 865 (Sup. Ct. Nassau County 1953), where the village board of trustees had not delegated final approval authority to the planning board:

> A planning board with advisory authority alone is in the instant situation equivalent to no planning board at all. . . . Such being the case, the board of trustees of the village could act as a planning board upon plats submitted.

without approval.[10] Nor can the legislative body indirectly exercise subdivision control authority by an agreement to extend municipal services to a tract if certain changes are made in the subdivision design.[11]

Despite these decisions, however, the position of the legislative body vis-a-vis the planning board on matters of subdivision control has not been fully defined. Presumably the legislative body can at any time accept the dedication of land for a public street.[12] In states such as New York, therefore, where planning board control of subdivisions extends only to plats showing new street, such legislative action would permit a landowner to record his plat without submitting it to the board for approval.

Another issue which has never been adjudicated is the obligation of the legislative body to accept title to streets which have been approved by the planning board, graded or otherwise improved by the subdivider at the board's direction, and offered for dedication. Although practically all statutes state that approval of the plat does not constitute acceptance of street dedication, it might be assumed that if the subdivider has acted in good faith, the legislative body would be compelled to accept his offers of cession for streets improved according to specifications of the planning board.

Action by a planning board in passing on subdivision plats is not reviewable by the board of zoning appeals unless this is specified in the enabling statute. Confusion may arise on this point in states where authorization for local planning, subdivision review, zoning, and official map procedure are to be found in a single article.[13]

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[10] People ex. rel. Jackson & Morris, Inc. v. Smuczynski, 345 Ill. App. 63, 102 N.E.2d 168 (1951); People ex rel. Tilden v. Massieon, 279 Ill. 312, 116 N.E. 639 (1917); Commissioners' Court v. Frank Jester, 199 S.W.2d 1004 (Tex. 1947).

[11] In Reid Development Corp. v. Parsippany-Troy Hills Township, 10 N.J. 229, 89 A.2d 667 (1952) the court, in deciding for the landowner observed:

> On the admitted facts, the extension of the water facilities was plaintiff's right; and it was an abuse of discretion to use the grant as a means of coercing the landowner into acceptance of the minimum lot-size restriction upon his lands, however serviceable to the common good. Such benefits are to be had through the channels prescribed by the law. . . . There is no statutory authority for this condition. Planning and zoning powers may not be exerted by indirection; the exercise of these functions must needs be in keeping with the principles of the enabling statutes.

[12] Section 18 of the Standard City Planning Enabling Act, supra note 3, provides:

> Council may, however, accept any street not shown on . . . an approved subdivision plat, provided the ordinance or other measure accepting such street be first submitted to the municipal planning commission for its approval and, if approved by the commission, be enacted or passed by not less than a majority of the entire membership of council or, if disapproved by the commission, be enacted or passed by not less than two-thirds of the entire membership of council.

[13] Such a statute was involved in Seligman v. Belknap, 288 Ky. 133, 155 S.W.2d 735 (1941) where on advice of counsel a Board of Adjustment and Appeals created under a separate zoning statute refused to review the approval by the City Planning and Zoning

## SUBDIVISION REGULATIONS

### A. *Administrative Regulations*

Enabling statutes for subdivision control commonly permit or require the planning board to adopt subdivision regulations. These regulations specify the procedure to be followed in submitting plats for review, the information to be shown on preliminary and final drawings, and general standards for subdivision design. These regulations govern the actions of both planning board and subdivider.

In *La Voie v. Building Commission of Town of Trumbull*[14] the subdivider submitted a revised plat for a tract previously subdivided into very narrow lots. The revised plat was approved by the town plan commission even though only one of the new lots met the minimum area requirements of the zoning ordinance. The court held that plat approval in these circumstances was improper because the plan commission had violated its own regulations.

Many regulations specify the maximum time permitted between the submission of the plat and a decision by the planning board to approve or disapprove. In *Hilbol Realty, Inc. v. Barnhart*[15] such a statutory requirement for a decision within forty-five days had been violated. Here the statute specified that failure to act within the prescribed time was deemed approval of the plat. The court held that a certificate of approval should be issued for the plat as originally submitted and that the subdivider was not required to make the changes specified in the decision reached after the forty-five days had elapsed.

A planning board may apparently make reasonable variations in the application of its regulations where special circumstances are present. The regulations in *Ann Lessin v. City Planning Commission of Norwalk*[16] limited the length of dead-end or cul-de-sac streets to 400 feet. The plat as approved showed such a street 470 feet long, the extra length being required to reach an otherwise inaccessible portion of the tract bordered on one side by a stream. The court upheld the planning commission, observing:

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Commission of a plat of a suburban subdivision. Complainants sought to compel action by the board through a writ of mandamus. The Kentucky Court of Appeals denied the writ, holding that the duties of the Board of Adjustment and Appeals were limited to zoning matters, and adding, " . . . an aggrieved person has a right to proceed directly to the courts to obtain redress."

[14] 135 Conn. 415, 65 A.2d 165 (1949).

[15] 205 Misc. 187, 126 N.Y.S.2d 865 (Sup. Ct. Nassau County 1953).

[16] Number 51166, Conn. Court of Common Pleas, Fairfield County, October 20, 1949 (Unreported).

> Since the "Rules and Regulations" adopted by the Common Council specifically grant the Commission power to "vary, subject to appropriate conditions, such requirements of the foregoing regulations as in its judgment to the special circumstances and conditions relating to a particular subdivision are not requisite in the interest of public health, safety or general welfare, etc." it would appear that the Commission had acted with reasonable discretion.

