THE MASTER PLAN

BASSETT

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With a Discussion of
The Theory of Community
Land Planning Legislation

BY
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PREFACE

GOVERNMENTAL units whether towns, villages, cities, counties, or states today realize better than ever before the economy of co-ordinating improvements connected with the land. Planning commissions are charged with the duty of advising lawmaking bodies regarding this co-ordination. A master plan is nothing more than the easily changed instrumentality which will show a commission from day to day the progress it has made. Planning with the help of such a plan will prevent clashes between the public improvements made in different years and will serve to avoid duplication and rebuilding. Mistakes in municipal construction cost untold millions of dollars.

Not only is increased attention being given to master plans and to planning commissions throughout the United States, but there is everywhere a desire to know more about the elements of a community plan. Not everything should go into it. What should go in and what should stay out is the burning question. If everything that human ingenuity can devise is made part of a master plan

it will become a thing of shreds and patches. This book tries to show its essential contents.

Part I is an analysis of community land planning (formerly called city planning). It is as applicable to France or England as it is to this country. It is not a discussion of the master plan although references are occasionally made to it. Part II is devoted to the master plan, which is a device not applicable to France or England or to any states in this country other than those whose municipalities have under a state law established planning commissions. The reader of Part II will desire to know the seven elements referred to by the author and therefore Part I defining the elements comes first and the master plan (Part II) comes later.

PART I

THEORY OF COMMUNITY LAND PLANNING LEGISLATION

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Univ. of Virginia

I. THE ORIGIN OF A COMMUNITY

IF ONE can imagine a thousand families pioneering in a new country where they must do for themselves or else perish, one will have a setup for discussion. They must hunt and fish. They must plant seed and raise animals. They will erect tents or shacks. Later they will build houses, stores, and factories. All these things individuals can do. But soon will arise the need of adapting land areas to common purposes. This only a community can do; individuals are powerless.

The first need will be streets. If a community does not make intelligent provision for streets, the disposition of houses, stores, and factories will be a hodgepodge. Everything will be out of place. People must have streets in order to go from one place to another, to deliver food and building materials, to fight fires, and to send their children to school. Soon parks will be needed, which will differ from streets. Streets are strips of land dedicated to movement; parks are land areas devoted to recreation. Sites will be needed for public buildings —schoolhouses, a courthouse, and a fire house. Be-

fore long the routes of public utilities must be determined—sewers, pipes for the supply of water and gas, surface cars, trunk-line railroads, and ferries. There will also come a demand for the location of public reservations—an airfield, an athletic field, a fair ground, or a forest reserve. As time goes on the community will want to prevent congestion of living and the improper invasion of buildings and uses, so zoning districts will be created. Along the shore of river or harbor there will be established a bulkhead line beyond which an owner cannot fill in the navigable water, and a pierhead line beyond which piers cannot extend.

II. THE SEVEN ELEMENTS OF COMMUNITY LAND PLANNING

ALL these community uses and markings of land areas constitute the elements of planning. They all relate to land areas. They are all made by the community for the community. They must be established by law, since the only way that a community can act is through its laws. The laws which are enacted constitute community planning legislation.

The community uses and markings of land areas mentioned comprise all the elements of planning which exist at present. All can be shown on a map. Later new elements may be added.

Streets

The word "street," as already mentioned, serves to cover the multitudinous forms of strips of land devoted to movement. Some of the names are highways, roads, thoroughfares, avenues, boulevards, bridges, traffic tunnels, viaducts, alleys, lanes, and freeways. Parkway is omitted because a parkway is not a street. As used here, street means a city

or village street, a county road, a state or national highway. The planning element is the same regardless of political divisions of the land. A national highway running from San Francisco to Boston makes substantially the same community use of a strip of land as does Broadway in New York City. It does not matter whether our pioneer community is a village, a state, or a nation. In every instance a street is established in substantially the same manner. In the main this book will not try to separate planning into fields of city, regional, county, state, or national planning. It is all community land planning.

Everyone knows that a bridge is not strictly a street, but its function is to perform the same service. It is usually the continuation of one. Therefore the writer takes the liberty of classifying bridges, vehicular tunnels, viaducts, and freeways as streets.

People sometimes ask, "What do you mean by street? Is it the space between the curbs? Does it include the sidewalks?" A street is the land between its two boundary lines. Often part of it is a lawn; nearly always part is sidewalk and part roadway. Administrative officers of a city can alter

the location of sidewalk and the width of roadway. Doing this does not alter the width or legal character of the street. The land is street land whether used for lawns, sidewalks, or roadways.

The relation of streets to planning will not become clear until private streets are distinguished from public. The community has nothing to do with the former. Only when a street is community owned or community controlled does it become public. In order to show how easy it is to confuse private streets and public streets let us describe some of their aspects.

An entrance road to a private house often resembles a public street. It may have sidewalks, gutters, and pavement. Yet the owner can tear it up and plant his land to crops if he wishes. It is nothing more than privately owned land.

On the outskirts of a Long Island village two contiguous farmers laid out a so-called street along the boundary line of their two farms. This street was exactly where the village did not want it and officials asked the court to stop its construction. The petition was unsuccessful, however, because the street was a private one on private land. The two farmers then made a roadway, laid sidewalks,

and demanded building permits. Village authorities objected but were legally advised that if they did not grant the permits the court would compel them to do so. The farmers then received permits and erected houses. The street still remained private. The owners could tear it up, tear down the houses if they were foolish enough to do so, and the street would disappear. The community had nothing to do with it.

A developer may show a private street on his plat, have the plat approved by an official planning board, file it in the county clerk's office, construct roadways and sidewalks, and build houses. Yet the street is still private. The community does not yet own or control it. After the developer has sold two or three houses fronting on the street, as shown on his plat, every grantee has an easement of passage over the street. One would think that now at last it had become a public street. Not so. It is still a private street. If anyone doubts this he can buy the street from the developer and the houses from the grantees, tear them down, and plow up the street. The land in the street will then be his private property and he can do what he wants on it.

Where then does the community come in? Obviously it never owns and controls a street until it has expressed its willingness to do so. No one can force it to act until it gets ready. The community must perform some positive act of assent to create a public street. It acts through laws. Sometimes it establishes a street *de novo*, first placing it on an official map, next opening it by applying to a court for a condemnation commission to fix awards for the land required and so taking the street by right of eminent domain. But this is not the only way of making a public street. The two farmers could have offered a deed of cession to the village, and if the latter had accepted the deed the street would have become public and the village would have been obliged to maintain it. Or, if the farmers had opened the roadway and sidewalks to public use, thus making an offer of dedication to the village, and if the latter had accepted this offer by performing acts of ownership and control, such as building a sewer or erecting street lamps, then the dedication would have been complete. The farmers would have made an offer of dedication, which the village would have accepted by overt acts.

Any one of the above three methods will estab-

lish a public street—condemnation, cession, or dedication. The point to notice is that the community must assent. In other words, until the community gives its legal sanction, a street never becomes public. This sanction is emphasized because the vital fact that establishes each element of planning is the approval of the community in compliance with the law.

When a community establishes a street it determines the boundary lines of that street. This is the first act of planning. Whatever comes afterward depends upon the locus of these boundary lines. Planning, in the sense used in this book, precedes acquisition and construction. Acquisition, whether by condemnation, cession, or dedication, is not planning. Sometimes ill-prepared laws provide that construction of a street cannot begin until it is approved by a planning commission. This would be too late for such approval because if the boundaries have been fixed and the street acquired, the municipality cannot very well do anything but proceed to construct it. Approval by the commission should be necessary for fixing the boundaries. Construction follows the locating, for locating is the act of planning. Similarly the determination of

the locus of boundary lines in all the elements of community planning is the vital act.

Every community should have its official map of streets. The first step in the acquisition of a new street should be the placing of its boundaries on that map. If a community wishes to acquire a street it should first determine its boundaries and place them on the official map. Placing street lines on an official map may long precede actual public ownership. This shows that the vital act of planning is mapping and not acquisition.

Planning elements can always be shown on a community plan or map by the mere laying out of boundaries because the legal character of land which has received community sanction or stamp differs from the private land adjoining it. A street, therefore, is part of a community plan. Not so with a private driveway from street to house. Not so with a private street. But when the community has stamped a legal character on the land for community purposes, then the land so stamped differs from private land, and the dynamic map (that is, one that denotes the exercise of the power of the community) or the master plan will show the boundary lines. This is true regarding each ele-

ment in a community plan. After a land area is stamped by the community with an official character it differs from adjoining land and can be shown on the plan. If it cannot be shown, it is not one of the elements of the plan. It is something else. For instance, a building code cannot be shown on a plan. Therefore it is not part of it. Private houses cannot be shown on a master plan. Therefore they are not part of it.

Thus we see that a mapped street, presumably soon to become a public street, is a strip of land stamped by law with the character of street and thus capable of being shown on a master plan.

Parks

Parks are the next element that can be shown on a plan. The dynamic plan must show differences of land character as stamped by law. For instance, a map showing a shore line that marks the boundary between land and water is a static map. No stamp of legal character enters into it. But a map showing pierhead and bulkhead lines established by law is a dynamic map, that is, it indicates the exercise of power by the community.

A park is a parcel of public land devoted to rec-

reation. In New York City the first step in establishing a park is for the Board of Estimate to place it on the official map of streets and parks. Thus its boundaries are determined accurately. The area may be raw land and the surface look very different from a park, but when the parcel is placed on the official map it becomes a mapped park.

A city does not always acquire a park as soon as it is mapped. In some instances a park has remained only mapped for twenty or thirty years. The private landowner can erect buildings on it just as if it were not mapped. In this respect mapped parks differ from mapped streets.

The permissive planning laws of New York and of several other states prevent the issue by a building inspector of a permit for a building on a mapped street not yet opened. Many claim that the same rule should apply to mapped parks. This would, however, be exceedingly drastic because it would be almost the same as depriving the owner of his land without payment. If the area remained unopened for twenty or thirty years the owner would be taxed and yet he could not build upon it. A street differs from a park in this respect. An owner who possesses the entire plot will need the mapped

street sooner or later. He cannot put the land to any service unless it has streets. If the streets are officially mapped, the land included in them is usually not assessed for taxes; its value is absorbed for assessment purposes by the land which abuts on it.

A park can be acquired by the community in the same way as a street; that is, by purchase or condemnation, by cession or by dedication.

The clear differentiation of streets and parks has been obscured by the word "parkway." It is easy to concede that a parkway is more like a street than like a park because it is used for traffic and is often rather narrow. For instance, Bronx River Parkway is thought by many to be the same as a street; as a matter of fact, it and all other true parkways are parks. Central Park is also a parkway because vehicles use it the same as they use Bronx River Parkway, but one never thinks of calling Central Park a parkway any more than he calls Bronx River Parkway a park. They are, however, identical in their legal characteristics. Both have been acquired as parks.

What further confuses the exact conception of true parkways is that in New York and in many

other large cities some broad streets are called parkways. The usual city roadway, though called a parkway, is a street, as is the usual city boulevard or concourse. Ocean Parkway and Eastern Parkway in the Borough of Brooklyn are both streets. Fort Hamilton Avenue in the same borough was taken over for administrative purposes by the park department and was called Fort Hamilton Parkway. Many consider that because it was taken over by the park department it is a parkway. Such is not the case. The test of a so-called parkway is whether stores or residences can front on it as a matter of right. If it is a street they can; if it is a park they cannot. In a strict sense the difference between a street and a park is that a street is a strip of public land devoted to movement over which abutting owners have an easement of light, air and access, whereas a park is a strip or parcel of public land devoted to recreation over which they have no such easement.

The people of a state have an interest in streets and parks. They cannot be sold or closed without consent of the state legislature. This is usually given in the form of laws allowing a municipality to sell or change the use of a street or park. In this

respect ownership of a park is different from that of the site for a public building. In the latter instance the municipality owns in a proprietary capacity, just as does an individual. However, as each of the three elements—streets, parks, and sites for public buildings—has a public purpose, the procedure of eminent domain can be used in acquiring title to any of them.

The legal quality of a park is the same throughout its length and breadth. It is all park and nothing but park. To be sure, it has roadways, but the land in these is the same sort from a legal point of view as that outside the roadways. Park authorities can usually alter the location of a roadway just as they can alter that of trees or bushes. They may set aside part of the area for playgrounds and sports, but it is not necessary that the entire area be devoted to those purposes. One of the principal uses of a park is to promote quiet and peacefulness of outlook.

