CAROL SONDHEIMER
13605

COASTAL ZONE
INFORMATION CENTER

a GUIDE to the PLANNING and ZONING LAWS of N.Y. State

New York. Office of Planning Services

HT
123.5
.N7
G85
1972

EW YORK, Nelson A. Rockefeller, Governor / OFFICE OF PLANNING SERVICES, Richard A. Wiebe, Director

TITLE: *Guide to the Planning and Zoning Laws of New York State*

AUTHOR: New York State Office of Planning Services

DATE: June 1972

SOURCE OF COPIES: New York State Office of Planning Services
488 Broadway, Albany, New York 12207

National Technical Information Service
2285 Port Royal Rd., Springfield, Virginia 22151

FOR REFERENCE: Library
U. S. Department of Housing and Urban Development
451 Seventh Street, S. W., Washington, D. C. 20410

Region 2 Library
U. S. Department of Housing and Urban Development
26 Federal Plaza, New York, New York 10007

Planning Depository Libraries

Planning School Libraries

PROJECT NO.: N. Y. P. 245

SERIES NO.: N. A.

NO. OF PAGES: 116

ABSTRACT:

This report is a consolidation of the laws pertaining to planning and zoning in New York State. It is intended to provide a ready reference to local officials.

The laws are arranged by subject matter, with marginal notes to point out the basic content of the sections. Provisions covered include General City Law, Town Law, Village Law and the General Municipal Law. Enabling legislation is given for the creation of metropolitan, regional, county, town and village planning boards; zoning boards of appeals; zoning; establishment of Official Maps; subdivision control regulations; and laws relating to conflict of interest. Other statutes relating to planning and zoning, such as the Public Health Law and the Real Property Law are also included.

Court decisions and administrative opinions affecting the interpretation of these laws are noted at the end of each section of the report. A listing of other planning and zoning aids available from the State Office of Planning Services completes the document.

The preparation of this report was financed in part through a comprehensive planning grant from the U. S. Department of Housing and Urban Development.

The paper was researched and written in the Legal Services Bureau of the New York State Office of Planning Services by Sheldon W. Damsky and James A. Coon, attorneys, under the general direction of Richard A. Persico, Counsel.

COASTAL ZONE
INFORMATION CENTER

Foreword

A GUIDE TO THE PLANNING AND ZONING LAWS has been prepared by the Bureau of Legal Services of the New York State Office of Planning Services as a one-volume source book to help municipal officials and attorneys make more efficient use of the planning and zoning enabling acts. The complete text of each pertinent section of law is provided, together with marginal notes to assist in ready reference to the content of each. Notes at the end of each section list court decisions, administrative opinions and OPS publications pertaining to that particular section.

To insure the best use of this guide, it is important to bear two things in mind regarding its contents.

First, while each section of law is set forth verbatim, the marginal references are not part of the statutes. They are meant only to highlight the key points of each statute.

Second, the statutes are not always arranged in numerical order, as they are in various volumes of the Consolidated Laws. Instead, they are arranged according to subject matter. It is felt that this arrangement will make research easier for those seeking information on closely related topics.

It should be kept in mind, in seeking statutory provisions, that more than one set of statutes may apply to and govern municipal action. For example, while the provisions of the Town Law naturally govern towns, important provisions affecting town planning and zoning also appear in the General Municipal Law, the Public Health Law and others. It is essential that all applicable statutes be considered.

June, 1972

U.S. DEPARTMENT OF COMMERCE NOAA
COASTAL SERVICES CENTER
2234 SOUTH HOBSON AVENUE
CHARLESTON, SC 29405-2413

HT 123.5.N7 G85 1972
11000 13
FEB 10 1997

Property of CSC Library

CONTENTS

I. GENERAL CITY LAW 5

Planning boards 6

§27 Creation and appointment 6
28 Officers, employees and expenses 7
30 Reports on matters referred to it 7
31 General reports 8
28-a Master plan 8

Zoning 9

§20 Grant of power to zone; purposes 9
83 Amendments, alterations and changes in district lines 10
81 Board of appeals 11
81-a Power of local legislative body to fix terms of office of board of appeals 12
82 Certiorari to review decision of board of appeals 12

Subdivision control 14

§32 Approval of plats 14
33 Approval of plats, additional requisites 15
34 Record of plats 17
83-a Exemption from zoning ordinance of lots shown on approved subdivision plats 18
37 Changes in zoning regulations 19
38 Court review of decisions 20

Official maps 21

§26 Official map – establishment 21
29 Official map – changes 21
35 Permit for building in bed of mapped street 22
35-a Limitation of time for revocation of permit 23
36 Municipal improvements in streets, buildings not on mapped streets 23

Other provisions 26

§39 Separability 26

II. TOWN LAW 27

Planning boards 28

§271 Creation and appointment 28
272 Officers, employees and expenses 29
274 Reports on matters referred to it 29
275 General reports 30
272-a Master plan 30

Zoning 32

§261 Grant of power to zone; appropriations for certain expenses 32
262 Districts 33
263 Purposes 33
266 Zoning commission 33
264 Enactment of zoning ordinances – procedure 34
265 Amendments and changes 35
267 Board of appeals 36

Subdivision control 39

§276 Approval of plats 39
277 Approval of plats – additional requisites 45
278 Recording of plats 49
265-a Exemption from zoning ordinance of lots shown on approved subdivision plats 50
281 Changes in zoning regulations 51
282 Court review of decisions 53

Official maps 54

§270 Official map – establishment 54
273 Official map – changes 54
279 Permit for building in bed of mapped street 55
280-a Permit for building not on improved mapped streets 55
280 Municipal improvements in streets 57

Other provisions 58

§268 Enforcement and remedies 58
283 Issuance of licenses and permits in certain towns 59
269 Conflict with other laws 59
284 Separability clause 59

III. VILLAGE LAW – ARTICLE VI-A 61

Planning boards 62

§179-f Creation and appointment; terms of office 62
179-g Organization; employees 63
179-i Reports on matters referred to it 63
179-j Power to make investigations and reports 64
179-g Master plan 64

Zoning 65

§175 Grant of power to zone 65
176 Districts 66
177 Purposes 66
179-a Zoning commission 66
178 Enactment of zoning ordinance procedure 67
179 Amendments and changes 68
179-b Board of appeals 70

Subdivision control 73

§179-k Approval of plats 73
179-l Approval of plats – additional requisites 75
179-m Recording of plats 77

Property of CSC Library

179-p Changes in zoning regulations 78
179-q Court review of decisions 80

Official maps 81
§179-e Official map – establishment 81
179-h Official map – changes 81
179-n Permit for building in bed of mapped streets 82
179-o Construction of municipal utility in mapped street; permits for erection of buildings 82

Other provisions 85
§179-c Enforcement and remedies 85
179-d Conflict with other laws 85
179-r Separability clause 86

GENERAL MUNICIPAL LAW – ARTICLE 12-A 87

City and village planning commissions 88
§234 Creation, appointment and qualifications 88
235 Officers, expenses and assistance 88
236 General powers of planning commissions 89
237 Maps and recommendations 90
238 General powers of planning commissions 90
239 Rules 91
239-a Construction of article 91

Metropolitan, regional and county planning boards – Article 12-B 92
§239-b Establishment 92
239-c Expenses 93
239-d Powers of board; authority to receive funds 93
239-e Planning associations or federations 96
239-f Money for maintaining planning federations 96
239-g County official maps; declaration of policy 97
239-h County official map; establishment 97
239-i County official maps; changes 98
239-j Permits for buildings in rights-of-way preserved by official map 99
239-k Building permits; regulations for control of development 100
239-l Coordination of municipal zoning and planning actions; legislative intent 101
239-m Notice of certain proposed municipal zoning actions to be submitted to county, metropolitan or regional planning agencies; report thereon; final action 102
239-n Notice of certain subdivision plats to be submitted to county planning agency; report thereon; final action 104

MISCELLANEOUS STATUTES RELATING TO PLANNING AND ZONING 105

Public Health Law; Article II, Title II 106
§1115 Realty subdivisions – definitions 106
1115-a Remedy for purchaser of one parcel of unimproved realty subdivision – application 106
1116 Realty subdivisions – plans to be filed and approved 107
1117 Realty subdivisions; duty of county clerk or register in respect to filing of plans or map 108
1118 Realty subdivisions; local regulations 108
1119 Realty subdivisions – filing fees 108
1120 Realty subdivisions – regulations 108

Real Property Law; Article 9 109
§334 Filing of subdivision maps – penalty for non-filing 109

General Municipal Law 111
§96-a Protection of historic places, buildings and works of art 111
99-g Capital programs 111
247 Acquisition of open spaces and areas 112
809 Conflict of interest – disclosure 114