Unreasonable provisions in subdivision regulations may, of course, be reviewed by the courts. The regulations in *Kesselring v. Wakefield Realty Co.*[17] required the subdivider to install curbs and gutters. The subdivider proposed instead to use a rolled "valley gutter" which would serve both purposes. The planning commission refused to approve the plat because of non-conformity with its regulations. The court directed the commission to approve the plat after examining testimony of engineers that the proposed system was a proper method of disposing of surface water.

### B. *Regulation of Street Widths and Alignment*

One of the earliest reported subdivision control cases is *Ridgefield Land Co. v. City of Detroit.*[18] The city plan commission approved the plat on condition that the subdivider dedicate strips of land along two boundary streets. These streets appeared on a general street plan adopted by the city council and called for street widths greater than those existing. The subdivider maintained that the city was in effect compelling him to dedicate private property for a public use without compensation. The court did not sustain this contention, saying:

> The error in plaintiff's position is the assumption that in requiring an additional dedication . . . the city is exercising power of eminent domain. Its argument would have merit . . . if this were a case where the plat had been recorded and the city were undertaking to widen the streets or to establish a building line. But this is not such a case. Here the city is not trying to compel a dedication. It cannot compel the plaintiff to subdivide its property or to dedicate any part of it for streets. It can, however, impose any reasonable condition which must be complied with before the subdivision is accepted for record. In theory, at least, the owner of a subdivision voluntarily dedicates sufficient land for streets in return for the advantage and privilege of having his plat recorded.[19]

Similar reasoning was the basis for the decision in *Newton v. American Securities Co.*[20] in which the widening of boundary streets was also required. A more recent case in point is *Ayres v. City Council of City of*

[17] 306 Ky. 725, 209 S.W.2d 63 (1948).
[18] 241 Mich. 468, 217 N.W. 58 (1928).
[19] Id. at 472, 217 N.W. at 59.
[20] 201 Ark. 943, 148 S.W.2d 311 (1941).

*Los Angeles*.[21] There the planning commission not only specified the dedication of additional land along a boundary street but required the widening from sixty to eighty feet of one of the interior streets. This street was to connect two main thoroughfares which then ended on opposite sides of the tract. The subdivider entered the usual complaint that this amounted to a taking of property without compensation in that the benefit to the lot owners would be relatively small compared to the general benefit of the city as a whole. The court held:

> Questions of reasonableness and necessity depend on matters of fact. They are not abstract ideas or theories. In a growing metropolitan area each additional subdivision adds to the traffic burden. It is no defense to the conditions imposed . . . that their fulfillment will incidentally also benefit the city as a whole. Nor is it a valid objection to say that the conditions contemplate future as well as more immediate needs. Potential as well as present population factors affecting the subdivision and the neighborhood generally are appropriate for consideration.[22]

An additional objection was that since these street widenings and openings were part of a city plan and eventually would be carried out in any event, the dedication requirements amounted to an exercise of the power of eminent domain.

> A sufficient answer is that the proceeding here involved is not one in eminent domain nor is the city seeking to exercise that power. It is the petitioner who is seeking to acquire the advantages of lot subdivision and upon him rests the duty of compliance with reasonable conditions for design, dedication, improvement and restrictive use of the land so as to conform to the safety and general welfare of the lot owners in the subdivision and of the public.[23]

These decisions indicate that reasonable planning board requirements affecting streets will be upheld. While the width of streets to be dedicated is the most frequent issue between board and subdivider, location and alignment are often as important. The planning board apparently has the right to refuse approval of a subdivision plat showing streets of abnormally steep grades, sharp curves, or dangerous acute-angle intersections. Usually these shortcomings in land planning can be corrected, if the subdivider will make comparatively minor changes in his proposed layout.

How far may the planning board go in substituting its judgment for that of the subdivider with respect to the over-all design of the subdivision? May the board require the landowner to make major changes in a rigid gridiron plat to a design showing curvilinear streets? Many

[21] 34 Cal.2d 31, 207 P.2d 1 (1949).
[22] Id. at 41, 207 P.2d at 7.
[23] Id. at 42, 207 P.2d at 7.

planning boards do, in fact, "suggest" that such changes be made in the interests of more attractive and often more economical residential development. Most city planners would regard this as an essential power of subdivision control, but this issue has, surprisingly, never appeared before the courts.

### C. *Requirements for Street and Utility Improvements*

One of the unfortunate results of the real estate boom in the 1920's was the widespread, inefficient subdivision of land. Around every large city were thousands of vacant lots, serviced by street and utility improvements which were usually paid for by the municipal government which in turn expected to recover the costs by taxes and assessments. More often than not the anticipated development did not take place, and the financial burden of paying for unused street and utility improvements was shifted to the owners of developed property.