Accordingly it will be seen that a park has a legal character of its own. It is a parcel of public land set aside for recreation. It can be established by the community, under sanction of law, and by nobody else. It can be shown on a dynamic map

or plan. Inasmuch as it has all these qualities it is an element of the master plan.

Sites for Public Buildings

The next element in planning is sites for public buildings. Illustrations are sites of publicly owned city halls, courthouses, schools, post offices, armories, water towers, pumping stations, and electric power stations. Each is a parcel of land set aside by sanction of law for community use and can be shown on the dynamic map or plan. It is not customary to show sites for public buildings on an official map as streets and parks are shown because the legal quality of the land on which they are located is less permanent. A municipality can sell these sites and give as good a title as can a private individual.

Before the invention of master plans city maps did not show the co-ordination of sites for public buildings with other elements of the plan. Master plans are more and more coming into use as a means to help planning commissions to co-ordinate the various elements of the plan. There is no need to have an official map of sites for public buildings since these sites may be enlarged and changed from

time to time. A planning commission should be the best adviser for a municipality in regard to sites for public buildings and these latter therefore should be shown on the master plan.

Although sites for public buildings constitute one of the elements of a plan the buildings themselves on such sites are not part of it—at least not in the sense of the term used here. A building is not a land area. It is something devised by an architect and constructed by a builder. In other words, buildings are architectural structures and not elements of a community land plan. All the skill of a planner is employed in determining the location, form, and boundaries of the site. In weighing the matters that determine the suitability of the latter, the planner must consider population trend, topography, accessibility, and a thousand and one subjects that come within his domain. Streets will often need to be adapted, sometimes old ones must be closed, and new parks opened, in relation to a new site.

It cannot be said that a building is the thing that requires planning and that the site is merely incidental. On the contrary this latter will be established simultaneously with development of the idea

for the new building and will harmonize with all the other elements of a plan. An architect will make drawings for the building.

In recent years there has been a tendency to place certain sorts of private buildings within the field of planning as, for example, housing. Housing has come to mean the providing of homes for people of small means, built usually by limited dividend corporations or through subsidies from city, state, or nation. Without endeavoring to minimize the importance of such housing, it is not part of planning unless the community owns the site. A school, courthouse, fire house, or city hall is built by a municipality on the site for a public building. Houses for people of small means that are on sites so owned are in the same category, that is, they are built on public land and are operated by and for the community. Just so the Williamsburg houses in the Borough of Brooklyn, which cover twelve blocks, are built on sites for public buildings. These sites are owned by the federal government and the buildings were erected and are now owned by it. They are therefore in the same category as a courthouse or a public school and undoubtedly come within the field of planning.

When, however, such buildings are erected by private corporations, perhaps with the help of subsidies from government and even when perhaps coupled with tax exemption, they are still private. To be sure, all the care that is taken in locating public buildings is required in locating such private buildings, and all the skill and experience of planners should be called in to ascertain the best situation, the size of the plot in proportion to that of the municipality, the supply of light and air, orientation, relation to parks, playgrounds, and streets.

In modern usage municipalities cannot obtain sites for public buildings by dedication. They must either buy or take them by condemnation. This shows, as has been stated, that the legal character of such sites has not such permanency as have streets and parks. Nevertheless from a planning point of view the location, size, and shape of sites for public buildings are of nearly the same importance as the location of streets and parks.

In New York City the official map of streets and parks cannot be altered to show a new street or park unless a public hearing is held before the Board of Estimate or the new Planning Commission. In-

asmuch as the site for a public building is not shown on an official map, the holding of a public hearing prior to its acquisition is not required. It is easy for the city to obtain the site for a public building or to dispose of the land on which a building had been erected if it decides to alter the site. We must, however, include sites for public buildings among the elements of a plan. They are parcels of public land whose boundaries are fixed by the community under sanction of law. They not only can but must be shown on a dynamic map or plan of the city.

Public Reservations

Our pioneer community will find sooner or later that it needs one or more public reservations. The legal character of a public reservation which is usually a large vacant space, although service buildings are often needed on it, is the same as the site for a public building. When the community applies to a court for permission to acquire title to land for a public reservation, it must show the purpose of the reservation just as in the case of the site for a public building. A public reservation is needed for an airport, a bird sanctuary, a forest reserve, a marginal way, or a public parking place not a street. A play-

ground is usually a park but it may also be a public reservation.

It is not necessary that the law enumerate what areas can be acquired as public reservations. An early public airport that was sought to be acquired in New York State was objected to on the ground that there was no specific law that provided for the acquisition of land for airports. The highest court of the state, however, declared that its purpose was lawful and therefore that acquisition of the land by condemnation was in lawful order.

A state or national forest is a public reservation. A national monument is a land area which the federal government brings under its custody and protection. It may be publicly or privately owned. Usually, however, when ownership is acquired by the national government it is set aside as a national park. When made a park by act of law the land has a distinct legal character. Public reservations like sites for public buildings will be shown on a master plan.

Zoning Districts

Our pioneer community will find it wise to prevent multiple houses from being erected every-

where and will limit them to small districts. Ample yards will be required in order to prevent congestion and to give each house sufficient light and air. A community will find that health and safety are promoted by separating business from residential districts. This will be on account of fire hazard, transmittal of disease by insects and exposed food, noise, and crowds. Better children can be reared in residential districts that are open and sunny than in those that are crowded with stores. Factories should be segregated from both stores and residences. In locating industrial districts account should be taken of accessibility to railroads and wharves and of the prevailing direction of the wind.

A zoning ordinance differs from a building code because it is applied to different districts that require different regulations, whereas the regulations in a building code are the same for the same kind of building throughout the municipality. Modern zoning is the regulation by districts of the height, area and use of buildings, the use of land and the density of population. Streets are not zoned because they are set aside by a community for movement. They cannot be built upon. A park cannot be zoned for use because the law declares that it is

for recreation. Parks are, however, usually zoned for height and area of buildings erected in them.

Some critics will say that zoning ought not to be one of the elements of planning because it has to do mainly with private land. No assertion is made that the elements relate to public land in the case of streets, parks, sites for public buildings, and public reservations, although such a statement would be accurate. But this is not so with zoning districts, routes for public utilities, and harbor lines. Zoning districts are land areas, the legal quality of which is impressed on the land by acts of law or the sanction of law.

It is easy to get the wrong impression that zoning relates not to the land but to buildings. To repeat, zoning maps never show buildings, only land. Through regulations applicable to particular districts the community allows certain kinds of buildings and prevents others. If a building burns down the zoning of the particular lot on which it stood does not change. Zoning regulations refer not only to buildings but to uses of vacant land. For instance, an automobile junk yard cannot be placed on vacant land in a residential district.

Moreover, although zoning is a guide to the

architect in the making of his building plans, the regulations alone do not constitute a plan for a building. Most zoning regulations provide an envelope for buildings in a particular district and the buildings must not project outside the lawful envelope. But the architect has free play to make his plans within the envelope.

The basic features of modern zoning—the fundamentals that have so largely procured the approval of courts—are:

(1) Recognition that the health and safety of a community are preserved by applying uniform safeguards within a district. Building codes have for many years been upheld by the courts. They make uniform requirements for the same kinds of buildings throughout a municipality. The need arose, however, for different regulations for different parts of a municipality and the new regulatory structure called zoning was an answer to this increasing problem. Block ordinances to bring about uniformity of private homes had been tried in Chicago and St. Louis before the days of zoning but the courts did not approve of them because they seemed discriminatory. In other words, similarly situated land in a municipality had not been treated uniformly.

In the first zoning cases that arose objection was made on similar grounds but the courts declared that if the regulations were reasonable, were based on community health and safety and were not discriminatory, district by district they would be upheld.

(2) No municipality is compelled to adopt a zoning ordinance. The state enabling act is permissive only. However, municipalities that decide to adopt zoning ordinances must comply strictly with the steps set forth in the enabling act.

(3) In order to protect private owners of land as fully as possible the procedure before adopting a zoning ordinance usually requires the appointment of a zoning commission to make a thorough study of the needs of a community, the trends of growth, the different kinds of business and industry, the topography and co-ordination of the zoning ordinance with streets, parks, and other elements of the plan. The zoning commission must then frame a preliminary report with a suggested zoning map and submit the same to the local legislative body. This gives the latter an opportunity to make its own additional suggestions. Thereupon the zoning commission prepares a final report including

a zoning map upon which it must hold one or more public hearings. The zoning commission then submits this final report to the legislative body of the municipality, which must advertise a public hearing a fixed number of days before the hearing so that all concerned may have an opportunity to attend. The local legislative body will hear all who are interested and may adjourn the hearing from time to time. Afterward the local body can adopt the zoning ordinance at a regular or special meeting. In some states, as for instance in New York, the ordinance and map must be published and posted in order to become effective. This procedure may seem unnecessarily protracted, but there is no doubt that it has prevented impulsive and hasty zoning throughout the nation. Zoning is so intimate a regulation of private property that the greatest care should be taken to see that it does not transcend the limits of fairness. It should be regulation and not a taking. Precautions observed to insure full information to all property owners have had much to do with procuring court approval of a measure. If these required steps are not put into practice, as provided by law, the result is void. The establishment of no other element of planning

so depends upon compliance with specific provisions. This is as it should be. No other stamp by the community affects private property so importantly as zoning.

(4) To prevent arbitrariness in carrying out the regulations upon a given plot of land a board of appeals, presumably composed of experts, is created by the municipality with power to reverse decisions of a building department when it makes mistakes, to make variances where the strict letter of the law will result in practical difficulty or unnecessary hardship and where the spirit of the law can be otherwise carried out at the same time that public welfare is maintained, and to make variances in exceptional fields pointed out in the ordinance itself with a rule of conduct to govern. The board of appeals has been called a quasi-judicial body. All of its determinations are subject to review by court. An aggrieved neighbor can take advantage of this procedure and without great expense or trouble bring his points quickly before the court. Thus the latter becomes an adjusting factor in the administration of a zoning ordinance. This is much better than repeated declarations of unconstitutionality on different provisions of an ordinance. A board

of appeals is a safety valve. It often prevents the boiler from exploding.

(5) No property owner can obtain damages from a municipality because of the manner of its zoning. If the zoning is reasonable and not discriminatory, and in compliance with the law, an owner must adapt himself to the regulations. If, however, it is unreasonable or discriminatory or does not comply with the prescribed procedure, it is null and void as to the lot in question.

It is sometimes said that planning has to do with public land and zoning with private land. Nothing could be farther from the truth. Parks are zoned for height and area of their buildings. Sites for public buildings and public reservations are zoned for height, area, and use.

Councils which establish zoning regulations should be the first to comply with their own rules. Although municipalities throughout the country are quick to do this, a government, usually that of state, county, or nation, sometimes asserts that it is not bound by a local ordinance of this sort. This is true in so far as a community needs a building that transcends the zoning regulations. If, for instance, the federal government needs a post office

in a district shown to be residential on the zoning map, it can have its way. But if subordinate officials refuse, for instance, to comply with the yard requirements of a district, they cannot have their way. The superior right of a government desiring to disregard the zoning ordinance is limited to those things that are necessary for a community. A governmental body having the right of decision will usually be supported by the courts, but in a plain case of disregard of local restrictions because of a whim or without reason the courts would undoubtedly enjoin the subordinate officials. In a certain town that established a residential district excluding business and all other sorts of buildings except residences, churches, and schools, a fire district determined to erect a fire house within it and was upheld by the court on the ground that the officials of the fire district had the power to make the determination and that they acted for the welfare of the community.

It is not contended that zoning be confined to height, area, and use of buildings. It can be used in the case of submarginal farms, reforestation, soil erosion, and flood control. In the future it may be applied to many new purposes. Its distinctive fea-

ture is that different reasonable regulations are applied to different districts within the same governmental unit.

Routes for Public Utilities

Early in the history of our pioneer community public utilities will be needed. A sewer system will be one of the first. Then will come water, gas, and electricity. Telegraph and telephones will follow along with omnibus lines, street surface railroads, and trunk-line railroads. Ferries will be established.