BIBLIOGRAPHY 115

from the
GENERAL CITY LAW

Planning boards

§ 27. Planning board, creation and appointment

Created by resolution or ordinance

Members

Such legislative body of each city is hereby authorized and empowered to create by resolution or ordinance a planning board to consist of five or seven members, in the discretion of such legislative body, to be appointed by the mayor or other duly authorized appointing authority with authority to remove any member of such board for cause and after public hearing. Not more than a minority of the members of such board shall hold any other public office or position in such city. No person who is a member of the legislative body of a city to which the provisions of this section are applicable, and no member of the planning board of such city, shall be eligible for membership on the board of appeals of such city. The terms of the officials or employees of the municipality shall terminate with the term of the mayor or other duly authorized appointing authority selecting them. The appointment of as nearly as possible of one-third of the other members of the board shall be for a term of one year, one-third for a term of two years and one-third for a term of three years. At the expiration of such terms, the terms of office of their successors shall be three years, so that the term of office of one-third of such members of such board, as nearly as possible, shall expire each year. Their successors and the successors of those now in office shall be appointed for the term of three years from and after the expiration of the term of their predecessors in office. The members of such boards now in office shall continue in office until the end of the term for which they were appointed and their sucessors have been appointed as provided in this section as hereby amended and have qualified. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by appointment for the unexpired term. The municipal officials or employees on such board shall not, by reason of membership thereon, forfeit their right to exercise the powers, perform the duties or receive the compensation of the municipal office or position held by them during such membership. In any city in which there is a planning commission created in accordance with article twelve-a of the general municipal law the ordinance or resolution instead of providing for the appointment of a new planning commission or board may provide that the existing commission shall continue the members thereof thereafter to be appointed in accordance with the provisions of such article twelve-a, with the powers and duties as specified for a planning board appointed as provided in this article in addition to

Eligibility of members of other public offices

Term of office

Municipal officials not to forfeit powers, duties and compensation by reason of membership

Existing planning commission may be appointed as planning board

the powers and duties as specified in such article twelve-a; provided, however, that in any such city section two hundred and thirty-eight of the general municipal law shall not be in force.

Notes:

– For planning commission provisions, see Article 12-A of General Municipal Law.

– For a discussion of incompatibility of office and conflict of interest imposing bars on planning board membership, see **Bibliography Item 4.**

§ 28. Planning board, officers, employees and expenses

Designation of chairman

Employment of experts and staff

Appropriation

Adoption of rules and regulations – public hearing and approval of legislative body

The mayor or other duly authorized appointing authority shall designate a member of said planning board to act as chairman thereof; or on his failure so to do, the planning board shall elect a chairman from its own members. It shall have the power and authority to employ experts and a staff, and to pay for their services and such other expenses as may be necessary and proper not exceeding, in all, the appropriation that may be made for such board; excepting and providing that in cities in which the general power and authority to fix salaries and prescribe positions is placed in some other board or officer the foregoing power and authority shall be in such other duly authorized board or officer. Each city is hereby authorized and empowered to make such appropriation as it may see fit for such expenses, such appropriation to be made by those officers or bodies having charge of the appropriation of the public funds. The planning board may adopt rules and regulations in respect to procedure before it and in respect to any subject matter over which it has jurisdiction under this article or any other statute, after public hearing by the planning board and subject to the approval of such legislative body.

§ 30. Planning board, reports on matters referred to it

Provision for reference of matters to planning board before final action

The body creating such planning board may by general or special rule provide for the reference of any matter or class of matters to the planning board before final action thereon by the public body or officer of said city having final authority thereon with or without the provision that final action thereon shall not be taken until said planning board has submitted its report thereon or has had a reasonable time to be fixed in said rule to submit the report.

Note:

– Under city zoning ordinance decision and resolution of planning board constituted only a report which was not binding on but was advisory to board of appeals (Matter of Milton Point Association vs. Clark, 14 Misc. 2d. 633).

§ 31. Planning board, general reports

Authority to make investigations, reports, etc.

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

§ 28-a. Master plan

Authority to prepare master plan

Contents of master plan

The planning board may prepare and change, a comprehensive master plan for the development of the entire area of the city, which master plan shall show existing and proposed streets, bridges and tunnels and the approaches thereto, viaducts, parks, public reservations, roadways in parks, sites for public buildings and structures, zoning districts, pierhead and bulkhead lines, waterways and routes of public utilities and such other features existing and proposed as will provide for the improvement of the city and its future growth, protection, and development, and will afford adequate facilities for the public housing, transportation, distribution, comfort, convenience, public health, safety and general welfare of its population.

Notice and hearing

Such planning board may advertise and hold public hearings when it desires, notice of which hearings shall be advertised at least once in an official newspaper or in a newspaper of general circulation in said city at least five days before each such hearing.

Filing of master plan

The master plan and all modifications thereof shall be on file in the office of the planning board, and the planning board shall file certified copies in the offices of the city engineer and the city clerk.

Notes:

– For a discussion of the elements of a comprehensive plan, see Bibliography Items 5 and 15.

– For city participation in metropolitan, regional or county master plan, see General Municipal Law, Sec. 239-d.

Zoning

§ 20.

Subject to the constitution and general laws of this state, every city is empowered:

Scope of grant of power

24. To regulate and limit the height, bulk and location of buildings hereafter erected, to regulate and determine the area of yards, courts and other open spaces, and to regulate the density of population in any given area, and for said purposes to divide the city into districts. Such regulations shall be uniform for each class of buildings throughout any district, but the regulations in one or more districts may differ from those in other districts. Such regulations shall be designed to secure safety from fire, flood and other dangers and to promote the public health and welfare, including, so far as conditions may permit, provision for adequate light, air and convenience of access, and shall be made with reasonable regard to the character of buildings erected in each district, the value of land and the use to which it may be put, to the end that such regulations may promote public health, safety and welfare and the most desirable use for which the land of each district may be adapted and may tend to conserve the value of buildings and enhance the value of land throughout the city.

Purpose of regulations

Regulation of trade and industry

25. To regulate and restrict the location of trades and industries and the location of buildings, designed for specified uses, and for said purposes to divide the city into districts and to prescribe for each such district the trades and industries that shall be excluded or subjected to special regulation and the uses for which buildings may not be erected or altered. Such regulations shall be designed to promote the public health, safety and general welfare and shall be made with reasonable consideration, among other things, to the character of the district, its peculiar suitability for particular uses, the conservation of property values and the direction of building development, in accord with a well considered plan.

Purpose of regulations

Considerations – well considered plan

Notes:

– *Multiple Dwellings:*
1. Height, bulk, open spaces – Multiple Dwelling Law, Sec. 26.
2. Two or more buildings on same lot – Multiple Dwelling Law, Sec. 28.

Recommendation of metropolitan, regional or county planning board of comprehensive zoning plan to cities, towns and villages – see General Municipal Law, 239.d (5).

– For discussions of the comprehensive plan, see Bibliography Items 5 and 15.

- For a discussion of interim zoning to preserve the status quo pending the adoption of an ordinance furthering the comprehensive plan, see Bibliography Item 2.
- For information regarding the preparation of a zoning ordinance, see Bibliography Item 12.
- Municipal regulations limiting use of property must be strictly construed, and if there is any doubt as to their meaning, it must be resolved in favor of the property owner (Turiano vs. Gilchrist, 8 A.D. 2d 953).
- Zoning ordinances are enacted to promote the health, safety and welfare of the community at large, to protect property values against depreciation and to preserve the character of the community (Clune vs. Walker, 10 Misc. 2d 858, aff d. 7 A.D. 2d 651).
- To sustain an attack on the validity of a zoning ordinance, an aggrieved property owner must show that, if the ordinance is enforced, the consequent restrictions on his property preclude its use for any purpose to which it is reasonably adapted (Arverne Bay Construction Co. vs Thatcher, 278 N.Y. 222).
- Zoning ordinances enacted by duly constituted legislative bodies are ordinarily considered to be constitutional unless they can be shown to be arbitrary (Flax vs. City of Rome, 57 Misc. 2d 905).

§ 83. Amendments, alterations and changes in district lines

Authorization to common council
Notice and hearing

The common council may from time to time on its own motion or petition, after public notice and hearing, which hearing may be held by the council or by a committee of the council or by the planning board, amend, supplement, repeal or change the regulations and districts established under any ordinance adopted pursuant to paragraphs twenty-four and twenty-five of section twenty of this chapter. Wherever the owners of fifty per centum or more of the frontage in any district or part

Petition by owners of 50% of frontage

thereof shall present a petition duly signed and acknowledged to the common council, requesting an amendment, supplement, change or repeal of the regulations prescribed for such district or part thereof, it shall be the duty of the council to vote upon said petition within ninety days after filing of the same by the petitioners with the secretary of the

Procedure in event of protest

council. If, however, a protest against a proposed amendment, supplement, repeal or change be presented, duly signed and acknowledged by the owners of twenty per centum or more of the area of the land included in such proposed change, or by the owners of twenty per centum or more of the area of the land immediately adjacent extending one hundred feet therefrom, or by the owners of twenty per centum or more of the area of land directly opposite thereto extending one hundred feet from the street frontage of such opposite land, such amendment shall not be passed except by a three-fourths vote of the council.