Not all cities were so unwary. Some of them required the installation of all or specified improvements by the subdivider as a condition of plat approval. In an early decision by the Michigan Supreme Court an ordinance was sustained which required subdividers to grade and gravel streets, and to provide surface drains, cement sidewalks and sanitary sewers.[24]

Many municipalities lacked statutory or charter authority for such requirements. An interpretation of the New York subdivision control enabling act in effect in 1931 was made in *In Re Lake Secore Development Co., Inc.*[25] The town planning board had refused approval of a subdivision plat because, among other reasons, the landowner had not constructed a water distribution system. The section of the statute on which the board relied read as follows:

> In approving such plats, the planning board shall require . . . that the land shown on such plats shall be of such a character that it can be used for building purposes without danger to health. . . .[26]

The Board contended that in a subdivision of small lots the absence of a water system would constitute such a danger. The court ruled:

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[24] Allen v. Stockwell, 210 Mich. 488, 178 N.W. 27 (1920). In a brief opinion the court said:

> The commission of the city had ample authority to make and enact the platting ordinance. A careful examination of the ordinance in question satisfies us that it is a reasonable regulation, a reasonable exercise of municipal and police power under the charter and statute, and that the same should be sustained and complied with.

[25] 141 Misc. 913, 252 N.Y. Supp. 809 (Sup. Ct. Westchester County 1931), aff'd without opinion, 235 App. Div. 627, 25 N.Y. Supp. 853 (2d Dep't 1932).

[26] N.Y. Town Law of 1909, § 149-n. This was repealed by N.Y. Laws, 1932, c. 634, § 340.

> The court is now asked to read into this statute words to the effect that the planning board can compel, as a condition of its approval, the establishment of a water system. I am of the opinion that the words "character of the land" referred to in the statute mean whether or not it would be dangerous to health for building purposes in the condition that it is in when the plat is offered for approval. It is obvious that if land which was swamp or bog was subdivided for residential purposes and a map of it offered for approval, the planning board would have the power to reject such a plat under the plain language of this statute, but I do not believe that the Legislature intended to have the court read into the statute powers that it could have easily conferred upon the planning board if it so desired.[27]

A few years later, in 1938, the New York Legislature adopted the subdivision statutes now in effect for cities, towns and villages.[28] These laws go further than the Standard Act in that they require all street and utility improvements to be furnished by the subdivider, allowing the planning board to waive those improvements deemed inappropriate or not required because of the location and character of the land. The New York statutes also provide that before a building permit may be issued, the street or highway providing access to the building must "have been suitably improved . . . as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street or highway."[29] In *Brous v. Smith* the New York Court of Appeals upheld the validity of this latter requirement, stating that the statute

> . . . reflects a legislative judgment that the building up of unimproved and undeveloped areas ought to be accompanied by provision for roads and streets and other essential facilities to meet the basic needs of the new residents of the area. . . . Thus, these regulations benefit both the consumer, who is protected "in purchasing a building site with assurance of its usability for a suitable home," and the community at large, which naturally gains greatly from the use of "sound practices in land use and development."[30]

In this case the owner had purchased a subdivision recorded before approval by the planning board was required. He was refused building permits for six one-family residences fronting on "paper" streets that had never been improved. The court found that the same reasons requiring the subdivider to make street improvements at the time of planning board approval applied to the situation under review.

The legality of requiring installation of improvements by the subdivider should now be well established. This power is being exercised in

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27 141 Misc. 913, 915, 252 N.Y. Supp. 809, 812.

28 N.Y. Town Law §§ 276 et seq.

29 Id. § 260-a.

30 304 N.Y. 164, 106 N.E.2d 503 (1952).

countless communities. A recent survey of nearly one hundred municipalities in the New York City area reveals that over seventy per cent require the subdivider to install streets, curbs, and storm water drains. Sixty per cent require the subdivider to provide gutters, sidewalks, water mains, and sanitary sewers.[31]

The exact nature of the requirement improvements must be spelled out by the planning board. If this is not done the subdivider is released from the responsibility of complying therewith. In *Shorb v. Barkley*,[32] land in the rear of a proposed subdivision sloped steeply and was subject to landslides. A ditch had been constructed along the base of the slope to provide better drainage, thereby reducing the danger of future slides. The planning commission approved the preliminary plat without specifying any improvements, although the drainage condition had been discussed at the public hearing. The final plat was then presented to the County Surveyor, who was required to examine the plat for conformity with standards of survey accuracy and to see that changes required in the preliminary plat had been made. He refused to approve the plat because the lots were not drained, as required by the local subdivision ordinance. The court refused to sustain this action.

> The appellant . . . takes the position that the ordinance does not require such an improvement . . . unless the Planning Commission *designates* it as an improvement to be so made. In support of her position she points to Section 2 of the ordinance, which in part reads: "At the time of its action on the tentative map the planning Commission *shall also designate* the improvements which will be required. . . ."
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> With this contention we are constrained to agree.[33]

Another interesting question is raised with respect to the annexation of an outlying tract of land in which improvements have been installed by the subdivider. Can the subdivider recover the costs of installing the utility services from the city? It would appear that the municipality cannot be compelled to reimburse the subdivider, and probably would not be permitted to do so in the absence of a statute authorizing this action. Courts have held that the subdivider had already been compensated by higher prices received for lots with such services,[34] or that the subdivider no longer had a property interest in the installed utility.[35]

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[31] 79 Regional Planning Bull. 1 (1952).

[32] 108 Cal. App. 2d 873, 240 P.2d 337 (1952).

[33] Id. at 876, 240 P.2d at 339.