All public utilities have routes. If distribution is not through a route the service does not constitute a public utility. Most utilities have definite routes as in the case of railroads and sewer, water and gas lines. The routes chosen by private corporations are specified in their franchises. For publicly owned utilities, such as sewers or subways, routes are chosen by the community. A community will not issue franchises to private persons but only to corporations which it can regulate. In every instance a franchise will show the route. Sometimes this may not be so definite as that of a railroad or a sewer; the franchise may give the right

to distribute a service over a ward or a city or a county.

A public utility is for the distribution of an important service. In some of the earlier laws, water, gas, and electrical companies were grouped under the head of transportation corporations. Movement of some kind is characteristic of every public utility. Otherwise the service is not a public utility. If a community establishes a community-owned utility, it will first lay out the route. This will be followed by acquisition of land and then by construction.

Utilities not having fast-moving machinery are likely to be community owned, as, for instance, sewers and gravity water-works. Electric power, telegraph, and telephone have been and still are rapidly advancing sciences and changes frequently occur in methods of production and transmission. They seem to be more successfully owned and operated by private corporations.

There is an undoubted tendency to increase public ownership and this is as it should be. As municipal governments become more permanent and there is greater continuity in public office, it will be found that they can successfully own and

operate the most difficult utilities. But probably as long as changes in administration are frequent and continuity in office interrupted, the rapidly moving and highly technical public utilities will be more successful if operated by private corporations.

There is no mystery about public utilities or their routes. If our pioneer community wished to consider milk distribution as a public matter and to grant a franchise to a different corporation for each ward, this would be the beginning of a new kind of public utility, but it would be entirely in order and it would have the necessary characteristics.

A public utility is a natural monopoly. It is common sense to encourage natural monopolies to give good service in specified territories by protecting their monopoly feature. This feature promotes economy and in the long run the utility gives better service at smaller cost to the consumer. A public utility corporation that is performing its proper function should not be subjected to competition as it has a prescribed territory and is under public regulation.

Many will declare that there is no such thing as a natural monopoly. If a city, however, builds a sewer system or a gravity water supply it will allow

no competitors. The day will come when public utilities will be more largely community owned and their characteristic of being a natural monopoly will not arouse discussion.

All this is disputatious ground where one can do little more than state fundamental principles, having in mind the best for community and corporation, provided a franchise can be issued with limitations and on conditions that will fully protect both sides and be subject to public regulation, leaning neither toward investor nor consumer. The impulsive granting of perpetual or indeterminate franchises, without checks and safeguards, is much to be deplored.

In the old days public utility franchises were often granted to private persons. The uncertainty of life, the settlement of estates, and sometimes incompetence in administration made this unsatisfactory. Today throughout the United States the holder of a public utility franchise must be a corporation organized under a special act. A corporation has the advantage of living forever or until termination fixed by its certificate of incorporation. It may employ eminent domain in obtaining land and the rights over land.

It is often said that a utility must have its pipes or lines in public streets. This is not so. These usually happen to be in streets, especially sewers and mains for water, gas, and electricity. Not infrequently, however, they are placed on private land and an easement for maintenance is obtained from the landowner. Trunk-line railroads are nearly always on private land.

Routes of public utilities should be shown on a master plan; and they should be co-ordinated with the other elements. Planners have not given much attention to routes of public utilities, the reason being probably that trunk-line, street surface and rapid transit railroads, telegraph lines and telephones, and electric light and power systems have received so much attention from specialists that the ordinary planner has almost forgotten that public utilities constitute one of the principal elements of a plan. Their routes are shown on the community official map. The sewer map and the water distribution map are just as official as are the maps of streets and parks, but they have not arrived at the latter's dignity and standing, since it has not been found necessary to surround the establishment of routes for utilities with the same checks

and precautions as are considered necessary for streets and parks.

Routes of public utilities always relate to land and the strips of land devoted to them have a different legal character from ordinary private land because this latter is not encumbered with easements for the maintenance of a public service. A strip of land constituting a street is first stamped with the community character of a street. If a public sewer is added the land is further stamped with the sewer character; if a street surface railroad is added it is also stamped with that character. If the strip is the route of a public utility corporation the land, whether public or private, is stamped with that additional characteristic. Railroad tunnels and bridges are part of the routes of public utilities. Not so, however, with vehicular tunnels and bridges which are extensions of streets. It is thus evident that the route of a public utility is properly part of a dynamic map or plan. If it cannot be shown on such a plan then it is not the route of a public utility.

Pierhead and Bulkhead Lines

When our pioneer community grows along the waterfront and shipping interests demand piers and deep water it will be found necessary to establish pierhead and bulkhead lines. A pierhead line is a line some distance from shore beyond which piers cannot extend. Piers allowed to be constructed without limit of length interfere with navigation. Pierhead lines become most important in narrow waterways like the East and North Rivers in New York. A bulkhead line marks the limit beyond which an upland owner cannot fill in the shore. Thus deep water can be preserved between bulkhead and pierhead lines for the accommodation of shipping.

But a bulkhead line has another important purpose. It shows the finished edge of the upland. A private owner will usually desire to fill in the shore in order to obtain land, part of which may be under water, for building purposes. If therefore there is no bulkhead line, one owner will encroach on the waterway farther than others, and the whole water edge will become chaotic. Stockholm, Sweden, is probably the best example of the careful

use of bulkheads in the world. More than forty miles of solid granite coping edges the upland.

Individuals cannot establish these so-called harbor lines. The community only can do it. In this country the federal government, inasmuch as it controls navigable waters, fixes them, but states and cities also have this power if their lines do not interfere with those controlled by the federal government. Harbor lines always relate to land, the legal character of which within the bulkhead line is different from that under water beyond it. The same can be said of land inside the pierhead line and that under water outside and beyond it. These harbor lines will be shown on a master plan, for they must be co-ordinated with its other elements. It is almost unnecessary to say that they not only can but must be shown on the dynamic map or plan.

III. ARE THERE OTHER ELEMENTS?

ARE there other kinds of land areas stamped by the community for community purposes? If so, we should include them as additional elements. For instance, a public building is not included because it is transitory. When it is destroyed by fire or otherwise it ceases to be. The elements of a community plan cannot be destroyed by fire or an act of God. A building could not be shown on a dynamic plan although it would undoubtedly be part of a static plan or map. It is an architectural structure and comes within the field of architecture rather than within that of community planning, but there must be an intimate correlation between a building and its site. There must also be co-ordination of a building and its site and the other elements of a plan. The design of the site must fit the design of the building.

So with houses built with public assistance for people of small means. Housing *per se* is not one of the elements of a plan, but if the term connotes a multiple house owned by a community, the land under such a building will be the site of a public

building, which is one of the elements of a plan. But if the site is not owned by the community, the multiple house is a private building even if public funds have been lent or contributed for its construction—a privately constructed building just like a one-family detached house.

An objection may here be raised that thus far the main thing has been omitted, that is, design in the plan. To some all discussion on the subjects mentioned is futile if it does not dwell upon good design. There is a possible good as well as a possible bad design to every street, every park, and every other element of a plan. To discuss design immediately raises a question of good or bad design and that is far outside the purpose of this book, which as has been said is to discover the elements of a community plan and to point out methods of co-ordination. Legislation can seldom produce good design. Design is something effected by a good workman or a good artist. If a community with the advice of good workmen and good artists can establish sound fundamentals, these will be the bases of good design.

IV. BOUNDARIES AND OWNERSHIP

AT FIRST one is likely to think that ownership by a community is the vital point where establishment of each element begins. On second thought one will conclude that the fixing of boundaries is such a vital point. To be sure, a street, park, site for public building, or public reservation does not come under community control until it is owned by the community. Nevertheless none of these comes into ownership of a community until boundaries have been established. The first step in the establishment of a street is placing its boundaries on the official map of streets. Acquisition by a community is one of the steps that come after such official determination. Some laws neglect to recognize this fundamental fact. They assume that the construction of a highway, for instance, is the first step to be taken. They require the approval of the planning commission before construction can begin, overlooking the fact that if boundary lines have not been fixed by the municipality then there is little need of having the

planning commission approve the beginning of construction.

Indeed in the case of some of the elements of a plan there is no public ownership whatever but only the fixing of boundaries by the community. This is so with zoning districts. Although the land is stamped with legal characteristics by a community it is mainly private land. Public utilities are largely owned by private corporations but the community fixes the boundary lines in the franchise. For instance, a company water-works pumping station, a company gas holder, a company trunk-line railroad and so on throughout the list are all owned by private companies and not by a community. Harbor lines have nothing to do with land ownership. An upland owner often owns land under water. More often, however, it is the state that owns the land which constitutes the foreshore and the federal government that fixes the location of the bulkhead lines.

If, therefore, a planning law is to secure a firm basis, it must provide a method by which the community may determine its own boundary lines. In fixing zoning districts there should not only be an assurance of expert study and preparation but the

holding of public hearings. The same statement may be made regarding streets, parks, public reservations, and harbor lines. Courts properly give great weight to the requirement and performance of these preliminaries, which constitute an important part of due process of law. That is because fixing boundaries by a community affects private rights and it is an arbitrary and usually unlawful proceeding if the private owners of surrounding land may not be heard. While public hearings are not always required in fixing the boundaries of sites for public buildings or the routes of public utilities they are always desirable and it is becoming more and more the custom to require them.

V. WHAT IS NOT COMMUNITY LAND PLANNING

EACH of the elements of the plan set forth in this book relates to land areas; has been stamped on land areas by the community for community use; can be shown on a map.

If a subject does not conform to these three requirements it does not come under the head of community land planning. Let us take up a few subjects and examine them.

Building codes, factory laws, and housing laws all depend for their efficacy on the police power and they affect each kind of building in a municipality in the same way. Therefore they cannot be shown on a map and do not constitute elements of the plan.

Some say that zoning prescribes the design of buildings. This is not so. Such zoning would be arbitrary and void. The most that zoning does is to apply regulations for the sake of light and air to buildings when they are erected. Zoning supplies an envelope within which the building must be designed and built. Yards must be provided for. But it is the land area that is shown on the zoning map and not the kind of building which is

decided by owner and architect. After a building is constructed it may burn down. This would not affect the zoning map. The legal character of the land would be the same before and after the fire.

Walks and drives in a public park are not part of a plan. Like the location of statuary or trees or shrubbery they are left to the control of the park board and can be changed from time to time without the matter's going before the local legislature. All the land has the character of a public park and from time to time can be used for lawns, lakes, paths, or driveways as the board decides. The next park board can change the design.

Budgeting and fixing the time for beginning various improvements are said by some to be part of a plan. We doubt this. The budget is one of a hundred things demanding prevision connected with a plan but not each one of these things is a basic element. The makers of a co-ordinated plan should know all about the budget, taxation, assessments for benefit, engineering, architecture, and landscape architecture. It is knowledge of these subjects that makes a qualified planner. They may be called ancillary. They are not the elements of a plan.

One of the subjects that a planner must know about is street traffic regulations. It is easy to confuse this subject with planning, but second thought will show that it is entirely different. It has none of the three essentials stated at the beginning of this section. Traffic regulation, which from time to time will need to be changed, is usually under the police department. Nothing can be more confusing than to introduce it as one of the elements of a plan.

Private parking spaces for automobiles are surely not part of a plan but the legislature of the state of New York last year declared that the master plan of a county should show such spaces. This illustrates how unable some official bodies are to distinguish planning from what is not planning. Much of the litigation that arises over planning laws comes because these laws are ill drawn. Many examples could be given of the confusion of the drafters of bills and of the legislative mind.

There has been much discussion about the qualifications of the community land planner. He is a person experienced and skillful in co-ordinating streets, parks, sites for public buildings, zoning districts, routes of public utilities, and harbor lines.

VI. APPLICATION OF TRIED METHODS OF REGULATION TO NEW PROBLEMS

Reforestation

NEW fields for the application of old and tried methods will arise. Careful segregation of the elements of a plan, as we have shown, will aid in a clearer perception of the needs of new legislation. For instance, during the past five years data have been collected by states and the federal government that will help in the regulation of reforestation. Little, if anything, has been actually accomplished except purchase by government of forest land. Purchase is a simple method of assuring reforestation and perhaps the best. Several other countries, among which are Italy and Japan, have, however, imposed regulations upon private land for the sake of reforestation. A private owner is not at liberty to cut down trees and leave bare land. He must substitute a new tree for every one that is taken down. Moreover regulations are imposed for the correct selection of trees to be cut and trees to be substituted. Public purchase of forest land is much more than the establishment of larger

public reservations. We have already treated of reservations as one of the elements of the plan.[1] When, however, in the interest of a community the regulation of private ownership of forest land arises we come into the field of zoning. Regulation to be effective must be different in different parts of the county, state, or nation. A new sort of reforestation would be the regulation of reforestation, district by district. New laws can be passed much the same as were the earlier zoning ordinances. There should be preliminary study. Private owners should be heard. Zoning district maps should be prepared and when the whole matter is in order the new maps and regulations be adopted. If the regulations for reforestation zoning are reasonable, they will be upheld by the courts the same as are the zoning regulations of today. If they are arbitrary or discriminatory, the courts will declare them void.