Notes:

- This Section must be read in connection with subdivisions 24 and 25 of Section 20, and consideration must be given to Section 83 as well as Section 20 (Shefler vs. City of Geneva, 1 Misc. 2d. 807).
- There is no provision in this section that the exercise of the common council's power to enact ordinances is conditioned upon the presentation of any particular form of petition (Homesfield Association of Yonkers vs. Frank, 273 A.D. 788).
- Provision of this section requiring a three-fourths vote in event of protest means a three-fourths vote of entire membership, not just of those present (Savatgy vs. City of Kingston, 20 N.Y. 2d. 258).

§ 81 Board of appeals

Authority of mayor or city manager to appoint board of appeals

1. The mayor or in a city having a city manager, the city manager of any city to which paragraphs twenty-four and twenty-five of section twenty of this chapter are applicable, except a city having a population of more than one million may appoint a board of appeals consisting of five members, each to be appointed for three years. Such board of appeals may consist of six members if the local legislative body of any such city shall so provide, which they are hereby authorized to do by ordinance.

Number of members

Powers and duties

Such board of appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to paragraphs twenty-four and twenty-five of section twenty of this chapter. They shall also hear and decide all matters referred to them or upon which they are required to pass under any ordinance of the common council adopted pursuant to such two paragraphs. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant any matter upon which they are required to pass under any such ordinance or to effect any variation in such ordinance. Every decision of such board shall, however, be subject to review as provided in article seventy-eight of the civil practice law and rules. Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the city.

Necessary vote

Review

Appeal to board of appeals

2. Appeal, how taken. Such appeal shall be taken within such time as shall be prescribed by the board of appeals by general rule, by filing with the officer from whom the appeal is taken and with the board of appeals of a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

Stay of proceedings

3. Stay. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of appeals after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by the supreme court, on application, on notice to the officer from whom the appeal is taken and on due cause shown.

Hearing and decision

4. Hearing of and decision upon appeal. The board of appeals shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties, and decide the same within reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.

Action by board

The board of appeals may reverse of affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the officer from whom the appeal is taken.

Power to grant variance

Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of any such ordinance, the board of ap-

peals shall have the power, in passing upon appeals, to vary or modify the application of any of the regulations or provisions of such ordinance relating to the use, construction, structural changes in, equipment or alteration of buildings or structures, or the use of land, so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done.

Notes:

- Notice of certain proposed municipal zoning actions to be submitted to county, metropolitan or regional planning agency – see General Municipal Law, 239-m.
- The members of a zoning board of appeals are permitted to use their personal knowledge in passing on cases coming before them, but if they do so, they must explicitly state in their return the substance of the facts outside the record upon which they rely (*Matter of Wehr vs. Crowley* 6 A.D. 2d 214).
- The board of appeals is not vested with despotic and arbitrary powers; it must act intelligently and fairly and within the domain of reason (*Friend vs. Feriola,* 35 Misc. 2d 250, aff'd, 23 A.D. 2d 822).
- The basic rules of hardship that must be found are (1) that the land in question cannot yield a reasonable return if used only for a purpose allowed in that zone; (2) that the plight of the owner is due to unique circumstances and not to general conditions in the neighborhood; and (3) that the use to be authorized by the variance will not alter the essential character of the locality (*Matter of Congregation Beth El vs. Crowley,* 30 Misc. 2d. 90).
- With respect to area variances, the basic rule which has evolved is that where the property owner will suffer significant economic injury by the application of an area standard ordinance, that standard can be justified only by a showing that the public health, safety and welfare will be served by upholding the application of the standard and denying the variance (*Matter of Fulling vs. Palumbo,* 21 N.Y. 2d. 30).

§ 81-a Power of local legislative body to fix terms of office of members of board of appeals

Authority of mayor or city manager to appoint members

The local legislative body of any city to which this article applies may provide by ordinance that the mayor or in a city having a city manager, the city manager of any such city shall appoint two members of the board of appeals for a term of office of one year, two members for a term of office of two years and one member or, if the board consists of six members, two members for a term of office of three years. The term of office of the successors of such members shall be three years.

Terms of office

§ 82. Certiorari to review decision of board of appeals

Aggrieved person or department or officer may apply for review

1. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals or any officer, department, board or bureau of the city, may apply to the supreme court for relief by a proceeding under article seventy-eight of the civil practice law and rules.

Procedure

Such proceeding shall be governed by the provisions of article seventy-eight of the civil practice law and rules, except that (a) it must be instituted as therein provided within thirty days after the filing of a decision in the office of the board; (b) the court may take evidence or appoint a

referee to take such evidence as it may direct and report the same with his findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter, and (c) the court at special term shall itself dispose of the cause on the merits, determining all questions which may be presented for determination under the provisions of section seventy-eight hundred three of said article.

Costs

2. Costs. Costs shall not be allowed against the board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

Preference over other civil actions

3. Preferences. All issues in all proceedings under this section shall have preference over all other civil actions and proceedings.

Notes:

- Petitioner must be aggrieved, his personal or property rights injured, before he may maintain this proceeding to restrain the alleged violation of ordinances enacted to protect the public (*Matter of Meadows vs. Binkowski*, 50 Misc. 2d 19).

- A court may not substitute its judgment for that of the zoning board of appeals and set aside its determination unless it appears that the board's action was arbitrary, capricious, constituted an abuse of discretion, or was not based on substantial evidence (*Matter of First National Bank vs. Sheehan*, 57 Misc. 2d 311; aff'd. 30 A.D. 2d 912).

Subdivision control

§ 32. Approval of plats

Purposes

Authority of planning board to approve plats

Approval of plats already filed

Notice and hearing

Action by planning board

Effect of inaction

For the purpose of providing for the future growth and development of the city and affording adequate facilities for the housing, transportation, distribution, comfort, convenience, safety, health and welfare of its population, the body creating such planning board may by ordinance or resolution authorize and empower the planning board to approve plats showing lots, blocks or sites, with or without streets or highways. For the same purposes and under the same conditions, the body creating such planning board may, by ordinance or resolution, authorize and empower the planning board to approve the development of plats, entirely or partially undeveloped and which have been filed in the office of the county clerk or register in which such plat is located prior to the appointment of such planning board and the grant to such board of the power to approve plats. Before such approval is given, a public hearing shall be held by the planning board which hearing shall be advertised at least once in an official paper or in a newspaper of general circulation in said city at least five days before such hearing. The planning board may thereupon approve, modify and approve, or disapprove such plat. The approval required by this section or the refusal to approve shall take place within forty-five days from and after the time of the submission of the plat for approval; otherwise such plat shall be deemed to have been approved, and the certificate of such city as to the date of the submission of the plat for approval and the failure to take action thereon within such time, shall be issued on demand and shall be sufficient in lieu of the written endorsement or other evidence of approval herein required. The ground of refusal of any plat submitted shall be stated upon the records of such planning board.

Filing of resolution or ordinance authorizing planning board to approve plats

The ordinance or resolution authorizing the planning board to approve plats shall make it the duty of some appropriate official or employee of said city to file with the clerk or register of the county or counties in which said city is situated a certificate showing that said planning board has been so authorized and shall specify the officer or employee of said city who shall issue in its behalf the certificate of failure to take action as aforesaid.

The approval by the planning board of a plat showing lots, blocks, or sites, with or without streets or highways, or the certificate of the city as

Expiration of planning board approval unless plat filed or recorded with county clerk within specified time

to the date of the submission of such plat and the failure of the planning board to take action thereon within forty-five days, shall expire ninety days from the date of such approval or of such certificate, unless within such ninety day period such plat shall have been duly filed or recorded by the owner in the office of the county clerk or register.

Notes:

- Purpose of this Section and Section 33 was to preserve a uniform and harmonious development of the municipality and to prevent the individual owner from laying out streets according to his own will without official approval (*Elsinore Property Owner's Association vs. Morwand Homes Inc.*, 286 A.D. 1105).
- Notice of certain proposed subdivision plats requiring referral to county superintendent of highways and/or county planning agency see General Municipal Law, Sec. 239-k.
- For a discussion of subdivision regulation enforcement, see Bibliography Item 3.