[34] City of Danville v. Forest Hills Development Corporation, 165 Va. 425, 182 S.E. 548 (1935):

> When the Forest Hills Development Corporation constructed the improvements . . . it was done in order to make the lots in the development salable . . . . The development corporation had sold at the time of the annexation a large number of high-priced

D. *Required Reservation or Dedication of Sites for Public Use*

Streets of adequate width and proper alignment are regarded as so essential that courts have upheld compulsory dedication requirements affecting land for streets in new subdivisions. Similarly, local planning boards have been sustained in compelling subdividers at their own expense to install utility lines and other improvements. These facilities are properly regarded as essential to the public health, safety and welfare. But there is no such judicial unanimity on the frequently encountered subdivision regulation specifying that the subdivider shall reserve or dedicate land for parks, schools, or sites for other public uses.

In *In Re Lake Secore Development Co., Inc.*[36] the board refused to approve a subdivision plat because of the failure to set aside sufficient land for park purposes. There the statute specified that "such plat shall also in proper cases show a park or parks suitably located for playground or other recreation purposes." The court upheld the planning board's refusal to approve the plat, saying:

> The demand of the planning board for additional park area is reasonable. The argument that "all Putnam County is a park" advanced by the petitioner is without merit. The apparent purpose of the petitioner is to establish a summer colony. It must dedicate to public use sufficient area to provide for the ultimate use to be made of this plat. It argues that the residents there can trespass upon other lands for recreational purposes. The mere statement of the proposition is its answer.[37]

The statement by the court that the subdivider "must *dedicate* to public use" land for parks is significant in that parks were here apparently regarded as essential as streets.

*Fortson Investment Co. v. Oklahoma City*[38] involved the validity of a

lots in the subdivision which were served by these facilities, in the sale price of which the enhancement in value representing the cost of the improvements had doubtless been included. We are, therefore, unable to see any reason for permitting the corporation to hold the city for the cost of these improvements under the circumstances.

[35] Suburban Real Estate & Construction Co. v. City of Cleveland, 31 Ohio App. 452, 167 N.E. 474 (1929):

> Let us suppose that, before annexation, all of the lots in the subdivision had been sold to purchasers, none of whom would have purchased but for the installation of the water supply, and the purchasers had erected residences complete throughout the subdivision, could the Suburban Real Estate Company sell and transfer the mains and pipes, etc., thus depriving the purchasers of lots of the benefit of water? We are of opinion that, having sold the lots on the representation of furnishing water, and a means having been provided therefore, the Real Estate Company would not be heard to claim ownership in the water mains, with right to remove the same.

See also Ford Realty and Construction Co. v. City of Cleveland, 30 Ohio App. 1, 164 N.E. 62 (1928).

[36] 141 Misc. 913, 252 N.Y. Supp. 809 (Sup. Ct. Westchester County 1931), aff'd without opinion, 235 App. Div. 627, 255 N.Y. Supp. 853 (2d Dep't 1932).

[37] Id. at 915, 252 N.Y. Supp. at 812.

[38] 179 Okla. 473, 66 P.2d 96 (1937).

planning board subdivision regulation requiring that five per cent of the gross area of the land be deeded to the city for public purposes. The subdivider executed a warranty deed for the proper amount of land, and the subdivision plat was approved. Several years later the plaintiff brought action to have the deed cancelled, or alternatively, to recover the market value of the land, contending that his property had been taken for a public use without compensation. In its opinion the court found that the dedication was a voluntary act and not a "taking" within the meaning of the eminent domain statutes.

> The deed does not refer to the rules of the commission or the section of the statute. . . . The record shows no official act of the Regional Planning Commission refusing to approve plaintiff's plat. He did not bring mandamus action and was not compelled by authority of statute or rule of the commission to execute the deed. The lower court . . . found that the deed was a voluntary dedication to the public and we cannot say that this finding is against the clear weight of the evidence.[39]

This is a disturbing opinion because it implies that the required dedication would not have been upheld had the plaintiff objected at the time the plat was filed or had even referred to the rules of the commission in the deed.

The court also relied on the argument that rights in the park had become vested in the lot purchasers, since they had relied on the representation of the subdivider that such land shown on the plat had been set aside for that purpose. A similar opinion was given in *Maisen v. Maxey*,[40] where the subdivider was restrained from selling lots in an area shown as a park on the recorded plat. Here again, however, there is the implication that the subdivider could not have been compelled to dedicate part of the tract for public use if he had objected at the time the plat was presented for final review.

A recent decision by the Puerto Rico Supreme Court is of interest because of the distinction made between "reservation" and "dedication" of land for public use. In *Vincente Zayas Pizarro v. Puerto Rico Planning, Urbanizing and Zoning Board*,[41] the court interpreted the public land requirement provisions of the enabling statute and the subdivision regulations. The statute specified that the regulations might provide for "obligatory reservations" of land for schools, parks and other public uses. The regulations adopted by the board required that five per cent of every subdivision tract where a new street was created should be

[39] Id. at 474, 66 P.2d at 98.

[40] 233 S.W.2d 309 (Tex. 1950). See also Shields v. Harris County, 248 S.W.2d 510 (Tex. 1952).

[41] 69 Puerto Rico 27 (1948).

"reserved and dedicated for recreational purposes." Action was brought to have this requirement set aside as an unconstitutional taking of property without compensation. The court held that the planning board could not compel a transfer of title, but that the board could require the owner to reserve and dedicate such land for park purposes, saying:

> Such a reservation, besides being authorized by the Act, is justified as a necessary measure for the health and well-being of the persons who are to live in the urbanization and of the community in general. . . .
>
> We are aware of the practical problem that the Government may not be authorized to spend public funds for the establishment of parks on land to which it has no title. But that does not constitute justification for us to redraft the statute and the regulations so as to require a transfer of title. The statute and the regulations in their present form only require that the owner reserve, not that he transfer to the Government, a park area.[42]

Though under Puerto Rican law no legal title passes in compulsory park reservation, the use of such land is public and the owner has no control over this property. The technical differentiation between "reservation" and "dedication" has no practical meaning.