Submarginal Farms

Under the leadership of Wisconsin and of the National Resources Committee, Washington, D. C., states have recently pursued the important subject

[1] See p. 27.

of mapping submarginal farming areas. Private land areas that are not sufficiently productive to support highways, schools, and other requisites of community existence are either bought by the state and further development of farming is discontinued, or else a system of zoning regulation is imposed to prevent new farm development. This subject bears such a close resemblance to existing building-zone regulations that the Wisconsin maps and regulations are called county zoning for submarginal farms.

Soil Erosion

State planning surveys and research carried on by the federal government have collected a vast amount of information regarding land, largely privately owned, eroded by wind and water. The time will come, if it has not now arrived, when some fair method of regulation must be followed by private owners in order to rehabilitate their land or at least to stop further erosion. Such regulations will necessarily be different in different districts but in many ways they must follow the principles already learned in building zone practice. Plowing horizontal furrows instead of vertical furrows on hill-

sides, the building of terraces and the planting of clinging grasses instead of cultivating the soil are a few of the methods owners would gladly adopt if their neighbors would do likewise. In some instances the state or federal government might assist. Other countries have carried terracing to a degree which is undreamed of in this country. Sooner or later our country must follow Italy and Japan in this matter. The whole subject is left in the air if regulatory methods like those in building zone practice based on fair statutes and local ordinances are not followed. The main features of progress in this direction will be preliminary study of suitable restrictions and maps, consultations with private landowners, public hearings, fair and nondiscriminatory regulations, district by district.

Flood Control

Dams and reservoirs cannot be built in sufficient numbers to prevent the occasional flooding of valleys. Research is now going on to discover methods to prevent the losses caused. Some of the flooded farmers say that there is nothing to be done except for the government to buy all valley land. Government cannot afford to do this and moreover it

should not own this highly productive land nor should the land be taken out of cultivation. Regulations analogous to zoning laws will be found practical. They should be made district by district. In areas most subject to floods nothing but cultivation will be permitted. Other areas less likely to be flooded will be subjected to regulations that prevent the erection of homes for human beings but permit animals and perhaps open-air industries. The safest areas will contain homes. There would be different regulations for different areas.

PART II

THE MASTER PLAN

I. ITS NEED AND PURPOSE

THE master plan is rapidly becoming an important feature of planning, whether local, state, or national. The use of terms in various parts of the country differs and causes some confusion. Ohio officials, for instance, fell into the way of calling an adopted map of streets and parks a master plan, whereas New York State was more inclined to keep the words "master plan" to designate a plastic plan which is retained by the planning commission and can readily be changed as occasion demands.

The writer's view has been that a master plan should not be adopted by any official body except by a planning commission. If finally so adopted copies can well enough be given to the various municipal departments, but if it needs to be adopted by the local legislative body it becomes to a certain extent hardened. Then when the commission desires to alter certain features in it the legislative body must first be persuaded to authorize the change. This is certain to work disastrously because as soon as a plan ceases to be plastic it becomes a

quasi-official map which has not been prepared and executed with the care and precision that the law requires in the case of official maps.

There are many advantages in keeping an official map separate from a master plan. An official map must be so precise that surveyors' and builders' stakes can be determined by it. Cities adopt official maps to determine streets, parks, and zoning districts. They are always established by a local legislative body and never by a planning commission. A master plan, however, will show not part but all the elements of the projected features of a city or region.

The need of a master plan arises with the establishment of planning commissions. If we conceive of a commission as an advisory body whose duty is to co-ordinate the various elements of a plan, it becomes apparent that the commission must have the means to denote its latest and best ideas in regard to improvements. This means should not be official because from time to time the master plan should be capable of quick alteration by the commission. The commission itself can of its own accord adopt all or any part of the master plan if an occasion renders this desirable, but if the instru-

ment is its own it is free to make changes. The master plan is for the use of the commission.

The master plan idea has spread all over the country. Enthusiastic legislators and drafters of bills seem to think that it is a short way to legislate and forget that it is for the use of commissions which are advisory bodies only. They seek to give stability to the items contained in it. This would create the danger of a flood of half-baked provisions in all our states. There is danger too that instead of a master plan's being a simple instrumentality to bring about co-ordination of elements of the community plan it will embody all sorts of preventives and embarrassments. One state legislature in 1937 declared that if the zoning of cities, villages, and towns did not agree with the master plan of the county, the suggestions in the master plan should be substituted for the deliberately adopted zoning regulations of the municipality. This declaration went a long way toward substituting the county planning commission for the county legislative body.

A master plan should not be passed by any legislative body. It is a co-ordinated plastic map or plan which a commission can at all times use in its

written advice to a legislative body, but to overwork its limited function will result in planning's running wild. Under its new charter Greater New York in January, 1938, set up a planning commission, a highly meritorious step in the administration of this city. One of the chief tools of the commission is its master plan, the advisory purpose of which in distinction to its use as a vehicle of legislation cannot be too often repeated.

II. WHAT TO CONTAIN

A MASTER plan should show the elements of a community plan. These have been discussed in Part I under the headings streets, parks, sites for public buildings, public reservations, zoning districts, routes for public utilities, and pierhead and bulkhead lines. The term "master plan" is so engaging to legislators that they are tempted to insert requirements on all sorts of non-community subjects, which they conceive will make up a well-arranged place in which to live—trees, private houses, private golf courses, stores, factories, and even private parking places for automobiles. They sometimes add subjects that have interested them, such as asphalt street surfaces, street lights, and park lakes. If a fertile and ingenious legislator puts everything that he knows about and likes in a plan, the latter becomes a scrapbook and is an embarrassment instead of a help. Master plans are fast becoming so important a part of modern community administration that we should determine the fundamental elements they should show. If a plan shows needed streets it can be left to mu-

nicipal engineers to select the kinds of sidewalks and street surfaces required. If it shows the boundaries of parks it can be left to the park commission and landscape architects to decide upon the location of roads, walks, and the kind of planting.

III. DEVELOPMENT OF THE TERM "MASTER PLAN"

THE term "master plan" arose following the establishment of planning commissions. Twenty-five years ago one did not hear of such commissions, but since then increased attention to community planning has caused their establishment under provisions of law. They are always made up of appointed members and are supposed to give expert advice to legislative bodies. After the appointment of a commission a community begins to think about some sort of general plan for the future wherein each element is co-ordinated with other elements. The natural follow-up of this demand is to place the burden of making a master plan on the commission. Although all perceive the need of a plastic master plan there is a constant tendency to pass legislation that will ossify it. As soon as this takes place the plan loses its usefulness as a reference map for the commission. It ought to be a plastic plan kept within the confines of the

commission. It should be the latest and best conclusions of the commission and capable of quick and easy change. The commission and not the plan should be the adviser of a legislative body and the various departments.

Tying up a master plan with red tape is a great danger. If, for instance, a village commission works out a complete and satisfactory plan which must be adopted by the commission and filed in the county clerk's office, and which later the village board of trustees must adopt, and if in addition this process must be repeated with every amendment, within a few years the plan will become ossified. The labor of making changes will be too great. It may be possible to persuade some trustees to favor a change but not all.

A master plan should not prevent new undertakings, but a commission must make reports upon them and interpret these undertakings. In every instance where a completed master plan might be used to prevent the laying out of a new street or park or other improvement the same object can be secured by obtaining a report on the advisability of the improvement from the commission after it has consulted its plan.

It is apparent therefore that a master plan cannot take the place of the official map although it may help to co-ordinate items in that instrument. Such a map will fix precise locations so that corners can be monumented and buildings erected in accordance with approved data. The official maps of streets, of parks, sewers, zoning, or harbor lines contain such data. The ordinary municipality cannot afford to make a master plan, which is rather general in character, precise enough to indicate monuments, and there is no need that it should do so. But there is great need for it to draft out a plan when one considers how few municipalities have any well thought out scheme to show future requirements. Without one, if an emergency arises which brings a popular clamor for some particular bridge or tunnel or main thoroughfare, this clamor is likely to be translated into a favorable vote by the city council. Later the council may discover that the new improvement which may have cost millions of dollars was not co-ordinated with other features of the plan.

Every city engineer of experience realizes that there ought to be a master plan and also official maps. This cannot be repeated too often. A single

official map can cover streets and parks, and include bridges and vehicular tunnels. An official sewer map, which usually shows sewers actually built, must be separate and distinct. The official zoning map shows the zoning regulations, district by district.

It is difficult to follow development of the term master plan without at the same time considering the subject of official maps, which as a first step in any improvement record the legislative body's determination of boundary lines or routes. In New York City the first step in obtaining a new park, for instance, is to amend the official map of streets and parks in order to show the boundaries of the new park. After this, acquisition can take place by condemnation or deed of cession. Many streets in this city, not yet opened, are shown on the official map as already in existence. They are mapped streets only. Zoning maps, however, treat these streets the same as if they had been opened.

The following pages give a chronological survey of steps in the establishment of official maps and master plans, their early confusion, and the gradual, more recent distinction between them. They will also show the increasing tendency to make master

plans diffuse and to ossify them. There will be no effort to include all the various documents in existence that might be illustrative. Those chosen will show the order of the development.

IV. CHARTER OF CITY OF NEW YORK PRIOR TO 1938

ON JANUARY 1, 1898, the consolidation of New York and Brooklyn took place. At the same time Staten Island and Queens County with all their cities and villages were annexed to the greater city, which was thus composed of five boroughs—Manhattan, The Bronx, Brooklyn, Queens, and Richmond (Staten Island), each borough being a county. Manhattan for generations had had an official map of streets and parks. Brooklyn and the county towns comprising the new Borough of Brooklyn had official maps of streets. Queens and Richmond had none. When consolidation went into effect an official map of streets and parks, opened and to be opened, was provided for the entire territory. Many years have been occupied in perfecting this map and even now in some parts of the outlying boroughs it is incomplete. New York City until 1938 had never had a planning commission and therefore the charter never made any provision for a master plan. Recommendations of the five borough presidents for improve-

ments were checked up by the chief engineer of the Board of Estimate and Apportionment, which board alone had the power of adding streets and parks to the official map. Charter provisions for this map were mainly those that existed in Manhattan and Brooklyn. These had been interpreted by the courts for several generations and were admirably suited to be the basis for the whole city.

In order to show the scope of the official map we quote from the New York charter as it existed in 1937:

> The board of estimate and apportionment is authorized and empowered, whenever and as often as it may deem it for the public interest so to do, to change the map or plan of The City of New York, so as to lay out new streets, parks, playgrounds, bridges, tunnels and approaches to bridges and tunnels and parks and playgrounds, and to widen, straighten, extend, alter and close existing streets and courtyards abutting streets, and to change the grade of existing streets shown upon such map or plan.[1]

[1] New York City Charter, Sec. 442.

V. CINCINNATI, OHIO

CINCINNATI has the distinction of having been first to appoint a planning commission with power to establish a master plan. Although this term was not at the time used in either the state statute or the city charter, in each the idea is clearly set forth. It will be noted that these laws bestow authority on no one outside the planning commission, but this body must be asked for a report on any proposed improvement before it is undertaken, and if the city council does not follow the advice of the commission a two-thirds vote of the council is required in order to disregard or overrule it. This is a better method than to require the adoption of the master plan by a council and then to require the plan to be followed unless it is amended or unless the commission renders an adverse report or makes new suggestions.

On January 21, 1926, George B. Ford read a paper on the Cincinnati plan before the City Planning Division of the American Society of

Civil Engineers in New York City,[1] in which he said:

For the first time in the United States, a complete, comprehensive city plan has become the law of a city. The whole plan actually can be enforced, thanks to the exceptionally broad powers granted to the City Planning Commission of Cincinnati, Ohio, by the State laws and the City Charter.