§ 33. Approval of plats, additional requisites

Authority of planning board to require parks for playgrounds or other recreational purposes

Before the approval by the planning board of a plat showing lots, blocks or sites, with or without streets or highways or the approval of the development of a plat entirely or partially undeveloped and which has been filed in the office of the clerk of the county wherein such plat is situated prior to the appointment of such planning board and the grant to such board of the power to approve plats, such plat shall also show in proper cases and when required by the planning board a park or parks suitably located for playground or other recreation purposes. If the planning board determines that a suitable park or parks of adequate size can not be properly located in any such plat or is otherwise not practical, the board may require as a condition to approval of any such plat a payment to the city of a sum to be determined by the common council or other governing board of such city, which sum shall constitute a trust fund to be used by the common council or other governing board of such city exclusively for neighborhood park, playground or recreation purposes including the acquisition of land. In approving such plats the planning board shall require that the streets and highways shall be of sufficient width and suitable grade and shall be suitably located to accommodate the prospective traffic, to afford adequate light and air, to facilitate fire protection, and to provide access of fire-fighting equipment to buildings, and to be coordinated so as to compose a convenient system conforming to the official map and properly related to the proposals shown by the planning board on the master plan; that the land shown on such plats shall be of such a character that it can be used safely for building purposes without danger to health or peril from fire, flood or other menace; that suitable monuments have been placed at such block corners and other necessary points as may be required by the board and the location thereof is shown on the map of such plat; and that the parks shall be of reasonable size for neighborhood playgrounds or other recreation uses; that all streets or other public places shown on such plats shall be suitably graded and paved and that sidewalks, street lighting

Authority to require monetary payment in lieu of reservation of land

Requirements for streets and highways

Other specific requirements

Posting of bond to insure performance

Waiver of requirements by planning board

Term of performance bond

Modification of requirements by planning board

Power of city to act in event of default of conditions of performance bond

Guides to planning board determination

standards, curbs, gutters, street trees, water mains, sanitaty sewers, fire alarm cables and necessary ducts, fire signal boxes and storm drains or combined sewers shall be installed all in accordance with standards, specifications and procedure acceptable to the appropriate city department, or alternatively that a performance bond sufficient to cover the full cost of the same as estimated by the planning board or other appropriate city departments designated by the planning board shall be furnished to the city by the owner; provided however, that the planning board may waive, subject to appropriate conditions and guarantees, for such period as it may determine, the provision of any or all such improvements as in its judgement of the special circumstances of a particular plat or plats are not requisite in the interest of the public health, safety and general welfare. Such performance bond shall be issued by a bonding or surety company approved by the corporation counsel of the city, or by the owner with security acceptable to the legislative body, and shall also be approved by such corporation counsel as to form, sufficiency and manner of execution. Such performance bond shall run for a term to be fixed by the planning board, but in no case for a longer term than three years, provided however that the term of such performance bond may be extended by the planning board with the consent of the parties thereto. If the planning board shall decide at any time during the term of the performance bond that the extent of building development that has taken place in the subdivision is not sufficient to warrant all the improvements covered by such performance bond, or that required improvements have been installed as provided in this section and by the planning board in sufficient amount to warrant reduction in the face amount of said bond, or that the character and extent of such development requires additional improvements previously waived for a period stated at the time of fixing the original terms of such bond, the planning board may modify its requirements for any or all such improvements, and the face value of such performance bond shall thereupon be reduced or increased by an appropriate amount so that the new face value will cover the cost in full of the amended list of improvements required by the planning board and any security deposited with the bond may be reduced or increased proportionately. In the event that any required improvements have not been installed as provided in this section within the term of such performance bond, the legislative body may thereupon declare the said performance bond to be in default and collect the sum remaining payable thereunder and upon the receipt of the proceeds thereof the city shall install such improvements as are covered by such performance bond and are commensurate with the extent of building development that has taken place in the subdivision but not exceeding in cost the amount of such proceeds.

In making such determination regarding streets, highways, parks and required improvement, the planning board shall take into consideration the prospective character of the development, whether dense residence, open residence, business or industrial.

Notes:

- The statute reflects a legislative judgment that the building up of unimproved and undeveloped areas ought to be accompanied by provision of roads and streets and other essential facilities to meet the basic needs of the new residents of the area (*Brous vs. Smith*, 304 N.Y. 164).
- For information on requirement for the installation of underground electric service, see Bibliography Item 1.

§ 34. Record of plats

No plat to be recorded without planning board approval and endorsement

No plat of a subdivision of land showing lots, blocks or sites, with or without streets or highways, shall be filed or recorded in the office of the county clerk or register until it has been approved by a planning board which has been empowered to approve such plats, and such approval be endorsed in writing on the plat in such manner as the planning board may designate. Such endorsement shall stipulate that the plat does not conflict with the county official map, where one exists, or, in cases where plats do front on or have access to or are otherwise related to roads or drainage systems shown on the county map, that such plat has been approved in the manner specified by section two hundred thirty-nine-k of the general municipal law. It shall be the duty of the county clerk or register to notify the planning board in writing within three days of the filing or recording of any plat approved by such planning board, identifying such plat by its title, date of filing or recording, and official file number. After such plat is approved and filed, subject, however, to review by court as hereinafter provided, the streets, highways and parks shown on such plat shall be and become a part of the official map or plan of the city. The owner of the land or his agent who files the plat may add as part of the plat a notation if he so desires to the effect that no offer of dedication of such streets, highways, or parks or any of them is made to the public.

Contents of endorsement

Notification to planning board by county clerk of recording of plat

Streets and highways on recorded plat

Notation that no dedication intended

Formal offer of cession

Formal offers of cession to the public of all streets, highways or parks not marked with such notation on the plat shall be filed with the planning board prior to the approval of the plat by the planning board. In the event that the owner or his agent shall elect not to file his plat prior to the expiration date of the validity of such approval provided in section thirty-two, then formal offers of cession shall be deemed to be invalid, void and of no effect on and after such expiration date.

Streets shown on plat to be private until offered to city and accepted

Every street shown on a plat that is hereafter filed or recorded in the office of the county clerk or register as provided in this section, shall be deemed to be a private street until such time as it has been formally offered for cession to the public and formally accepted as a public street by ordinance of the local legislative body, or alternatively until it has been condemned by the city for use as a public street.

Effect of other provisions of law relating to approval of plats

In so far as provisions of law other than those contained in this article, require the approval of a plat, map or plan of land by the authority of the city, as a prerequisite of its record, or allow it to be recorded on failure of the city to approve or disapprove of the same within a given time, said provisions shall not be in force in so far as they apply to plats, maps or plans of land within the limits of any city which has established an official map or plan and authorized a planning board appointed by it to approve plats of land within said city showing lots, blocks or sites, with or without streets or highways, under this article.

Notes:

– County official maps – see General Municipal Law, Sec. 239-g to 239-k.

– Approval of plats related to roads or drainage systems shown on county official map – see General Municipal Law, Sec. 239-k.

– To constitute a dedication there must not only be an offer and acceptance, but there must be a formal opening of the street by the public authorities or a user (*Bayer vs. Pugsley*, 13 Misc. 2d 610; aff'd. 7 A.D. 2d 828).

§ 83-a Exemption of lots shown on approved subdivision plats

Zoning ordinances adopted or amended, increasing lot areas or dimension, not to affect certain subdivision plats previously approved and filed

1. Notwithstanding any inconsistent provision of this chapter or of any general, special or local law, the provisions of a zoning ordinance hereafter adopted, and the provisions of a change or amendment hereafter adopted to a zoning ordinance, which provisions establish or increase lot areas, lot demensions which are greater than or in excess of the lot areas or lot dimensions of the lots shown and delineated on a subdivision plat of land into lots for residential use and which said subdivision plat also shows and delineates one or more new streets, roads or highways in addition to lot lines and dimensions of the lots thereon delineated and which said subdivision plat has been duly approved by the planning board, if any, of the city in which the land shown on said plat is situate, or approved by such other board or officer, if any, of such city, vested with authority to approve subdivision plats, and duly filed in the office of the recording officer of the county in which the land shown on said subdivision plat is situate, or which provisions establish or increase side, rear or front yard or set back requirements in excess of those applicable to building plats under the provision of the zoning ordinance, if any, in force and effect at the time of the filing of the said subdivision plat, shall not, for the period of time prescribed in subdivision two of this section, be applicable to or in any way affect any of the lots shown and delineated on such subdivision plat.

Periods of exemption of such plats

2. If at the time of the filing of the subdivision plat referred to in subdivision one of this section there was in the city both a zoning ordinance and a planning board vested with authority to approve subdivision plats, then the exemption provided for in such subdivision shall apply for a period of three years after the filing of the subdivision plat. If at the time of the filing of the subdivision plat referred to in subdivision one of this section there was a zoning ordinance in effect in the city but there was no planning board in said city vested with authority to approve subdivision plats, then the exemption provided for in such subdivision shall apply for a period of two years after the filing of the subdivision plat. If at the time of the filing of the subdivision plat referred to in subdivision one of this section there was no zoning ordinance in the city but there was a planning board vested with authority to approve subdivision plats, then the exemption provided for in such subdivision shall apply for a period of two years after the filing of the subdivision plat. If at the time of the filing of the subdivision plat referred to in subdivision one of this section there was no zoning ordinance in the city and no planning board vested with authority to approve subdivision plats, then the exemption provided for in such subdivision shall apply for a period of one year after the filing of said subdivision plat.