How long can the subdivider be compelled to hold in reserve land designated for a public purpose? Must the municipality immediately purchase or condemn such land? Three recent decisions are in point. The Supreme Court of Puerto Rico, in *Felipe Segarra Serra v. Puerto Rico Planning, Urbanizing and Zoning Board*[43] held that immediate action to acquire title was not necessary. In July, 1947, the planning board approved a preliminary plat on condition that some 20 acres of land be reserved for park and school purposes. In June, 1948, the board approved the final plat for part of the subdivision, which showed the reserved areas. In August, 1948, the subdivider petitioned the board asking permission to subdivide the 20 acres because the Government had taken no steps to acquire the land. By December, 1948, when the board finally denied the petition, about 15 acres had been acquired by condemnation. Action was then brought by the subdivider with respect to 2 acres of land reserved for a school site and which had not yet been condemned. This appeal was denied.

> We assume, without deciding, that land which is zoned for public use must be acquired by purchase or condemnation by the government within a reasonable time. . . . But under all the circumstances of this case we cannot agree that more than a reasonable time had elapsed. . . . This is particularly true in view of the facts that virtually all of the land had actually been condemned by the time the Board passed on the motion . . . and that the urbanization was being completed gradually in several stages during this period.[44]

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[42] Id. at 35.

[43] 71 Puerto Rico 139 (1950).

[44] Id. at 142.

Second, in *An Appeal From an Ordinance of Lower Moreland Township*[45] a subdivision regulation requiring that ". . . provision shall be made for suitable open spaces . . ." was attacked as a taking of property. This regulation was based on a provision of the enabling act which authorized the township commissioners to require ". . . adequate open spaces for . . . recreation . . ." in new subdivisions. The court, in holding this provision of the statute unconstitutional, said:

> The land owner . . . may mark this . . . [park] area on the plan "to be dedicated" or "not to be dedicated." If he dedicates the land then so far as he is concerned he has no further interest in it and no complaint to make, but if he refuses to dedicate then for all practical purposes, he has lost his land without compensation. He cannot sell the land or use it for any other purpose than for a park or recreation area. True, the township may take it over by condemnation in which event he will be paid, but there is no obligation on the part of the township to take this step. The land may lay (sic) there for years before the township decides to accept the land or condemn it for park purposes.

This lower court decision has been quoted at such length because it states so well the practical problems involved in situations of this sort. Moreover, a subsequent decision by the Pennsylvania Supreme Court in *Miller v. City of Beaver Falls*[46] indicates that the Moreland Township decision would probably have been sustained on appeal. The *Miller* case did not involve the usual type of subdivision regulation. Instead, the city adopted an official plan of parks which located a 4-¼ acre playground in a vacant tract of land for which the appellant had prepared a subdivision plan. The statute under which the ordinance adopting the park plan was passed, provided that:

> . . . unless an ordinance actually appropriating the land within the lines of said park or parkway to public use is duly passed by council thereof, or said land is acquired by council within three years . . . said ordinance . . . shall be void and of no effect. . . .[47]

The court was unwilling to extend the well-established authority of Pennsylvania cities to lay out new streets without immediate payment of compensation to the planning of parks.

> Shall this principle relating to streets, which are narrow, well defined and absolutely necessary, be extended to parks and playgrounds which may be very large and very desirable but not necessary? The injustice to property owners of permitting a municipal body to tie up an owner's property for three years must be apparent to every one. The city can change its mind and abandon or refuse to take the property at the end of three years; but in the meantime the owner has been, to all intents and

[45] Pa. Court of Quarter Sessions, Montgomery County (1950) (Unreported).

[46] 368 Pa. 189, 82 A.2d 34 (1951).

[47] Pa. Stat. Ann., tit. 53, § 12198-3702, amended by Pa. Laws, 1951, c. 662, § 37.

purposes deprived of his property and its use and the land is practically unsalable.

. . . .

The city is not without a remedy, but it cannot eat its cake and have its penny too. If it desires plaintiff's land for a park or playground which it considers desirable or necessary for its future progress, it can readily and lawfully obtain this land in accordance with the Constitution which, we repeat, is the Supreme Law of the land. The Constitution of the United States and the Constitution of Pennsylvania empower the city to take and appropriate private land for public purposes. *All that is required is that just compensation be paid therefor.*[48]

In the new Municipal Planning Act of the State of New Jersey, which became effective on January 1, 1954,[49] the plat reviewing agency may require reservation of sites for parks and schools appearing on the community's master plan for a period of one year. If this land has not been purchased or condemned by the municipality by the end of this period the subdivider may use the reserved areas for other purposes. Here the reservation period has been reduced to the minimum practical period, yet if the reasoning used in the Pennsylvania decisions were to be applied it is difficult to see how this new provision could survive. Perhaps the New Jersey courts will recognize the practical difficulties in providing for the immediate acquisition of a park site for which no funds were allocated in the annual budget but which must be carried out at once because a landowner suddenly initiates subdivision proceedings.