Elsewhere throughout the country, city planning commissions are strictly advisory. They rarely have any power except that in some States they have the right to control the layout of sub-division plats and in some they have art jury powers permitting them to veto the location of public works of art and sometimes to control the appearance of public buildings and structures. The authority of the City Plan Commission of Cincinnati goes infinitely further than this, for under the statute and the charter, there can be no departure from any item of the city plan, once adopted by the Commission, except by a two-thirds vote of the full membership of the City Council, after public notice and hearing, accompanied by the approval of the department head most affected.

Therefore, the problem, which deserves most earnest discussion, is whether city planning commissions throughout the country, and regional planning commissions as well, shall continue to have merely advisory powers or whether extensive powers, such as those

[1] In Proceedings of the American Society of Civil Engineers, Part I, October, 1926.

granted by the Ohio statute, are really practicable or desirable.

In Massachusetts, for example, the planning boards have no power whatsoever except that their existence is compulsory. The argument for strictly advisory powers is that if the city planning board cannot convince the public and the city officials that its ideas are the best, there must be something wrong with the ideas. The further argument is made that legislative authority should not be divided, but rather concentrated in one body, that is, the city council, which alone is strictly responsible to the electorate. The claim is made that the State Legislature has no right to delegate to a non-elective, non-responsible body any legislative power such as making the city plan the law of the city. In any case, no city council would consent even to sharing the control of the city plan with another body.

In Ohio, however, the claim is made that city planning is a highly specialized and a highly technical matter; that the preparation of a plan that is worth anything, requires the concentrated effort of a selected group of exceptionally intelligent and experienced citizens, aided by the best technical advice. It is maintained that the average city council has neither the time nor the experience necessary to frame an effective city plan, and, in fact, is only too glad to shift the burden, and the inevitable charges of favoritism involved in most planning matters, to another body. It is felt that the making and the promulgating of the city plan is comparable to the making and issuing of health regulations by a health board, or to police or traffic

regulations by a police board, or fire prevention regulations by a fire commission. In each of these cases there appears to be little question but that the State Legislature has the right to delegate specific legislative power to these strictly appointive boards. It is merely an extension of the same idea to delegate to a city planning commission the right to frame and enact a city plan, of course, giving the city council a veto power over it, provided this veto cannot be exercised too easily.

The City Planning Commission in Cincinnati consists of seven members with the Mayor as Chairman and with the Director of Public Service and the President of the Park Board as *de facto* members. The Commission contains in its membership, three manufacturers, two lawyers, and one physician of the community.

The power and duties of the City Planning Commission according to the state statute are as follows:

Sec. 4366–2. The powers and duties of the commission shall be to make plans and maps of the whole or any portion of such municipality, and of any land outside of the municipality, which in the opinion of the commission bears relation to the planning of the municipality, and to make changes in such plans or maps when it deems same advisable. Such maps or plans shall show the commission's recommendations for new streets, alleys, ways, viaducts, bridges, subways, parkways, parks, playgrounds, or any other public grounds or public improvements; and the removal, relocation, widening or extension of such public works then exist-

ing. With a view to the systematic planning of the municipalities, the commission may take recommendations to the mayor, council and department heads concerning the location of streets, transportation and communication facilities, public buildings and grounds. . . . Whenever the commission shall have made a plan of the municipality, or any portion thereof, no public building, street, boulevard, parkway, park, playground, public ground, canal, river front, harbor, dock, wharf, bridge, viaduct, tunnel, utility (whether publicly or privately owned) or part thereof shall be constructed or authorized to be constructed in the municipality or said planned portion of the municipality, until and unless the location thereof shall be approved by the commission; provided that in case of disapproval, the commission shall communicate its reasons for disapproval to council, and the department head of the department which has control of the construction of the proposed improvement or utility; and council, by a vote of not less than two-thirds of its members, and such department head shall together have the power to overrule such disapproval.

The powers and duties of the City Planning Commission according to the City Charter of 1918 are almost identical. . . . Since the City Plan of Cincinnati has been law every question that has arisen as affected by the City Plan has been decided in accordance with the plan. All city departments are co-operating. In no instance has the City Council overruled the City Plan.

The general impression of those who are watching the

effect of the Cincinnati method is that it is proving highly successful and is a distinct improvement on the strictly advisory powers of most other planning commissions. It means that the presumption is in favor of the plan because it is the law and also because it was worked out with a great deal of care and thought. It means that the obligation rests with any one who disagrees with the ideas presented to prove that, all things considered, the plan can be improved upon and then the burden rests on him to present a better solution and to convince the City Planning Commission or the City Council that he is right. In other words, it means stability to the plan as a whole, features which do not exist in the same degree in most other States.

VI. NEW YORK TOWN LAW, VILLAGE LAW, AND GENERAL CITY LAW

IN NEW YORK State amendments for the permissive establishment of planning commissions were inserted in the Village Law and in the General City Law on April 30, 1926, and one year later were inserted in the Town Law. The provisions were almost the same in each law. The words "master plan" do not occur. Drafters of these three laws intentionally omitted any requirement to draw up a master plan because of the fear that if one was established by a majority vote of the planning commission or adopted by the municipality, it would become ossified and cease to be a plastic instrument for the use of the commission itself in making its reports. This idea was expressed in 1926 in a printed report addressed by the drafters of the three laws to the Regional Plan of New York and Its Environs, in connection with the passage of these laws. The report, under Purposes of the New Laws, says:

> The new laws contemplate that a planning board, established by the legislative authority of the munic-

ipality, shall prepare a master plan showing present and future streets and parks, the same not to be binding in any way, but merely to serve as a guide for comprehensive planning.[1]

So far as the author knows, this is the first use of the words master plan in print in this connection.

[1] Recent New York Legislation for the Planning of Unbuilt Areas. Regional Plan of New York and Its Environs, New York, 1926.

VII. THE SO-CALLED STANDARD CITY PLANNING ENABLING ACT

IN SEPTEMBER, 1921, Herbert Hoover, when Secretary of Commerce, appointed an Advisory Committee which prepared a standard city planning enabling act to be used by state legislatures desiring to permit their municipalities to establish better methods of planning. The first draft in tentative form was printed in August, 1926, and was followed in 1928 by a pamphlet issued by the United States Department of Commerce, entitled A Standard City Planning Enabling Act by the Advisory Committee on City Planning and Zoning of the United States Department of Commerce. The suggestions it contained for a form of statute were widely used by states. Many subjects are covered in addition to the establishment of a planning commission. It can fairly be said, however, that this commission is the core of the pamphlet. The master plan is emphasized. Its recommendations correspond with the seven elements of the community plan already defined in this book.[1] The

[1] See p. 11.

list as given in the enabling act is not terse and evidently to cover a subject completely it uses various popular terms for the same element, for instance, streets, boulevards, and other public ways.

The form of the statute does not provide that the municipal legislature shall approve or adopt the master plan. This is as it should be. The only requirement that has a hardening effect is that the plan must be adopted by the commission in whole or in part. This may be justified because when a master plan is prepared there will be a demand by departments or citizens for copies and to require its adoption by the commission may increase its dignity even if it is to be amended hundreds of times later. On the other hand, adoption seems to make necessary a public hearing duly advertised. When one realizes that to keep a master plan up to date may require a dozen amendments a month and a public hearing on each amendment it will be seen that the requirement of adoption is likely to effect an ossification. It will be almost impossible for a commission to go through with the necessary routine of advertising and holding hearings on all changes. When it is asked to report on a specific point it may be obliged to refer to a plan four or

five years old on that point and not at all what the members are willing to recommend. It is also apparent that this ossifying procedure—that is the requirement of adoption and hearing—is not of any real help because the master plan itself does not control anything whatever. The report of the commission is the vital thing. And this can be more quickly made if the master plan is merely the latest and best thought of the commission and if that body is freed from the necessity to adopt and hold hearings before it makes a routine recommendation.

We now come to a part of this document which has caused confusion in states and municipalities that have established official maps of streets and parks and other precise official maps and which desire to have a master plan kept in the possession of a planning commission for its guidance. Some states may prefer to have the document continue to be called the master plan even after its recommendations have been translated into official maps. This model act does not contemplate an official map of streets and parks but a master plan, since its recommendations, adopted by the council from time to time, would *pro tanto* become the official map of streets and parks.

In Section 9 of the form the master plan is for the first time called an official plan. It is contemplated that the official map and master plan shall not be two documents but one. Somewhat later the master plan is referred to repeatedly as the official master plan, the distinction being made between the master plan before it has been translated in whole or part into a precise plan through its adoption by the council and the same master plan after it has been made precise and so adopted.

States and cities which prefer to have a master plan partly official and partly non-official may possibly be able to work out a method effectively, but those that have been accustomed to official maps of streets and parks and sewer and zoning maps, will probably not find the so-called standard model act adapted to their needs in this particular. There is clarity in the master plan as a plastic plan perfected from time to time by a planning commission as distinguished from an official map, which is something that has passed beyond a planning commission and is established by a council according to precise data. The propriety and validity of these suggestions will be judged by each state which will probably prefer the method that it has inaugurated.

The clauses referred to in the so-called standard act are given here:

Sec. 6. General Powers and Duties. It shall be the function and duty of the commission to make and adopt a master plan for the physical development of the municipality, including any areas outside of its boundaries which, in the commission's judgment, bear relation to the planning of such municipality. Such plan, with the accompanying maps, plats, charts, and descriptive matter, shall show the commission's recommendations for the development of said territory, including, among other things, the general location, character, and extent of streets, viaducts, subways, bridges, waterways, water fronts, boulevards, parkways, playgrounds, squares, parks, aviation fields, and other public ways, grounds and open spaces, the general location of public buildings and other public property, and the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power, and other purposes; also the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing ways, grounds, open spaces, buildings, property, utilities, or terminals; as well as a zoning plan for the control of the height, area, bulk, location, and use of buildings and premises. As the work of making the whole master plan progresses, the commission may from time to time adopt and publish a part or parts thereof, any such part to cover one or more major sections or divisions of the

municipality or one or more of the aforesaid or other functional matters to be included in the plan. The commission may from time to time amend, extend, or add to the plan.

Sec. 7. Purposes in View. In the preparation of such plan the commission shall make careful and comprehensive surveys and studies of present conditions and future growth of the municipality and with due regard to its relation to neighboring territory. The 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; including, among other things, adequate provision for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, and the adequate provision of public utilities and other public requirements.

Sec. 8. Procedure of Commission. The commission may adopt the plan as a whole by a single resolution or may by successive resolutions adopt successive parts of the plan, said parts corresponding with major geographical sections or divisions of the municipality or with functional subdivisions of the subject matter of the plan, and may adopt any amendment or extension

thereof or addition thereto. Before the adoption of the plan or any such part, amendment, extension, or addition the commission shall hold at least one public hearing thereon, notice of the time and place of which shall be given by one publication in a newspaper of general circulation in the municipality and in the official gazette, if any, of the municipality. . . .

Sec. 9. Legal Status of Official Plan. Whenever the commission shall have adopted the master plan of the municipality or of one or more major sections or districts thereof no street, square, park, or other public way, ground, or open space, or public building or structure, or public utility, whether publicly or privately owned, shall be constructed or authorized in the municipality or in such planned section and district until the location, character, and extent thereof shall have been submitted to and approved by the commission: Provided, That in case of disapproval the commission shall communicate its reasons to council, which shall have the power to overrule such disapproval by a recorded vote of not less than two-thirds of its entire membership: Provided, however, That if the public way, ground, space, building, structure, or utility be one the authorization or financing of which does not, under the law or charter provisions governing same, fall within the province of the municipal council, then the submission to the planning commission shall be by the board, commission, or body having such jurisdiction, and the planning commission's disapproval may be overruled by said board, commission, or body by a vote of not less than two-thirds of its membership. The

failure of the commission to act within 60 days from and after the date of official submission to the commission shall be deemed approval.