Three-year exemption

Two-year exemption

One-year exemption

§ 37. Planning board, changes in zoning regulations

Authority of planning board, simultaneously with plat approval, to modify provisions of zoning ordinance if so authorized

The body creating said planning board is hereby authorized by ordinances or resolution applicable to the zoning regulations of such city or any portion of such zoning regulations, to empower it, simultaneously with the approval of any such plat either to confirm the zoning regulations of the land so platted as shown on the official zoning maps of the city or to make any reasonable change therein, and such board is hereby empowered to make such change. The owner of the land shown on the plat may submit with the plat a proposed building plan indicating lots where group houses for residences or apartment houses or local stores and shops are proposed to be built. Such building plan shall indicate for each lot or proposed building unit the maximum density of population that may exist thereon and the minimum yard requirements. Such plan, if approved by the planning board, shall modify, change or supplement the zoning regulations of the land shown on the plat within the limitations prescribed by such legislative body in said ordinance or resolution. Provided that for such land so shown there shall not be a greater average density of population or cover of the land with buildings than is permitted in the district wherein such land lies as shown on the official zoning map. Such building plan shall not be approved by the planning board unless in its judgement the appropriate use of adjoining land is reasonably safeguarded and such plan is consistent with the public welfare. Before the board shall make any change in the zoning regulations there shall be a public hearing preceded by the same notice as in the case of the approval of the plat itself. A written notice of any proposed change or amendment affecting property within the protectively zoned area of a housing project authorized under the public housing law, as such area is shown on an approved zoning map filed with the officer charged with enforcement of zoning regulations, shall be given to the housing authority erecting or owning the project and to the government providing financial aid or assistance thereto at least ten days prior to the date of such public hearing. A written notice of any proposed change or amendment affecting property within five hundred feet of the boundaries of any city, village, town or county, shall be given, in the case of a city, village or town to the clerk of such city, village or town, and in the case of a county, to the clerk of the board of supervisors or other person performing like duties. Such city, village, town or county shall have the right to appear and to be heard at such public hearing with respect to any such proposed change or amendment, but shall not have the right of review by a court as hereinafter provided. On the filing of the plat in the office of the county clerk or registrar such changes, subject, however, to review by court as hereinafter provided, shall be and become part of the zoning regulations of the city, shall take the place of any regulations established by the board of estimate or other legislative authority of the city, shall be enforced in the same manner and shall be similarly subject to change.

Submission of proposed building plan; contents of building plan

Limitations

Public hearing

Written notice of proposed change to housing authority, and municipalities affected

Effect of filing of plat

Notes:

– Notice of certain proposed municipal zoning actions to be submitted to county, metropolitan or regional planning agency – see General Municipal Law, 239-m.

§ 38. Boards of appeal

Right of review by aggrieved persons

Any person or persons, jointly or severally aggrieved by any decision of the planning board concerning such plat or the changing of the zoning regulations of such land, or any officer, department, board or bureau of the city, may obtain a review in the manner provided by the civil practice law and rules provided the proceeding is commenced within thirty days after the filing of the decision in the office of the board.

30-day limitation

Stay of proceedings

Commencement of the proceeding shall stay proceedings upon the decision appealed from.

The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs

Costs shall not be allowed against the planning board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

Preference over other civil actions

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

Notes:

– Where entire property or plaintiff has been included in the city's official map for construction of a proposed highway and plaintiff purchased the premises for the purpose of erecting thereon an apartment building and had applied to the zoning board of appeals for a building permit but such application had been denied and no compensation had been paid to plaintiff, resolution and official map of the city constituted such deprivation as amounted to an unconstitutional interference with the vested rights of plaintiff's property and was void (*Roer Construction Corp. vs. City of New Rochelle*, 207 Misc. 46).

Official maps

§ 26. Official map, establishment

Authority to establish official map

Contents of map

Map to be final and conclusive with respect to streets, parks and drainage systems shown thereon

Purpose of official map

Filing

Every city by ordinance or resolution of the legislative body which has the authority to lay out, adopt and establish streets, highways and parks may establish an official map of the city showing the streets, highways and parks theretofore laid out, adopted and established by law. Drainage systems may also be shown on this map. Such map is to be deemed to be final and conclusive with respect to the location and width of streets, highways, drainage systems and the location of parks shown thereon. Such official map is hereby declared to be established to conserve and promote the public health, safety and general welfare. Said ordinance or resolution shall make it the duty of some appropriate official or employee of said city at once to file with the clerk or register of the county or counties in which said city is situated a certificate showing that the city has established an official map.

Notes:

- For general information on official maps, see Bibliography Item 19.
- An official city map need not be established. Where such map is established, however, a certificate must be filed in the office of the county clerk (14 Op. St. Compt. 431).
- Adoption of "official" map laws is a grave step with respect to the property rights of the freeholders of a municipality. It is essential that the scheme be comprehensive and scrupulously followed (*Di Biasi vs. City of New York*, 19 A.D. 2d 323, aff'd 14 N.Y. 2d 711).

§ 29. Official map, changes

Authority to change or add to official map

Notice and hearing

Referral to planning board for report

Such legislative body is authorized and empowered, whenever and as often as it may deem it for the public interest, to change or add to the official map of the city so as to lay out new streets, highways or parks, or to widen or close existing streets, highways or parks. Drainage systems may also be shown on this map. At least five days' notice of a public hearing on any proposed action with reference to such change in the official map shall be published at least once in an official publication of said city or in a newspaper of general circulation therein. Before making such addition or change the matter shall be referred to the planning board for report thereon, but if the planning board shall not make its

Effect of changes

report within thirty days of such reference, it shall forfeit the right further to suspend action. Such additions and changes when adopted shall become a part of the official map of the city, and shall be deemed to be final and conclusive with respect to the location of the streets, highways and parks shown thereon.

Changes in streets and highways pursuant to other provisions of law deemed to be change or addition to official map

The layout, widening or closing, or the approval of the layout, widening or closing of streets, highways or parks by the city under provisions of law other than those contained in this article shall be deemed to be a change or addition to the official map, and shall be subject to all the provisions of this article.

Notes:

– City council's adoption or revision of general map does not obligate city to commence condemnation proceedings to acquire land in bed of street as shown on map nor compel city to open street shown thereon until council decides that it is actually needed (*Headley vs. City of Rochester,* 272 N.Y. 197).

§ 35. Permits for building in bed of mapped streets.

Purpose

No permit to be issued for any building in bed of street shown on official map or plan

For the purpose of preserving the integrity of such official map or plan no permit shall hereafter be issued for any building in the bed of any street or highway shown or laid out on such map or plan, provided, however, that if the land within such mapped street or highway is not yielding a fair return on its value to the owner, the board of appeals or other similar board in any city which has established such a board having power to make variances or exception in zoning regulations shall have power in a specific case by the vote of a majority of its members to grant a permit for a building in such street or highway which will as little as practicable increase the cost of opening such street or highway, or tend to cause a change of such official map or plan, and such board may impose reasonable requirements as a condition of granting such permit, which requirements shall inure to the benefit of the city. Before taking any action authorized in this section, the board of appeals or similar board shall give a hearing at which parties in interest and others shall have an opportunity to be heard. At least fifteen days notice of the time and place of such hearing shall be published in an official publication of said city or in a newspaper of general circulation therein. Any such decision shall be subject to review by certiori order issued out of a court of record in the same manner and pursuant to the same provisions as in appeals from the decisions of such board upon zoning regulations.

Authority to vary terms of section under certain circumstances and to impose conditions

Notice, hearing, publications

Review

Granting of permit where proposed street widening or extension has been shown on official map for ten years

Where a proposed street widening or extension has been shown on such official map or plan for ten years or more and the city has not acquired title thereto, the city may, after a hearing on notice as hereinabove provided, grant a permit for a building and/or structure in such street or highway and shall impose such reasonable requirements as are necessary to protect the public interest as a condition of granting such permit, which requirements shall inure to the benefit of the city.

Notes:

- There is little doubt that an objective which seeks to achieve better city planning falls fully within the concept of promoting the general welfare (*Rochester Business Institute Inc. vs. City of Rochester*, 25 A.D. 2d 97).
- As in all matters dealing with ordinances and statutes, the court must so construe the official map law as to sustain its constitutionality in a given situation if it is possible to do so (*Rochester Business Institute Inc. vs. City of Rochester*, 25 A.D. 2d 97).

§ 35-a Limitation of time for revocation of permit

Action to revoke permit on ground that building is in bed of mapped street must be commenced within 15 years

Extension of time

Effect of failure to commence action

An action or proceeding to revoke a building permit on the ground that the building erected pursuant thereto stands wholly or partly within the bed of any street or highway shown on the official map or plan of a city must be commenced within fifteen years from the time of the issuance of such permit; but if at the time this act takes effect more than fourteen years have elapsed since the time of the issuance of the permit, an action or proceeding to revoke the permit on such ground must be commenced within one year from the time this act takes effect. If no action or proceeding is commenced within the time limited, the permit shall be deemed as valid as if it had been issued pursuant to the provisions of section thirty-five of this chapter.

§ 36. Municipal improvements in streets, buildings not on mapped streets.