The problems faced by the landowner should be recognized. If he is compelled to reserve a portion of the subdivision for a park and the municipality ultimately decides not to acquire the land, it may be difficult to divide this portion of the tract into lots of satisfactory shape and size. An additional street may be needed requiring added engineering and legal fees. Or, the subdivider might be required to submit a new plat for the park area, thereby necessitating a duplication of the procedure in filing and receiving approval on preliminary and final plats.

An interesting question is raised on the tax status of such reserved park land. In *Crane Berkley Corporation v. Lavis*[50] the court held that the owner of land, reserved for park purposes as required by the planning board but never accepted by the municipality, was not required to pay real estate taxes on the property. The court said:

Can it be said that, notwithstanding . . . the approval by the planning board . . . of the respondent's plat with its streets and parks, the filing by the respondent of its map or plan so approved, and its subsequent sale of

[48] 368 Pa. 189, 193, 198, 82 A.2d 34, 36, 38 (1951).

[49] N.J. Stat. Ann. § 40:55-1.20 (1953).

[50] 238 App. Div. 124, 263 N.Y. Supp. 556 (2d Dep't 1933).

lots in its development pursuant to its map, the respondent still is free to ignore its established parks and devote their site to private uses? Surely any attempt by respondent to eliminate the parks and to deprive its grantees of their enjoyment would be held of no effect.

. . . .

I fail to see what beneficial interest in the park lands in suit remains in respondent, estopped as it is from devoting them to any other than park uses.[51]

A few tentative conclusions can be drawn from these cases. Under present enabling acts courts are not likely to uphold compulsory dedication of land for parks. Required reservation of park land in new subdivisions for an indefinite period would also seem doubtful. A requirement to reserve such land for a specified and relatively brief period of time might be sustained in some states. Obviously this is an aspect of subdivision control law which needs further study. The municipality must be permitted sufficient control of its own expansion, and the subdivider must be protected against arbitrary demands for public land.

### General Disapproval of Subdivision Plats

Many of the foregoing cases dealt with situations where planning board approval was withheld because of one or more objectionable features of the plat design. Two important decisions have been reported in cases involving blanket disapproval of the plats on much broader and less specific grounds.

In *Mansfield & Swett, Inc. v. Town of West Orange*[52] the subdivider proposed to lay out a subdivision and build houses costing between $15,000 and $18,000. The tract of land had been the site of a single home. In the vicinity were a number of mansions valued at $50,000 to $75,000. There was evidence to show that at the public hearing on the plat many property owners voiced objection to the development. The planning board's grounds for disapproval, as summarized by the court, were the following:

. . . (1) that the proposed development is not in keeping with the character of the neighborhood and would so decrease the "rateables of surrounding properties" as to entail financial loss to the municipality; (2) that it would effect "an increase in density of population on the premises in question where none now exists," and would create additional traffic hazards, particularly for school children and the fire department, and place upon the municipality "the burden of additional policing" and "necessitate additional supervision of traffic"; (3) that the proposal is "contrary to the unanimous wish of practically all the property owners"

[51] Id. at 126, 128, 263 N.Y. Supp. at 559, 560.

[52] 120 N.J.L. 145, 198 Atl. 225 (1938).

. . . . and (4) that approval of the plan "would interfere with safety, health and general welfare of the community."[53]

Here the objections to the plat were not centered on such matters as lot size, street widths and grades, intersection design, and even the reservation of open spaces. Instead, the "character" of the proposed development was considered inappropriate by certain property owners in the vicinity. The court was unwilling to sustain disapproval on such grounds, saying:

> We are convinced that . . . the planning board considered the views and desires of the neighboring estate owners as determinative. . . . This evinces a palpable misconception of the law. The standard is not the advantage or detriment to particular neighboring landowners, but rather the effect upon the entire community as a social, economic, and political unit.[54]

A more recent decision in a similar case is *Beach v. Planning and Zoning Commission of Town of Milford*.[55] Here the plat, which met all the requirements of the subdivision regulations, was disapproved because of the additional financial burden it would place on the municipality for such services as schools, policing and fire protection. The court rejected these reasons on the basis that these considerations were outside the scope of the planning commission's authority as set forth in the statute. The court then said:

> Even if the statute had given the commission power to legislate in this regard, it would not follow that the commission could, in one isolated case and without any standards to guide it disapprove a subdivision for a reason which it would not be required to apply to all subdivisions as to which the same reason obtained. Such action would be special legislation of the worst type.[56]

### Fees

The validity of charging reasonable fees to cover the cost of subdivision review procedure was upheld in *Kesselring v. Wakefield Realty Company*.[57] The statute authorized the county planning and zoning commission to "fix a reasonable schedule of fees" for the issuance of permits and certificates. The commission interpreted the approval of a plat as an act of certification and established a fee of 1-½ per cent of the estimated cost of the physical improvements in the proposed subdivision. The Kentucky Court of Appeals upheld the commission in these words:

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[53] Id. at 148, 198 Atl. at 228.

[54] Id. at 159, 198 Atl. at 233.

[55] 141 Conn. 79, 103 A.2d 814 (1954).

[56] Id. at 85, 103 A.2d at 817.

[57] 312 Ky. 334, 227 S.W.2d 416 (1949).