Sec. 18. Improvements in Unapproved Streets. The municipality shall not accept, lay out, open, improve, grade, pave, curb, or light any street, or lay or authorize water mains or sewers or connections to be laid in any street, within any portion of territory for which the planning commission shall have adopted a major street plan, unless such street (a) shall have been accepted or opened as or shall otherwise have received the legal status of a public street prior to the adoption of such plan, or unless such street (b) corresponds with a street shown on the official master plan or with a street on a subdivision plat approved by the planning commission or with a street on a street plat made by and adopted by the commission. Council may, however, accept any street not shown on or not corresponding with a street on the official master plan or on an approved subdivision plat or an approved street 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. A street approved by the planning commission upon submission by council, or a street accepted by a two-thirds vote after disapproval by the planning commission, shall thereupon have the status of an approved street as

fully as though it had been originally shown on the official master plan or on a subdivision plat approved by the commission or had been originally platted by the commission.

VIII. PENNSYLVANIA PLANNING ACT FOR SECOND CLASS CITIES

THE Pennsylvania Planning Act for Second Class Cities became law on May 13, 1927. In the main it follows the wording of the so-called standard enabling act but some of the variations are interesting. In the Pennsylvania act the master plan must be followed because the procedure in regard to it has now all the force of law. It ceases to be the guide and becomes the ruler. The ease of slipping into this mistake shows the wisdom of the New York legislature in the Town, Village, and General City Laws in omitting any mention of the master plan, thereby leaving a planning commission in the making of reports to a local legislative body without any embarrassment in framing and resorting to the master plan. The New York method leaves the master plan entirely plastic and subject to easy and speedy changes so that it can be the last word in the co-ordination of the planning elements of a community.

This Pennsylvania act shows how a master plan can be overloaded. A plan cannot be a law and a

ready reference guide at the same time. The act makes the master plan the legal control for the laying out of streets and parks or for fixing the official data of other elements. The standard enabling act goes no farther than to provide that when a master plan is approved in whole or in part a planning commission can make recommendations which must be followed unless they are disapproved by a preponderating vote of the council. The Pennsylvania law in question makes the master plan itself the measure of validity of all future precise steps. Accordingly a method is outlined in the act for forcing the commission to alter its own plan.

Section 15 of this act relating to erection of buildings shows the difficulties that are unnecessarily created in dealing with an "official master plan," "the official street map made by and officially adopted by the commission" and the simple "master plan" as established in the earlier sections of the law. The relevant sections of this law are here quoted:

Section 5. General Powers and Duties. It shall be the duty of the commission to make and adopt a master plan, either as a whole or in sections, from time to time, for the physical development of the city and of any land outside its boundaries which in the commis-

sion's judgment bears relation to the planning of such city. Such plan or plans, with the accompanying maps, plats, charts, and descriptive matter, shall show the commission's recommendations for the future development of said territory, including among other things the general location, character, and extent of streets, viaducts, subways, bridges, waterways, water fronts, boulevards, parkways, playgrounds, squares, parks, aviation fields, and other public ways, grounds, and open spaces, and a major street plan, the general location of public buildings and other public property, and the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power, and other purposes, and the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing ways, grounds, open spaces, buildings, public utilities or terminals, as well as a zoning plan for the control of the height, area, bulk, location, occupation, and use of buildings and land. The commission may from time to time make, adopt, and publish a part of the plan covering one or more divisions of the city or one or more of the aforesaid or other subjects. The commission may from time to time amend, extend or add to the plan or any section thereof.

Section 7. Legal Status of Official Plan. Whenever the commission shall have adopted the master plan of the city, or of any division thereof, no street, square, park or other public way, ground or open space or public building or structure or public utility, for which a

franchise may hereafter be granted by the proper municipal authorities, whether publicly or privately owned, shall be constructed or authorized in the city, unless the location and general extent conform thereto; Provided, In case the said proposed street, square, park or other public way, ground or open space, or public building or structure or public utility, as aforesaid, does not conform to said master plan, and the city planning commission, upon application to it, shall refuse to alter said master plan so as to permit said street, square, park or other public way, ground or open space or public building or structure or public utility, as aforesaid, the said city planning commission shall refer the same to the council, together with its reasons for disapproval, and the council shall have power to overrule said disapproval by a majority vote of its entire membership. The failure of the commission to act within sixty days from and after the date of official submission to the commission shall be deemed approval.

Section 15. Erection of Buildings. No building or buildings, or parts thereof, shall be erected on any tract, nor shall a building permit be issued therefor, unless the street giving access to the tract upon which such building or buildings is proposed to be placed shall have been accepted or opened as, or shall otherwise have received the legal status of, a public street prior to that time, or unless such street corresponds with a street shown on the official master plan or with a street on a subdivision plat approved by the planning commission or with a street on a street plat or the official street map made by and officially adopted by the com-

mission or with a street accepted by council after submission to the planning commission by the favorable vote required in section fourteen of this act. Any building erected in violation of this section shall be deemed an unlawful structure, and the building inspector or other appropriate official may cause it to be vacated and have it removed.

IX. CALIFORNIA PLANNING ACT

THE California Planning Act became law on June 17, 1929. In many respects it follows the so-called standard enabling act. The temptation to use the newly discovered "master plan" for all sorts of exploratory purposes, whether within or outside the powers of the community, has been irresistible. The plan here ceases to be a plastic instrumentality for the help of the planning commission. Even before any part of it can be called a master plan it must be adopted by the local legislative body after a public hearing. Not only must public improvements be constructed in conformity with the master plan but the commission must make a report on these improvements. If reports must be made at each point by the commission this latter should be able to keep the plan in a plastic condition for its own immediate help. But it is not able to do so. It must make a master plan which immediately passes out of its control and becomes a local legislative act. One wonders how after a plan has been in existence five or ten years the public works of a municipality can pro-

ceed without embarrassment since the plan must be amended before any particular piece of work can be undertaken.

The contents of the master plan extend farther in some directions than the power of the community. For instance, the plan must contain sites for private group buildings and plans for their architectural treatment. This duty should not be imposed on a planning commission because the courts of California have not recognized any such powers in municipalities. The placing of private structures is not the making of zoning regulations for these merely designate prohibited buildings and uses. Although the master plan ceases to be a convenience for the planning commission and becomes a law imposed by the local legislative body, it does not remain a controlling document for the municipality because it must be "precised" by the local legislative body in some particulars so that it will have the force of an official map of streets and parks. All this procedure and all these requirements tend to congeal the plan so that after it has been in existence five or ten years it will be an obstacle instead of an assistance. If differences arise in the legislative body about the location of a street,

for instance, delays may well happen in amending the master plan and the work will come to a standstill. A fighting minority can make all sorts of trouble for necessary amendments. It would be far better to have the master plan a co-ordinated design for the elements of the community plan kept within the commission itself. Then with the advice of the commission the legislative body could establish and amend the various official maps that depend upon precise data. This last named method means continuous work on the details of the master plan and the gradual building up of the official map. Any method involving a mass of red tape with constant amendment and reamendment is a loss of momentum. The words of the act in question follow:

Sec. 4. It shall be the function and duty of the planning commission to make and adopt a master plan for the physical development of the city, city and county, or county, and of any land outside the boundaries thereof which in the commission's judgment bears relation to the planning thereof. Such master plan, with the accompanying maps, diagrams, charts, descriptive matter and reports, shall include the following subjects matter:

Major traffic street plan—Such plan shall show the general location and width of a comprehensive system

of major thoroughfares and shall be published separately from other parts of the master plan. Districting plan—Such plan shall be comprehensive and shall show proposed districts in which the use, height and bulk of buildings and premises are limited; provided, that ordinances and amendments thereto establishing such districts shall be adopted only after the making of the reports, holding the public hearings and following the same procedure as prescribed in chapter seven hundred eighty-four of the statutes of 1917, as amended, for cities, and in such other provisions of law as may hereafter be adopted. Transportation plan—Such plan may show the proposed location of rights of way, terminals, viaducts, grade separations and other facilities for steam and electric railroads or other means of carrying passengers and freight and related public utilities and improvements; such plan may include plans for the development of port, harbor, and aviation facilities. Transit plan—Such plan may show a proposed system of rapid transit lines, street car and motor bus lines and facilities, and related public utilities and improvements. Park and recreation system plan—Such plan shall show the needs of the city and county and of districts or sections thereof for parks, parkways, playgrounds, and school and recreational areas, and when practicable the plan may show the proper and most advantageous locations for proposed parks, parkways, playgrounds, school and recreational areas. Group building plans—Such plans may show the proposed location, grouping and architectural treatment of public or other buildings, and proposed plazas, squares and open spaces. The

commission may from time to time prepare detailed maps of streets and of any of the improvements delineated on the master plan, which, when adopted by the legislative body as herein provided for amendments to the master plan shall be deemed to be a part of the master plan. The commission may make such other plans, studies and recommendations as it may deem necessary for the orderly, economic and social development of the area under its jurisdiction and may from time to time adopt and publish a part of the plan covering one or more major sections or divisions of the territory under its jurisdiction or one or more of the aforesaid or other subjects matter. No plan or map, hereafter, shall have indicated thereon that it is a part of the master plan until it shall have been adopted as part of the master plan by the legislative body as herein provided. All money collected from the sale of any of the maps, plats, charts or other descriptive matter regarding the master plan published by the commission shall be paid into the treasury of the respective city, city and county, or county which appointed the planning commission and shall be credited to the funds budgeted or allocated for the use of said commission. The commission may from time to time amend, extend or add to the master plan, as herein provided.

Sec. 5. Before adopting the master plan or any part of it, or any substantial amendment thereof, the commission shall hold at least two public hearings at least fifteen (15) days apart, notice of the time of each of which shall be given by one publication in a newspaper of general circulation in the municipality or county.

The adoption of the master plan, or of any amendment, extension or addition thereof, shall be by resolution of the commission carried by the affirmative votes of not less than two-thirds of the total membership of the commission. The resolution shall refer expressly to the maps and descriptive and other matter intended by the commission to constitute said plan or any amendment, addition or extension thereof, and the action taken shall be recorded on the map and plan and descriptive matter by the identifying signature of the secretary of the commission. An attested copy of any part, amendment, extension or addition of the master plan adopted by the planning commission, shall be certified to the legislative body.

Sec. 6. Upon receipt of an attested copy of the master plan, or of any part thereof, as adopted by the planning commission, a public hearing thereon shall be held by the legislative body. At least ten days' notice of such public hearing shall be published in an official publication of said city, county, or city and county, or in a newspaper of general circulation therein. No change or addition to said master plan, or any part of it as adopted by the planning commission, shall be made by the legislative body until the said proposed change or addition shall have been referred to the planning commission for report thereon and an attested copy of said report thereon filed with the legislative body by the planning commission; but the failure of the commission to so report within thirty days from and after the date of the request for said report by the legislative body shall be deemed to be approval of said

notations showing existing or proposed locations, not theretofore mapped, of new or widened public ways and new or enlarged parks, and proposed discontinuances in whole or in part of existing or mapped public ways and parks. No such change or addition shall become effective until after a public hearing in relation thereto before the city council or a committee thereof or before the selectmen, at which parties in interest shall have an opportunity to be heard. At least ten days' notice of such a public hearing shall be given by advertisement in an official publication of, or in a newspaper of general circulation in, the city or town and by mailing a copy of such advertisement to all owners of property abutting on such proposed improvement or discontinuance, as appearing upon the most recent tax list. No such change or addition which has not been previously recommended by the planning board shall be adopted until after a report thereon by said board, and no variance from a plan prepared or approved by the planning board shall be made except by a two-thirds vote of all the members of a city council, or by a two-thirds vote of a town meeting; provided, that the last mentioned requirement shall be deemed to be waived in case the matter has been referred to said board for a report and it has failed to report within thirty days thereafter.

Sec. 81D. Sections eighty-one A to eighty-one J, inclusive, shall not abridge the powers of the city council or the selectmen or any other municipal officer in regard to highways or parks in any manner except as provided therein, nor shall they authorize the taking of

land, nor authorize a city or town to lay out or construct any way or widening thereof which may be indicated on such a map until the same has been laid out as a public way, nor authorize a city or town to discontinue or close any way or park as indicated on such a map except in accordance with the laws governing the same.

Upon final action by the proper authorities in establishing a public way, or any widening thereof, or any discontinuance thereof in whole or in part, or in establishing a public park, or any enlarging thereof, or closing thereof in whole or in part, the lines and notations showing such improvement, discontinuance or closing, as so established or effected shall be made a part of its official map, if there be any.