No public municipal street utility or improvement to be constructed in city of less than one million unless it is public street shown on official map

No permit to be issued for any building unless access street suitably improved is shown on official map

Performance bond in lieu of improvement

1. A city having a population of less than one million. No public municipal street utility or improvement shall be constructed by any city having a population of less than one million in any street or highway until it has become a public street or highway and is duly placed on the official map or plan. No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plan, which street or highway shall have been suitably improved to the satisfaction of the planning board in accordance with standards and specifications approved by the appropriate city departments as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street or highway or alternately that a performance bond sufficient to cover the full cost of such improvement as estimated by such board shall be furnished to the city by the owner. Such performance bond shall be issued by a bonding or surety company approved by the corporation counsel of the city, or by the owner with security acceptable to the legislative body, and shall also be approved by such corporation counsel as to form, sufficiency and manner of execution. The term, manner of modification and method of enforcement of such bond shall be determined by the planning board in substantial conformity with section thirty-three of this article. Where the enforce-

Variance procedure in event of unnecessary hardship or practical difficulty

ment of the provisions of this section would entail practical difficulty or unnecessary hardship, and where the circumstances of the case do not require the structure to be related to existing or proposed streets or highways, the applicant for such a permit may appeal from the decision of the administrative officer having charge of the issue of permits to the board of appeals or other similar board in any city which established a board having power to make variances or exceptions in zoning regulations, and the same provisions are hereby applied to such appeals and to such board as are provided in cases of appeals on zoning regulations. The board may in passing on such appeal make any reasonable exception and issue the permit subject to conditions that will protect any future street or highway layout. Any such decision shall be subject to review under the provisions of article seventy-eight of the civil practice law and rules.

Procedure relating to cities of one million or more

2. A city having a population of one million or more. No public municipal street utility or improvement shall be constructed by any city having a population of one million or more in any street or highway until it has become a public street or highway and is duly placed on the official map or plan. No certificate of occupancy shall be issued in such city for any building unless a street or highway giving access to such structure has been duly placed on the official map or plan, which street or highway shall have been suitably improved to the satisfaction of the department of highways of the city in accordance with standards and specifications approved by such department as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street or highway, or, alternately, unless the owner has furnished to the department of highways of such city a performance bond naming the city as obligee, approved by such department, to the full cost of such improvement as estimated by such department, or other security approved by such department, that such improvement will be completed within the time specified by such department. If such improvement has not been installed within the time specified by such department, such department may declare such performance bond or other security to be in default and shall collect, in the name of the city, the sum remaining payable thereunder. Upon receipt of the proceeds thereof, the city shall install such improvement. If the cost of such improvement exceeds the sum remaining payable under such bond or other security, the owner shall be liable for and shall pay to the city, the amount of such excess. Where the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, and where the circumstances of the case do not require the structure to be related to existing or proposed streets or highways, the applicant for such a certificate of occupancy may appeal from the decision of the administrative officer having charge of the issuance of certificates of occupancy to the board of standards and appeals or other similar board of such city having power to make variances or exceptions in zoning regulations, and the same provisions are hereby applied to such appeals and to such board as are provided in cases of appeals on zoning regulations. The board may in passing on such appeal make any reasonable exception and issue the certificate of occupancy subject to conditions that will protect any

No certificate of occupancy to be issued unless access street has been placed on official map

Performance bond

Variance procedure

future street or highway layout. Any such decision shall be subject to review under the provisions of article seventy-eight of the civil practice act.

No permit to be granted for erection of building unless liability policy furnished

No permit shall be granted for the erection of any building or structure in such city unless the owner has furnished to the commissioner of highways of such city a policy of liability insurance, marked paid, in such amounts as may be fixed by such department, insuring, indemnifying and saving the city harmless from any claims, suits, demands, causes of action and judgements by reason of personal injuries sustained by any person or persons, including death, and from any claims, suits, demands, causes of action and judgements for damages to property, occurring on any such street or highway giving access to such structure, up to the date of the issuance of the certificate of occupancy or up to the date of the completion of the improvement of such street or highway as required by or pursuant to this section, whichever is later. In the event that the owner is covered by such a policy of liability insurance, the department of highways may accept a certificate of endorsement extending such policy to include and cover the city.

Every permit to contain statement that no certificate of occupancy to be issued unless access street suitably improved is shown on official map or performance bond furnished

Every permit issued for the erection of any such building or structure shall contain a statement that no certificate of occupancy will be issued with respect to such building or structure unless a street or highway giving access to such structure has been duly placed on the official map or plan, which street or highway shall have been suitably improved to the satisfaction of the department of highways of the city in accordance with standards and specifications approved by such department as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street or highway or, alternately, unless the owner has furnished to the department of highways a performance bond naming the city as obligee, approved by such department, sufficient to cover the full cost of such improvement as estimated by such department, or other security approved by such department, that such improvement will be completed within the time specified by such department.

Notes:

– The purpose of this statute is to insure and provide reasonable means as coping with fires and other emergencies. The statute does not require any particular form of physical access, merely any reasonable means (*Matter of Turner vs. Calgi*, 12 Misc. 2d 1026).

Other provisions

§ 39. Separability clause

If any part or provision of this article or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgement shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgement shall have been rendered and shall not affect or impair the validity of the remainder of this article or the application thereof to other persons or circumstances and the legislature hereby declares that it would have enacted this article or the remainder thereof had the invalidity of such provision of application thereof been apparent.

from the TOWN LAW

Planning boards

Sec. 271. Planning board, creation and appointment

Power to create; number of members; power to remove; compensation

1. The town board of each town is hereby authorized and empowered to appoint a planning board of five members or seven members in the discretion of the board, and shall have authority to remove any member of such planning board for cause and after public hearing. The town board may also provide for compensation to be paid to the members of the planning board. Of the members first appointed to a planning board consisting of five members, one shall hold office for the term of one year, one for the term of four years and one for the term of five years, from and after his appointment. Their successors shall be appointed for a term of five years from and after the expiration of the terms of their predecessors in office. Of the members first appointed to a newly created planning board consisting of seven members, one shall hold office for the term of one year, one for the term of two years, one for the term of three years, one for the term of four years, one for the term of five years, one for the term of six years and one for the term of seven years after his appointment. Where the membership of an existing planning board is increased as authorized by the provisions of this section as amended, one of the new members shall be appointed for a term of six years and the other for a term of seven years, such terms to commence on the same calendar day of the year as the original appointments and thereafter upon the expiration of the term of each member, his reappointment or the appointment of his successor shall be for a term of seven years. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by the town board by appointment for the unexpired term.

Terms of office

Filling of vacancy

Additional member in certain agricultural towns

2. Notwithstanding any inconsistent provision of this chapter or of any general, special or local law, the town board in any town in which a planning board has heretofore been or may hereafter be created may, if at least twenty per cent of the area of such town is devoted to agricultural pursuits, appoint an additional member to such planning board, for a term of five years from and after his appointment. If the town board determines to appoint such additional member, he shall be a person who derives more than one-half of his annual income from agricultural pursuits. As used in this subdivision, the term "agricultural pursuits" means the growing, producing, processing or selling of the products of agriculture.

Notes:

- For town participation in establishment of metropolitan, county and regional planning boards, see General Municipal Law, Sec. 239-b et seq.
- An individual may be a member of both a town and county planning board (1968 Atty. Gen. (Inf.) 379).
- A town board, which has established a planning board, may abolish it at any time (6 Op. St. Compt. 39).
- For a discussion of incompatibility of office and conflict of interest imposing bars on planning board membership, see Bibliography Item 4.

Sec.272. Planning board, officers, employees and expenses

Appointment of chairman

Adoption of rules and regulations; Public hearing and approval of town board

Employment of staff; expenses; appropriations

Town charge

The town board shall designate a member of said planning board to act as chairman thereof, or on failure so to do, the planning board shall elect a chairman from its own members. The planning board may adopt rules and regulations in respect to procedure before it and in respect to any subject matter over which it has jurisdiction under this article or any other statute, after public hearing by the planning board and subject to the approval of the town board. The planning board shall have power and authority to employ experts, clerks and a secretary, and to pay for their services and such other expenses as may be necessary and proper, not exceeding in all the appropriation that may be made therefor by the town board for such planning board. The town board is hereby authorized and empowered to make such appropriation as it may see fit for such expenses, provided, however, that in a town containing one or more villages or parts thereof the amount of the appropriation shall be the estimated charges and expenses less fees if any collected; such charges and expenses shall be a charge upon the taxable property of that part of the town outside of incorporated villages and shall be assessed, levied and collected therefrom in the same manner as other town charges.

Notes:

- Notice of public hearing required by this section need not contain full text of proposed rules and regulations (10 Op. St. Compt. 145).
- Regulations adopted by town planning board and approved by town board have force of legislative enactment. (*Villa-Laken Corp. vs. Planning Board of Town of Eastchester*, 138 N.Y.S. 2d 362).
- Town planning boards are authorized to appoint experts, clerks and a secretary and to pay them within the appropriation therefore. (1968 Atty. Gen. (Inf.), March 11).

Sec.274. Planning board, reports on matters referred to it

Authorization by town board

Referral of matters to planning board; provision for withholding of final action pending board report

The town board may by general or special rule provide for the reference of any matter or class of matters, other than those referred to in section two hundred seventy-two of this article, to the planning board before the final action thereon by the body or officer of said town having final authority thereon with or without the provision that final action thereon shall not be taken until said planning board has submitted its

report thereon, or has had a reasonable time to be fixed by the town board in said rule to submit the report.