> Had the Legislature merely authorized the commission to fix "a fee" for the issuance of permits and certificates, we would have entertained some doubt concerning the right of the commission to charge more than a nominal amount for the issuance of such permits. But since it authorizes the commission to "fix a reasonable schedule of fees," we do not doubt that it was intended that the commission should schedule fees commensurate with the amount of work and study required of the commission to inspect the property, inspect and help prepare the plans of the subdivision, and finally to determine whether its rules and regulations have been conformed to.[58]

The amount collected through fees must be reasonably related to the costs incurred by the planning board in carrying out inspections of the subdivision. While the court in *Prudential Co-op Realty Co. v. Youngstown*[59] upheld the imposition of fees charged for this purpose, its opinion contained this warning:

> Whether or not the surplus of fees over expenses is sufficient to render an ordinance invalid is a mixed question of law and fact. If the excess is small, no question of invalidity is presented. If it is enormously large, it becomes a clear case of operating as an excise tax. Between these extremes there must be a twilight zone where cases must be decided upon their individual facts and where no controlling rule can be declared. The court of common pleas in this case has held the fees to be reasonable. The Court of Appeals in its opinion expressed a different notion, but did not reverse the case. While to this court the excess seems to be large, and it may be suggested that if the fees continue to be large, and the expenses small, a serious question might arise in future cases as to the validity of the ordinance on the ground of excessive charges.[60]

Some municipalities are imposing substantial fees to provide funds for the purchase of land reserved but not dedicated for parks in new subdivisions.[61] While this is a commendable purpose, this practice would seem of dubious legality in the absence of legislation authorizing such action. However, a recent opinion of the Comptroller of the State of New York suggests that no specific legislative authorization is required.[62] Litigation on this point can be expected.

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[58] Id. at 337, 227 S.W.2d at 418.

[59] 118 Ohio St. 204, 160 N.E. 695 (1928).

[60] Id. at 215, 160 N.E. at 699.

[61] Am. Soc'y of Planning Officials, Planning Advisory Service, Rep. No. 46, "Public Open Space in Subdivisions." See also the recommendations for the establishment of a cumulative reserve fund from fees paid by land developers for cities in Washington in Association of Washington Cities, Information Bull. No. 167, "Regulating Subdivisions" (1954).

[62] It appears, under section 277 of the Town Law, that a town planning board has the power to approve or disapprove a plat where (a) "such plat shall also show in proper cases and when required by the planning board, a park or parks suitably located for playground or other recreational purposes" or (b) it "may waive, *subject to appropriate conditions*, the provision of any or all such improvements and requirements" due to special circumstances . . . . It is the opinion of this Department that a

### EXTRATERRITORIAL CONTROL

A number of cities, through statutory or charter provisions, may control subdivision activity within specified distances beyond their corporate boundaries. The validity of extraterritorial control was established in *Prudential Co-op Realty Co. v. Youngstown*[63] where the court examined at some length the compelling practical reasons why this type of control is essential for sound metropolitan development:

> Every growing municipality must, from time to time, annex surrounding territory to provide homes and institutions for its increasing population.
> . . . .
> A growing city cannot make election among surrounding parcels. There is no element of compensation or bargain and sale. It must annex the lands which lie nearest. In numerous instances cities have been built in haphazard fashion without definite plan and without thought of such municipal functions as providing civic centers, boulevards, scenic beauty, and without thought of other esthetic considerations, and later have sought to correct the early mistakes at enormous expense. Modern vehicular traffic requires broad highways between cities. Our State Highway Code has recognized this need by making provision for the establishment and improvement of inter-county and main market highways. All highway exits and entrances must necessarily traverse the adjacent territory, and the statement that narrow streets and other obstructions without limit may be established by suburban owners, and that the Legislature is powerless to intervene, is a travesty on justice and government.[64]

There can be little question but that the exercise of extraterritorial power would be sustained in any state where the enabling act or charter provision is correctly drawn.

### SUBDIVISION CONTROL AND COMPREHENSIVE PLANNING

In most cases of subdivision control the planning agency is dealing with owners of relatively small tracts of land. These subdivisions are often not contiguous. Moreover, their owners may have quite different ideas about the character of the residential development they intend to promote. The solution so often suggested is that the planning board require that all subdividers conform to the recommendations of the master plan for the area, at least to the general street plan. Such a plan almost always shows only the general location of proposed major thorough-

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town planning board where special circumstances exist, may require a subdivider to deposit a specific sum of money per acre to be placed in separate playground and park funds, as an appropriate condition within the meaning of section 277 of the Town Law. The situation must, of course, be a reasonable one in which the planning board exercises this power.

N.Y.S. Comptroller, Opinion No. 6836 (1954).

63 118 Ohio St. 204, 160 N.E. 695 (1928).

64 Id. at 210, 212, 160 N.E. at 697, 698.

fares. At the time of subdivision the precise location of the right-of-way will be determined. Whether the exact location is fifty feet in one direction or a hundred feet in another from that shown on the general plan is of little importance. The result would be an integration of many separate subdivisions into a single neighborhood pattern. This procedure has been used with some success in so many communities, and its acceptance has become so widespread, that it is disturbing to learn that the legality of this practice is questionable.