Sec. 81E. A city or town having a planning board established under section eighty-one A may, by ordinance, by-law or vote, provide for the reference of any matter or class of matters to the planning board before final action thereon, with or without the provision that final action shall not be taken until the planning board has submitted its report or has had a reasonable fixed time to submit the same. The planning board shall have full power to make such investigations, maps and reports, and recommendations in connection therewith, relating to the planning and development of the city or town, as it deems desirable.

XII. NEW YORK COUNTY PLANNING ACT

ON JUNE 5, 1936, an alternative form of government for counties in New York State became law. Before the provisions of this new law can go into effect regarding any county this alternative form must be adopted by the electors of the county. Consequently it cannot be said that this law is imposed upon a county but a period of study is possible for every county before it adopts the new law. Thus far no county has adopted it. However, where the law provides for a master plan the purposes of the legislature are plainly set forth. The purpose and scope of the master plan have not been carefully thought out. After the master plan has been made it is to be recommended to the board of supervisors for adoption. Thus at the outset there is an ossifying process. If a change is desired in the plan the commission must induce the board of supervisors to make the change and hearings must be held by the commission, notice of which must be printed. If the board of supervisors is dilatory in acting or if it does not act at all, the plan ceases to reflect the opinion of the commission, and

if delay should go on for a few years the plan would become virtually defunct.

The plan is still further ossified by the requirement that on completion it shall be immediately filed with the county clerk. By this time the commission will have ceased to be its custodian. If the commission perceives the danger, it should postpone indefinitely submitting the plan for adoption to the board of supervisors; if not adopted, the plan would not become official but that would not matter. Before a street or park can be located the board of supervisors must obtain the approval of the county planning commission. If the board does not like the recommendation of the commission it can reject it by a two-thirds vote.

Towns, villages, and cities of the county will probably refuse to surrender their zoning power to a county planning commission and a board of supervisors as is contemplated in this alternative law. It has always been considered that if each community can do its own zoning it will be better suited than if the zoning is imposed upon it by a county. If a county zones the cities, villages, and towns within its borders objection will surely arise that it has discriminated between municipalities,

favoring some, injuring others. The success of zoning in this country has been largely due to home rule.

The law further provides that the zoning of a municipality within 300 feet of a town boundary shall not take effect until the county planning commission approves, a provision that virtually gives that body the absolute power of zoning a belt of 300 feet. This is an endeavor to grant legislative power to a commission, a method admittedly unlawful unless a rule of conduct is established for this body. Even then it would seem to be contrary to legislative methods in this country for a discretionary appointive body to take the place of an elective legislative one. The law outlines a method of procedure for a town planning commission and a county planning commission regardless of the fact that neither of these discretionary bodies is a legislative body.

The master plan as outlined in the county planning law does not contain zoning districts. Whether this omission is intentional or not is difficult to say, because later in the act three entire sections refer to the continuation of existing zoning ordinances up to the point where they may conflict with new

provisions made by the county commission. These sections refer to recommendations to be specified on the master plan mentioned in the act but when we check up to see what they are we fail to find any mention of zoning districts. One of these sections on zoning gives a town the power to zone any unzoned village within its confines. Today no village is compelled to zone itself unless it wants to do so. If, however, this alternative law should be adopted by a county in which a village is located, the town within whose confines the village lies could zone that village regardless of any objection.

The law makes no provision for an official map of streets and parks, or for other official maps having precise data. The role of a master plan seems to have grown so large that official maps are entirely neglected.

This law is an illustration of how a master plan may cease to be the plastic, easily altered guide for a planning commission, and how it may become an intricate and hidebound instrumentality; also how a planning commission may be wrongly substituted for a local legislative body. The relevant sections of this law as they were amended the year following its enactment follow:

Sec. 1603. Recommendation of master plan. It shall be the duty of the county planning commission to make and recommend to the board of supervisors for adoption a master plan for the physical development of the county, provided that the said master plan shall conform to the plans made by the sanitation commission as provided in article twelve. Such master plan, with the accompanying maps, plats, charts, and descriptive matter, shall show the commission's recommendations for the development of the said county, including, among other things, the general location, character and extent of streets, highways, viaducts, subways, bridges, waterways, waterfronts, boulevards, parkways, playgrounds, squares, parks, aviation fields, public and private parking spaces, and other public ways, grounds and open spaces, the general location of public buildings and other public property and the general location and extent of public utilities and terminals whether publicly or privately operated, for light, transportation, communication, power and other purposes; and also the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing features of the plan. As the work of making the whole master plan progresses, the commission may from time to time recommend to the board of supervisors a part or parts thereof, any such part to cover one or more major sections or divisions of the county or one or more of the functional matters to be included in the plan. Before recommending the master plan or any part thereof, or any amendment, extension or addition thereto, to the board of

supervisors, the commission shall hold at least one public hearing. At least seven days' prior notice of the time and place of each hearing shall be given by publication in the official newspapers and in a newspaper of general circulation in the locality affected. At least seven days' prior notice of the hearing shall be given in writing to the supervisor or presiding supervisor of each town, and the mayor and clerk of each village, or city, any portion of which falls within the part of the master plan under consideration. The recommendation of the plan, and of any part, amendment, extension, or addition thereof, shall be by resolution of the commission carried by the affirmative votes of not less than five members.

Sec. 1604. Adoption of master plan. The board of supervisors, upon the recommendation of the county planning commission, shall have power to adopt by ordinance the master plan and any part, amendment or extension thereof in so far as the same relates to any portion of the county except cities or villages which at the date on which this act becomes effective in the county have prepared and adopted a plan for the development of the said city or village. The board of supervisors may also, upon recommendation of the county planning commission, adopt by ordinance such parts of the master plan as relate to state, county or town highways, county buildings, and public navigable waterways, irrespective of town, city or village boundaries. Upon the adoption of any ordinance as provided in this section, the board of supervisors shall immediately file with the county clerk a certified copy thereof,

including all accompanying maps and plans. Except as otherwise provided in this act, the town board of a town which has heretofore adopted an official map or plan, and the planning board or commission of such town, shall continue to exercise such powers in relation to platting conferred upon them, or either of them, by law, until such time as a valid master plan has been adopted by the board of supervisors for such town, or any part thereof.

Sec. 1605. Enforcement of master plan. Whenever the board of supervisors shall have adopted a master plan as hereinbefore provided, or one or more parts thereof, no street, square, park, or other public way, ground, or open space, or public building, public structure, or public utility, whether publicly or privately owned, shall be constructed or authorized by the county, by any town, or by any city or village which on the date on which this act becomes effective in the county has not prepared and adopted a plan for its development, in any portion of the county in respect to which such plan or part thereof has been adopted as provided herein, nor shall any such structure, improvement or utility be constructed or authorized by any other city or village within three hundred feet of any boundary thereof adjoining a portion of the county in relation to which such plan or part thereof has been adopted as provided herein, until the location, character, and extent thereof shall have been submitted to and approved by the county planning commission as conforming to the general intent and purpose of the plan. The county planning commission shall make rules relating to such

submissions which shall provide for notice to all parties in interest, including towns, cities, and villages which may be affected thereby, and including any state park commission if the matter submitted relates to any portion of the county within three hundred feet of any state park or parkway under the jurisdiction of such commission, and if the matter submitted relates to the territory of any city or village which at the date on which this act becomes effective in the county has prepared and adopted a plan for its development, the same shall not be disapproved except by a two-thirds vote of the county planning commission.

Sec. 1606. Zoning powers of towns, cities and villages continued subject to master plan. Except as otherwise provided in this act, the laws of this state as they now are or may hereafter be conferring on towns, villages and cities and the officers, boards and commissions thereof, powers with regard to the regulation and restriction of the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes shall remain in force in such towns, villages and cities; provided that such regulations and restrictions shall govern unless the provisions, if any, of the master plan or portion thereof adopted pursuant to this article which are in conflict with such regulations and restrictions shall, after a hearing as hereinbefore required prior to the recommendation of the master plan, be reaffirmed by a two-thirds

vote of the county planning commission in which case the provisions of the master plan or portion thereof shall govern.

Sec. 1607. Extension of zoning powers of towns. The powers now or hereafter conferred by law on any town or board or commission thereof with regard to the matters set forth in the preceding section shall also be exclusively exercised thereby within all portions of such town unincorporated as a village at the date on which this act becomes effective in the county, irrespective of the inclusion thereof in a village erected or incorporated after such date, and also within all territory situated in such town and in a village previously incorporated which at such date does not have a valid zoning ordinance. Such powers may also be exercised by any such town or the appropriate board or commission thereof by a two-thirds vote of such board or commission within all portions of the town within three hundred feet of any public navigable waterway, for the purpose of adopting a higher or more restrictive classification therefor.

Sec. 1608. Power to zone within three hundred feet of boundary restricted. No zoning ordinance or amendment thereto passed by any city, town or village within the county after the date on which this act becomes effective in the county relating to any portion of the said city, town or village within three hundred feet of a town boundary shall take effect in respect to such portion of said city, town or village until the ordinance or amendment has been submitted to the county planning commission and been approved thereby. No zoning

ordinance or amendment thereto passed after the date on which this act becomes effective in the county by any village partly or wholly in any town relating to any portion of such village within such town and within three hundred feet of the boundary of such village, shall take effect in respect to such portion of such village until the ordinance or amendment has been submitted to the town board of the town in which such portion of such village is situated and been approved thereby. The ordinance or amendment shall be deemed to have been approved unless within thirty days after the same has been filed with the county planning commission or town board, as the case may be, a resolution disapproving it is adopted by a two-thirds vote of such commission or board, after a public hearing thereon. At least seven days' prior written notice of such hearing shall be given to the clerk of the town, city or village affected. Similar notice shall be given in writing to any state park commission having jurisdiction of any park or parkway situated within three hundred feet of the land affected by the proposed ordinance or amendment.

Sec. 1609. Filing of ordinances and maps. At the date on which this act becomes effective in the county, certified copies of all master plans, zoning ordinances or portions thereof in effect therein, with all accompanying maps and charts, shall be filed with the county clerk, and all amendments to such ordinances, plans, maps or charts thereafter adopted shall likewise be filed with the county clerk.

XIII. PENNSYLVANIA STATE PLANNING BOARD LAW

THE Pennsylvania State Planning Board Law, after its passage, was approved by the governor on July 30, 1936. The clauses referring to the master plan are an example of the vagaries that may be enumerated if a legislature does not clearly understand what is meant by the term. Many features are included which are not part of such a document or in any sense capable of being shown on a dynamic map or plan. For instance, "the general location and extent of existing and prepared forests and agricultural areas," if shown on a master plan, are static material only and have no relation whatever to state regulations. The general classification in the law, of the state land as mineral, agricultural, industrial, and urban is suggested to assist future study for state purposes, but it is not helpful in a master plan. Then, too, some of the seven elements are omitted, as, for instance, public utilities and land areas capable of being regulated district by district. Provisions in the law outline a program to insure future investigation

rather than to enumerate the proper elements of a plan. If the requirements for a master plan and the plan itself become more and more discursive, its purpose to co-ordinate the various elements to help a commission in making quick reports will be lost. The following extracts are quoted from this law:

Sec. 4. (a) It shall be the duty of the State Planning Board to prepare and, from time to time, to perfect a State master plan for the physical development of the State, by the State, its agencies, and political subdivisions. Such State master plan, with the accompanying maps, plats, charts, and descriptive matter, shall show the board's recommendations for the development of the State, and may include, among other things, parkways, bridges, waterways, water front development, flood prevention work, parks, reservations, forests, wild life refuges, aviation fields, drainage and sanitary systems works, motor vehicle routes, public buildings, and other public ways, grounds, spaces, structures, institutional and other buildings and works, which by reason of their function, size, extent, location or legal status are of State-wide as distinguished from merely local concern, or the location, construction or authorization of which falls, according to law, within the province of State agencies or officials, and which are appropriate subjects of a State, as distinguished from a merely local program or plan, the general location and extent of existing and prepared forests, agricultural

areas and other development areas for purposes of conservation, food and water supply, sanitary and drainage facilities, or the protection and perfection of urban and rural development, also a land utilization program, including the general classification and allocation of the land within the State amongst mineral, agricultural, soil conservation, water conservation, forestry, recreational, industrial, urbanization, housing and other uses and purposes.

Sec. 6. The board may submit its master State plan, or any portion thereof, to the Governor with recommendation for official approval. Before approving any plan or plans for such official action, the board may hold public hearings thereon. Such plan or plans, when approved by the Governor, shall be known as the official State plan.