Authority from town board, to approve street or highway changes in filed subdivision plats and other street changes

The town board may by resolution authorize and empower the planning board to approve or disapprove (a) changes in the lines of existing streets, highways or public areas shown on subdivision plats or maps filed in the county clerk's office in the county in which such town is located, (b) the laying out, closing off or abandonment of streets, highways or public areas under the provisions of the town and highway laws, within that part of the town outside the limits of any incorporated city or village. Where the town board has authorized such planning board to approve or disapprove such matters, final action thereon by the body or officer of said town having final authority thereon shall not be taken until such planning board has had a reasonable time to submit its report thereon. Nothing contained in this section shall be construed as limiting final action or the authority now possessed by law of any body or officer of the said town.

Withholding of final action pending planning board report

Notes:

- Application for site plan approval was governed by this section and not Section 276 of the Town Law, which involves subdivision plats. (*Thurman vs. Snowden,* 28 A.D. 2d 705).
- A planning board should keep a record of its meetings (7 Op St. Compt. 236).

§ 275. Planning board, general reports

Authority to make investigations, reports, etc.

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

Sec.272-a. Master Plan

Authority to prepare master plan

The planning board may prepare and change, a comprehensive master plan for the development of the entire area of the town, which master plan shall show desirable street, bridges and tunnels and the approaches thereto, viaducts, parks, public reservations, roadways in parks, sites for public buildings and structures, zoning districts, pierhead and bulkhead lines, waterways and routes of public utilities and such other features existing and proposed as will provide for the improvement of the town and its future growth, protection, and development, and will afford adequate facilities for the public housing, transportation, distribution, comfort, convenience, public health, safety and general welfare of its population.

Features of master plan

Notice and public hearing

Such planning board may advertise and hold public hearings when it desires, which hearings shall be advertised in a newspaper of general

circulation in said town at least ten days before each such hearing.

Filing of master plan

The master plan and all modifications thereof shall be on file in the office of the planning board, and the planning board shall file certified copies in the office of the town engineer or town highway superintendent and the town clerk.

Notes:

- There is nothing in this section which requires, or even implies, that a board of zoning appeals should review or approve the master plan, or any changes in such plan as devised by the planning board. (23 Op. St. Compt. 225).
- The master plan, although it may contain zoning recommendations, is not really an official town pronouncement, as is the official map or the zoning ordinance itself. Unless and until the town board officially incorporates the master plan into an ordinance to give it the force of law, the master plan remains only an advisory document or documents and is not capable of enforcement. (23 Op. St. Compt. 226).
- For town participation in metropolitan, regional or county master plan, see General Municipal Law, Sec. 239-d.
- For a discussion of the elements of a comprehensive plan, see Bibliography Item 5 and 15.
- For information on available financing and technical assistance in preparing a comprehensive plan, see Bibliography Item 16.
- It is clear that from history of Article 16 of the Town Law that description "official map or plan" appearing in Section 279 was not intended to refer to or include the "master plan" authorized by Section 272-a. (*Walder vs. Cook,* 30 A.D. 2d 917, aff'd. 25 N.Y. 2d 661).

Zoning

§ 261. Grant of power; appropriations for certain expenses incurred under this article.

Purposes – exercise of police power

For the purpose of promoting the health, safety, morals, or the general welfare of the community, the town board is hereby empowered by ordinance to regulate and restrict 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 of other purposes; provided that such regulations shall apply to and affect only such part of a town as is outside the limits of any incorporated village or city; provided further, that all charges and expenses incurred under this article for zoning and planning shall be a charge upon the taxable property of that part of the town outside of any incorporated village or city. The town board is hereby authorized and empowered to make such appropriation as it may see fit for such charges and expenses, provided however, that such appropriation shall be the estimated charges and expenses less fees, if any, collected, and provided, that the amount so appropriated shall be assessed, levied and collected from the property outside of any incorporated village or city. Such regulations may provide that a board of appeals may determine and vary their application in harmony with their general purpose and intent, and in accord dance with general or specific rules therein contained.

Scope of grant of power

Part of town affected

Appropriations

Authority to vary regulations

Notes:

- Multiple dwellings:
  1. Heights, bulk, open spaces – Multiple Dwelling Law Sec. 26.
  2. Two or more buildings on same lot – Multiple Dwelling Law, Sec. 28.
- A town board, in exercising its legislative power to zone property in the town, must consider the overall effect on the area zoned and on adjacent areas. (*Hewlett vs. Town of Hempstead,* 3 Misc. 2d 945, aff'd. 1 A.D. 2d 954).
- Zoning ordinances, restricting free use of property by owner, being in derogation of the common law, should be strictly construed (*Hinna vs. Board of Appeals of Town of Hempstead,* 11 Misc. 2d. 349).
- Town zoning board may exercise power to make zoning regulations only to promote health, safety, morals or general welfare of community (*Connell vs. Town of Granby,* 12 A.D. 2d 177).
- Local legislative body's judgment in zoning case must be allowed to control if classification is fairly debatable and courts may not interfere unless local body's determination is arbitrary (*Thomas vs. Town of Bedford,* 11 N.Y. 2d. 428).
- The dominant design of any zoning ordinance is to promote the general welfare subject always to the constitutional limitation that it must not be employed arbitrarily or unreasonably (*Style Rite Homes, Inc. vs. Zoning Board of Appeals of Town of Chili,* 54 Misc. 2d. 866).

§ 262. Districts

Division of town into districts

For any or all of said purposes the town board may divide that part of the town which is outside the limits of any incorporated village or city into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings, throughout such district but the regulations in one district may differ from those in other districts.

Uniformity of regulations within each district

Notes:

- Town district must be created in light of municipal or town objective as opposed to an exclusively district purpose (*Connell vs. Town of Granby*, 12 A.D. 2d 177).
- A zoning ordinance may provide for various categories of business districts, each permitting operation of certain types of businesses therein (11 Op. St. Compt. 364).

§ 263. Purposes in view

Regulations in accordance with comprehensive plan

Specific purposes

Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets, to secure safety from fire, flood, panic and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

Considerations to character of district, suitability, etc.

Notes:

- Recommendation of metropolitan, regional or county planning board of comprehensive zoning plan to cities, towns and villages – see General Municipal Law 239-d (5).
- A "comprehensive plan" within the requirement of this section that zoning regulations shall be made in accordance with a comprehensive plan is not necessarily a written document; it is an underlying purpose to control land uses for benefit of the whole community based upon consideration of the community's problems and applying the ordinance itself or a general policy to obtain a uniform result (*Walus vs. Millington*, 49 Misc. 2d 104).

  For a discussion of interim zoning to preserve the status quo pending the adoption or amendment of an ordinance furthering the comprehensive plan, see Bibliography Item 2.
- For a discussion of spot zoning, see Bibliography Item 10.

§ 266. Zoning commission

Appointment by town board

Purposes

In order to avail itself of the powers conferred by this article, such town board shall appoint a commission to be known as the zoning commission to recommend the boundaries of the various original districts and

Public hearings and preliminary report

Final report

appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report and such town board shall not hold its public hearing or take action until it has received the final report of such commission. Where a planning board already exists it may be appointed as the zoning commission.

Notes:

- The town board has specific authority under this section to appoint the members of the town planning board to the zoning commission.
- The town board may not appoint one of its own members to the zoning commission (10 Op. St. Compt. 350).

§ 264. Method of procedure

Authority of town board

Notice and public hearing

Written notice of zoning changes within housing projects, or within 500 feet of boundaries of county, city, town, village, State park or parkways

The town board shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established and enforced, and from time to time amended, supplemented or changed. However, no such regulation, restrictions or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least ten days' notice of the time and place of such hearing shall be published in a paper of general circulation in such town and a written notice of any proposed change or amendment affecting property within the protectively zoned area of a housing project authorized under the public housing law, as such area is shown on approved zoning map filed with the town officer charged with enforcement of zoning regulations, or property within five hundred feet of the boundaries of any city, village, town, county, state park or parkways shall be given, in the case of a housing project to the housing authority erecting or owning the project and to the government providing financial aid or assistance thereto, in the case of any state park or parkway, to the regional state park commission having jurisdiction over such state park or parkway, in the case of a city, village or town to the clerk of such city, village or town, and in the case of a county, to the clerk of the board of supervisors or other person performing like duties, at least ten days prior to the date of such public hearing. Such city, village, town or county shall have the right to appear and to be heard at such public hearing with respect to any such proposed change or amendment, but shall not have the right of review by a court as hereinafter provided.