The Connecticut Supreme Court, in *Lordship Park Ass'n. v. Town of Stratford*[65] failed to uphold the disapproval of a subdivision plat because its street pattern differed from that shown on the general plan. Other factors were influential: the master plan was referred to as a "preliminary plan"; it was prepared in 1927 but not adopted by the town council until 1936; no public hearing was held; and there was little evidence that any steps had been taken to carry out any features of the plan. Nonetheless, the wording of the opinion is disquieting:

> The vote of the town council . . . was simply that the "preliminary plan" . . . be adopted and used as a guide for future development subject to future changes. . . . If the board could in its discretion disapprove the plaintiff's plan solely because it was in conflict with the town plan, then the merely preliminary town plan, operating to control the discretion of the board, would have the effect of curtailing the private property rights of the plaintiff.
>
> . . . .
>
> . . . It is apparent that the board . . . was not justified in refusing to approve the plan . . . on the ground that it did not contemplate the construction of a road in the location indicated roughly on the preliminary town plan. To justify the action of the board on that ground would be to give an effectiveness to the preliminary town plan . . . which it was not intended to have and which, under the constitution, it could not have.[66]

In the light of this decision perhaps subdivision statutes should be reexamined and an attempt made to define more precisely the effect of a general plan as it applied to areas which are being subdivided.

### Enforcement of Subdivision Control

The denial of the privilege of recording an unapproved plat is perhaps the oldest enforcement device. The validity of this is now well established. Because the wording of deeds by reference to a recorded plat is simplified, the subdivider is induced to submit his plat for review and approval. Control may still be evaded, however, through sales by metes and bounds. The laws of many states make such sales unlawful if the

[65] 137 Conn. 84, 75 A.2d 379 (1950).

[66] Id. at 89, 92, 75 A.2d at 381, 382.

vendor has referred to or exhibited an unapproved plat during the sales negotiation. These laws are virtually unenforceable because of the difficulty of proving that such a plat was displayed.

In an effort to eliminate metes and bounds sales of many parcels in a tract or sales of portions of lots in a subdivision already approved and recorded, the Indiana statutes were amended in 1935 to read:

> . . . No conveyance of nor agreement to convey any parcel of ground of less than two acres . . . shall be filed or recorded until the written approval of . . . [the planning] . . . commission shall have been entered thereon, unless said parcel of ground comprises at least one entire lot, as recorded, located within a subdivision already approved. . . .[67]

This act was repealed in 1947 because of the feeling that such metes and bounds land sales could not be prohibited. Some variation of this statute would be helpful in many states where adequate enforcement of subdivision control is being hampered by metes and bounds sales.

The recent subdivision legislation of New Jersey[68] provides two additional methods of enforcement when violations occur. First, the municipality may institute a civil action for injunctive relief. Second, the municipality may take action to set aside and invalidate any conveyance of lots in unapproved subdivisions, such action to be brought within two years of the recording of the instrument of transfer. But the constitutionality of this latter provision is open to question. In *Borough of Oakland v. Roth*[69] the court invalidated a similar provision in a previous statute on other grounds. In its decision the court commented:

> It is observed that the Legislature evidently deemed it conducive to the enforcement of the planning act to confer authority . . . to maintain an action in this court to invalidate and nullify the grant. . . . It is not difficult to envision the plight of an unwary grantee who has for one day less than two years established and maintained his family home on one of such lots.[70] .

Two other methods of preventing evasion of subdivision controls are frequently used. One of these is a prohibition of any public improvement in a street which does not appear on an approved plat. This prevents the subdivider from inducing the municipality to assist in developing the tract and makes improper sales of lots more difficult.

Perhaps more effective is the power to deny building permits for proposed structures on lots which have access only from unaccepted or unapproved streets. While most planners have assumed the legality

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[67] Indiana Laws of 1935, c. 268, § 9.

[68] N.J. Stat. Ann. § 40:55-1.14 (1953).

[69] 28 N.J. Super. 321, 100 A.2d 698 (1953).

[70] Id. at 326, 100 A.2d at 701.

of such regulations, court decisions are divided on this point.[71] As the court pointed out in *State ex rel. Weber v. Vainer*,[72] this method of enforcement penalizes the purchaser of a lot and not the subdivider who created the situation. Nevertheless, its use is widespread and helps to prevent the evasion of subdivision regulations.

## Conclusions

As was indicated at the outset, the law of subdivision control is still in its infancy. The limits of control authority are still largely undetermined. Municipalities should not hesitate to experiment with untried or legally untested methods of plat review if such methods appear to be in the public interest. The liberal philosophy of the late Alfred Bettman, distinguished as both planner and attorney, might well serve as a guide. In encouraging communities to investigate new devices for the control of city growth and development, Bettman concluded:

> Be sure you are right, then go ahead. There is nothing in the nature of American constitutional law which should produce timidity or the palsying of effort by fear of constitutional difficulties. The American Constitution is sufficiently beneficient and wide-armed to receive within its protection whatever is morally and intellectually justifiable and really needed for the public welfare.[73]

If the exercise of subdivision control powers and the redrafting of subdivision statutes and regulations are approached in that spirit we cannot fail to find the right solutions to problems which now appear so difficult.

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[71] See Mitchell v. Morris, 94 Cal. App. 2d 446, 210 P.2d 857 (1949):

> . . . a more necessary regulation could hardly be imagined than one which forbids the erection and maintenance of a dwelling house in a modern city except where such dwelling has adequate and permanent access to a public street.

But in People ex rel. Schempff v. Norvell, 368 Ill. 325, 13 N.E.2d 960 (1938), the court said:

> There is no rule of law which forbids the subdivision of land by its owner in such a way as to establish over it only private ways for the sole benefit of those who may become owners of lots in the tract. . . .

[72] 92 Ohio App. 239, 108 N.E.2d 569 (1952).

[73] Bettman, City and Regional Planning Papers 84 (1946).