XIV. NEW CHARTER OF THE CITY OF NEW YORK

ON JANUARY 10, 1929, the Mayor of the City of New York made a report to the Board of Estimate and Apportionment giving the reasons why the charter of the city should be amended to provide for a planning commission and a master plan.

Added to this report were clauses for the amendment of the charter, which had been prepared after consultation with experienced engineers and charter lawyers. To accomplish the purposes of these clauses a bill embodying the amendments was introduced in the state legislature of 1929. It was approved by the committee on cities of each branch of the legislature but in the turmoil of adjournment the bill failed to pass. Those who collaborated in making the report had made a thorough study of all legislation in this country on planning commissions and master plans, which covered the constitution of a commission, its procedure, the relation of a master plan to the official map of streets and parks and the subjects of platting and preserving the integrity of mapped streets not yet opened.

The report provided that the seven elements as discussed in this book should be shown in the master plan, which after approval by the commission should remain entirely within the latter's hands with power to alter it quickly from time to time. In this respect the master plan is more plastic than many we have discussed. The commission is instructed to make reports when asked, and if the Board of Estimate does not follow its recommendations in laying out streets and parks or other elements of planning the Board may proceed on recommendations of its work only by a vote of twelve out of the sixteen members of the Board.

The suggestions contained in this report were to a considerable extent followed by the Charter Commission appointed a few years later whose proposed charter was adopted in November, 1936, by a municipal referendum. As these suggestions are an intermediate step between other acts which we have discussed and the new charter of the City of New York in relation to the new planning commission of 1938 and the master plan the following parts of the report are quoted:

Number of Members. The planning board is to consist of three members, one of them being the chief en-

gineer of the Board of Estimate. There have been many suggestions of a larger board. If the board were unpaid, it might well be larger. If the board took evidence as has been part of the duty of many state and city boards heretofore, five members might be desirable in order that single members might be assigned to the taking of evidence in numerous special cases. The planning board will need to act as a unit and it must hold its hearings as a unit. Instead of having a larger number of paid members it would appear to be better to use the additional money in strengthening the staff.

Chief Engineer. The chief engineer has a well-organized staff. This office has been the co-ordinating office of the city on all matters of the official city map and zoning maps. It will not answer to make the chief engineer the head of staff of the planning board because the Board of Estimate ought to have its own engineering adviser on the many engineering matters arising in the many fields under its jurisdiction. On the other hand, the planning board and the office of the chief engineer should not be separate. If they are separate, there will be constant clashing as to the functions of the two bodies. If the chief engineer is one of the planning board, he can continue as the special engineering adviser of the Board of Estimate, continue the work on the official city map and zoning district maps much the same as heretofore, but co-operating with the planning board in the making and perfecting of the master plan. The chief engineer is already overburdened, and undoubtedly these new duties will require that he be given one or more new assistants.

Official City Map Related to the Police Power. Difficulty has from time to time arisen in court proceedings on the question of whether or not the official city map is based on the police power of the state. It is now considered throughout the country that an official map showing streets and parks is founded on the police power and can be maintained under the police power. The charter itself should state words that bring it under the police power of the state, and this is done in the proposed statute.

Board of Estimate Relieved of Certain Hearings. Present charter provisions require that hearings shall be held before the Board of Estimate before changes, however minute, can be made in the official city map or the building zone maps. These hearings have become so numerous and the difficulty of deciding fairly between the appearing parties is so great that the general work of the Board of Estimate as a legislative body has been greatly interfered with. These statutory hearings should be held before the planning board. This does not mean that the Board of Estimate does not have the power to hold such hearings as it deems best. The Board of Estimate ought to have the power of deciding what of the above mentioned items, if any, it will allow to go to a hearing before it. Probably no other legislative body in this country is obliged by law to hold so many hearings as the Board of Estimate. Most legislative bodies do their business without having hearings before them. As the name of the Board of Estimate and Apportionment implies, the original intention was that the time of this board should be mainly devoted

to determining the amount of money that could be spent for operating expenses and improvements and fixing the order of making improvements. If the proposed charter amendment is passed, it is to be hoped that the Board of Estimate will refuse to hold these multitudinous hearings on the official city map and building zone maps.

Powers of Planning Board Relating to Reports to Board of Estimate. As the planning board will hold the statutory hearings on changes of the official map of the city and building zone maps, the reports made by the planning board to the Board of Estimate after such hearings and due consideration should carry a certain amount of weight and importance. If they are advisory and nothing more, there is danger that the planning board will gradually become obsolete. On this account provision is made that, if the Board of Estimate chooses to vary from the form and effect of such a report, it must do so by vote of twelve out of sixteen. This continues the status of the Board of Estimate as the sole legislative body regarding matters within its jurisdiction.

Master Plan. The main duty of the planning board is to make its own master plan of the city and perfect it from time to time. The master plan will show many features that are not shown on the official map or plan of the city. The master plan, however, will be gradually translated into the official map of the city so far as streets, parks, etc., are concerned from time to time as the Board of Estimate deems proper. The master plan is nothing more than the constantly improving plan of

the planning board decided upon from time to time by its majority vote. It will be the co-ordinating plan of all city planning features of the city. It will be a quick guide to the planning board in making reports and recommendations. The master plan should at all times show the co-ordinated physical elements of city progress and should be an approximation to the best standards by which all proposed changes of the official map of the city and building zone maps and all other city planning features can be compared. It will be noticed that the features shown on the master plan are basic and in all cases related to location. Undoubtedly the planning board will be able to advise regarding construction, but the master plan is designed to show location and not construction. The great field of construction having to do with pavements, public buildings, building of sewers and subways, all these matters of construction should be left to boards, architects and engineers who are experts in their several fields and have expert staffs. This is not to say that the planning board and its staff should not be experts in all these fields. They should be so far as possible in order that they can do sound and far-seeing work on the master plan. It would be impractical to establish a planning board that would be a sort of super-government. Its field should be co-ordinated locations. Heretofore the city has lacked the co-ordinating element as a constantly functioning branch of government.

Here follows the main provision relating to the master plan:

Sec. 442-e. The principal duty of the planning board shall be to make its master plan of the city, and perfect it from time to time. Such master plan shall show desirable streets, highways, street grades, public places, bridges and tunnels, approaches to bridges and tunnels, viaducts, parks, parkways, playgrounds, roadways in streets and parks, sites for public buildings and structures, building zone districts, pierhead and bulkhead lines, waterways, routes of railroads, omnibuses and ferries, and locations of sewers, water conduits, and other public utilities. Such master plan shall be established, added to and changed from time to time by the majority vote of the planning board. It shall be a public record but its purpose and effect shall be solely as an aid to the planning board in making its reports and recommendations. It shall be the duty of the board to consult with and make recommendations of an advisory character to the board of aldermen, the board of estimate and apportionment, the departments, boards and bureaus of the city government, the borough presidents, the art commission, the port of New York authority, officials of contiguous states and municipalities, and the departments of the federal government. It shall also be the duty of the planning board to consider the design of public structures and the treatment of parks and other public land areas to assist in making its master plan and preparing its recommendations. The planning board shall endeavor to bring about coordination of the master plan and plans for improvements outside of the city. Every board, bureau and official of the city before requesting an appropriation

Under the new charter the contents of the master plan are to be the elements of community planning as outlined in this book. In addition the plan may contain "such other features, changes and additions as will provide for the improvement of the city and its future growth and development and afford adequate facilities for the housing, transportation, distribution, comfort, convenience, health and welfare of its population." These words are unnecessary as all the purposes of the master plan had been enumerated before the words were inserted. It is to be feared that they will furnish an opportunity for specialists in the commission to urge all sorts of projects outside of community planning that are sure to arise from time to time in the minds of successive commissioners. This will be unfortunate.

The excellent thing about this master plan is that it will remain in the control of the commission and can be quickly changed by the commission. Words are used that contemplate its adoption by the commission and a public hearing must be held before it is so adopted and before changes are made. However, no official body outside the commission needs to adopt it, and presumably the commission

can act quickly in making necessary changes. It is probably too early for anyone to say that this slight hardening of the master plan is better than to leave it entirely plastic. The purpose of the charter commission was to make sure that changes should be carefully studied and that property owners in the neighborhood should have a chance to be heard.

The planning commission must make advisory reports on contemplated improvements for which the master plan will be its guide. This is much better than to give a statutory authority to the master plan itself. The sections of the charter concerning the master plan follow:

Master plan of the city. Sec. 197. a. The commission shall prepare and from time to time modify a master plan of the city which shall show desirable streets, roads, highways and the grades thereof, public places, bridges and tunnels and the approaches thereto, viaducts, parks, public reservations, parkways, squares, playgrounds, roadways in parks, sites for public buildings and structures, building zone districts, pierhead and bulkhead lines, docks and wharves, waterways, routes of railroads, omnibuses and ferries, locations of drainage systems, sewers, sewage treatment plants, incinerators, water conduits and other public utilities privately or publicly owned, and such other features, changes and additions

as will provide for the improvement of the city and its future growth and development and afford adequate facilities for the housing, transportation, distribution, comfort, convenience, health and welfare of its population.

b. Before adopting the master plan or any part or modification thereof, the commission shall hold a public hearing or hearings, notice of which shall be published in the City Record at least ten days prior thereto.

c. The master plan and all modifications thereof shall be on file in the office of the commission, and certified copies shall be filed in the offices of the chief engineer of the board of estimate and of each borough president.

City map. Sec. 198. a. The map or plan of the city of New York, as the same shall exist at the time when this charter goes into effect, is hereby continued and is referred to in this charter as the city map.

b. The commission shall be the custodian of the city map, and it shall be the duty of the commission to complete and maintain the same and to register thereon all changes resulting from action authorized by law.

c. The city map shall be filed in the office of the commission, and certified copies thereof and of all changes thereto shall be filed in the offices of the corporation counsel and of each borough president.

Projects and changes in master plan. Sec. 199. a. After the adoption of the master plan or any part thereof no improvement or project affecting the master plan or the city map and no addition to or change in the city map shall be authorized otherwise than as provided in this charter.

b. Before taking action on any proposed addition to

or change in the city map not initiated by the commission, the board of estimate shall refer it to the commission, which shall, after a public hearing, notice of which shall be published in the City Record at least ten days prior thereto, report thereon within six weeks with respect to its relation to the master plan and to the city map. If the commission shall report that the proposed addition or change conforms to the master plan or shall recommend approval or modification thereof, it may be adopted in accordance with the recommendations of the commission by a majority vote of the board of estimate. If the commission shall report that the proposed addition or change does not conform to the master plan and shall not recommend approval thereof, or shall recommend a modification thereof not accepted by the board of estimate, or shall fail to make its report within the said period of six weeks, the board of estimate may nevertheless authorize the said addition or change, but only by a three-fourths vote.

c. An addition to or change in the city map may be initiated by recommendation of the commission to the board of estimate adopted after public hearing before the commission, notice of which shall be published in the City Record at least ten days prior thereto, with the same effect as a report made by the commission on a proposed addition or change referred to it by the board of estimate.

d. Upon the authorization of any such addition or change in accordance with the provisions of this section, the commission shall make such change in the master plan as shall be necessary to conform thereto.

XV. CONCLUSIONS

IT IS a mistake for legislation to require and for planning commissions to include in a master plan subjects which are no part of a community plan that affects land areas. The following subjects should be shown in the master plan and no others:

Streets which include pedestrian and vehicular bridges and tunnels;

Parks which include parkways;

Sites for public buildings;

Public reservations;

Zoning districts, which words refer to any governmental unit where the regulations differ in different districts;

Routes for public utilities;

Pierhead and bulkhead lines.

A procedure that will harden or ossify a plan and make it difficult to amend quickly should not be adopted. A master plan should be a design for the co-ordination of the elements of the community plan. It should be kept inside the four walls of the

planning commission, not a secret document but one capable of being readily changed, the last and best word of the commission.

If a master plan needs to be adopted by a local legislative body, if before any amendment hearings must be held and votes had by other bodies, if it must be filed in a county clerk's office, it becomes something different from the plastic instrument that it should be. Laws will probably require a planning commission to make reports to legislative bodies before action is taken in regard to official maps. These reports will at all times be based on the master plan and it is not therefore necessary to delay them by creating unnecessary procedure. Laws will require public hearings before an official map, such as that of streets and parks and zoning, can be changed.

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