Zoning ordinance or amendments and map to be entered in minutes of town board

Publication

Every zoning ordinance and every amendment to a zoning ordinance (excluding any map incorporated therein) adopted pursuant to the provisions of this chapter shall be entered in the minutes of the town board and a copy thereof (exclusive of any map incorporated therein) shall be published once in a newspaper published in the town, if any, or in such newspaper published in the county in which said town may be located having a circulation in such town, as the town board may designate, and affidavits of the publication thereof shall be filed with the

Effective date of ordinance

town clerk. Such ordinance shall take effect ten days after such publication, but such ordinance or amendment shall take effect from the date of its service as against a person served personally with a copy thereof, certified by the town clerk under the corporate seal of the town; and showing the date of its passage and entry in the minutes.

Notes:

- Notice of certain proposed municipal zoning actions to be submitted to county, metropolitan or regional planning agency – see General Municipal Law, 239-m. This requirement is mandatory and failure to follow it will result in an invalid ordinance although no reference is made to the requirement in the Town Law.
- There is no authority for a town to conduct a referendum on a proposed zoning ordinance (10 Op. St. Comp. 329).
- While the statute does not specify a particular form of notice, it must be intended to reasonably apprise the public of the essence of the regulations to be adopted, so that members of the public can appear at the hearing and present their views to the board either in favor of or in opposition to the regulation (*Village of Sands Point vs. Sands Point Day School,* 2 Misc. 2d. 885; aff'd. 2 A.D. 2d 769).
- Where no zoning map was entered in the minutes of the town board, or incorporated in the ordinance by specific description, the amendment to the zoning ordinance was void (*Soron Realty Co., Inc. vs. Town of Geddes,* 23 A.D. 2d 165).
- Every property owner is entitled to know with precision in which district his property has been placed (*Keeney vs. Village of Le Roy,* 22 A.D. 2d 159).
- Attempted original districting of area was ineffective where town had not complied with requirement of publication pursuant to this section (*Barry vs. Town of Glenville,* 8 N'Y' 2d 1153).
- Local laws relating to zoning changes, adopted without post-publication thereof, *may* be subject to attack as unconstitutional (Op. St. Compt. 69-838).

§ 265. Changes

Amendment, modification, repeal, etc. by ordinance

Procedure in event of protest

Such regulations, restrictions and boundaries may from time to time be amended, supplemented, changed, modified or repealed by ordinance. In case, however, of a protest against such change signed by the owners of twenty per centum or more, either of the area of the land included in such proposed change, or of that immediately adjacent extending one hundred feet therefrom or of that directly opposite thereto, extending one hundred feet from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of at least three-fourths of the members of the town board. The provisions of the previous section relative to public hearings and official notice shall apply, equally to all changes or amendments.

Entry in minutes, publication

Changes, amendments or supplements made to any zoning ordinance (excluding any map incorporated therein) adopted pursuant to the provisions of this chapter shall be entered in the minutes of the town board and a copy thereof (exclusive of any map incorporated therein) shall be published once in a newspaper published in the town, if any, or in such newspaper published in the county in which such town may be located having a circulation in such town, as the town board may designate, and affidavits of the publication thereof shall be filed with the town clerk. Such ordinance shall take effect ten days after such publication, but such ordinance shall take effect from the date of its service as against a person served personally with a copy thereof, certi-

Effective date

fied by the town clerk under the corporate seal of the town; and showing the date of its passage and entry in the minutes.

Notes:

- Notice of certain proposed municipal zoning actions to be submitted to county, metropolitan or regional planning agency, see General Municipal Law 239-m. This requirement is mandatory; failure to follow it will result in an invalid amendment, even though the Town Law make no reference to the requirement.
- A town may not repeal a town zoning ordinance without holding a public hearing thereon (15 Op. St. Compt. 38).
- The *entire* amending ordinance and not a summary thereof must be published (8 Op. St. Compt. 244).

§ 267. Board of appeals

Appointment of members; compensation, staff, expenses

1. Such town board shall appoint a board of appeals consisting of five members, shall designate its chairman and may also provide for compensation to be paid to said members, experts, clerks and a secretary and provide for such other expenses as may be necessary and proper, not exceeding in all the appropriations that may be made by the town board for such board of appeals. No person who is a member of the town board shall be eligible for membership on such board of appeals. Of the members of the board first appointed, one shall hold office for the term of one year, one for the term of two years, one for the term of three years, one for the term of four years, one for the term of five years from and after his appointment; provided, however, that such town board may, by resolution, increase the number of members of the board to seven, and provide for their compensation and thereafter such additional members shall be first appointed for terms of two and four years respectively.

Member of town board precluded from membership

Terms of office, additional members

Their successors, including such additional members as may be appointed by the town board, shall be appointed for the term of five years from and after the expiration of the terms of their predecessors in office. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by the town board by appointment for the unexpired term. The town board shall have the power to remove any member of the board for cause and after public hearing. All meetings of the board of appeals shall be held at the call of the chairman and at such other times as such board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of such board shall be open to the public. Such board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examination and other official actions. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the board shall immediately be filed in the office of the town clerk and shall be a public record.

Filling of vacancy

Removal of member

Meetings

Filing of decisions

Powers and duties of board of appeals

2. Such board of appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of any ordinance

adopted pursuant to this article. It shall also hear and decide all matters referred to it or upon which it is required to pass under any such ordinance. The concurring vote of a majority of the members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance. Such appeal may be taken by any person aggrieved, or by any officer, department, board or bureau of the town.

Majority vote

Appeal procedure

3. Such appeal shall be taken within such time as shall be prescribed by the board of appeals by general rule, by filing with the officer from whom the appeal is taken and with the board of appeals a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

Stay of proceedings, except if life or property is imperiled

4. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of appeals, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.

Notice and hearing

5. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give public notice thereof by the publication in the official paper of a notice of such hearing, at least five days prior to the date thereof, and shall, at least five days before such hearing, mail notices thereof to the parties, and to the regional state park commission having jurisdiction over any state park or parkway within five hundred feet of the property affected by such appeal, and shall decide the same within sixty days after the final hearing. Upon the hearing, any party may appear in person or by agent or by attorney.

Action by board

The board of appeals may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises and to that end shall have all the powers of the officer from whom the appeal is taken.

Power to grant variances – criteria

Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such ordinances, the board of appeals shall have the power in passing upon appeals, to vary or modify the application of any of the regulations or provisions of such ordinancing relating to the use, construction or alteration of buildings or structures, or the use of land, so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done.

Re-hearing

6. Upon motion initiated by any member and adopted by the unanimous vote of the members present, but not less than a majority of all the members, the board of appeals shall review at a re-hearing held upon notice given as upon an original hearing, any order, decision or determination of the board not previously reviewed. Upon such re-hearing, and provided it shall then appear that the rights vested prior thereto in per-

sons acting in good faith in reliance upon the order, decision or determination reviewed will not be prejudiced thereby, the board may, upon the concurring vote of all the members then present, reverse, modify or annul its original order, decision or determination.

Appeal to Supreme Court from decision of board

Time limit for appeal

7. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals or any officer, department, board or bureau of the town, may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceeding shall be instituted within thirty days after the filing of a decision in the office of the town clerk. The court may take evidence or appoint a referee to take such evidence as it may direct and report the same with his findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter. The court at a special term shall itself dispose of the cause on the merits, determining all questions which may be presented for determination.

Costs

8. Costs shall not be allowed against the board of appeals unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

9. All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

Appointment of referee to hear and report

10. If upon the hearing at a special term of the supreme court, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Notes:

- Notice of certain proposed municipal zoning actions to be submitted to county, metropolitan or regional planning agency, see General Municipal Law Sec. 239-m.
- Town zoning appeal board may act upon its own knowledge or make its own survey, provided it sets forth facts so found in decision (*Bettman vs. Michaelis,* 27 Misc. 2d. 1010).
- The town zoning board of appeals has no power to amend a zoning ordinance (18 Op. St. Compt. 124).
- Unlike variance, which involves varying a zoning ordinance, special permit deals with compliance with ordinance and imposes duty on zoning board of appeals to grant the permit once the applicant has complied with particular conditions specified in ordinance (*Krust vs. Hill,* 212 N.Y.S. 2d. 981).
- A variance is an authorization to use property for a purpose prohibited by the zoning ordinance; and a use which is authorized by a variance is not limited to a particular owner but runs with the land *(Balodis vs. Fallwood Park Homes,* 54 Misc. 2d. 936).
- Before the zoning board of appeals may grant a variance upon the ground of unnecessary hardship, the record must show that (1) the land in question connot yield a reasonable return if used only for a purpose allowed in that zone; (2) that the plight of the owner is due to unique circumstances and not to the general conditions in the neighborhood which may reflect the unreasonableness of the zoning ordinance itself; and (3) that the use to be authorized by the variance will not alter the essential character of the locality (*Otto vs. Steinhiber,* 282 N.Y. 75).
- Special hardship need not be established as a condition to granting of an area variance. It is sufficient if there be a showing of practical difficulty *(Ozolins vs. Horn,* 26 A.D. 2d. 555).
- Fact that a court may disagree with conclusion of zoning board of appeals is not sufficient to justify it in substituting its judgment for that of board (*Brush vs. Zoning Board of Appeals of Town of Huntington,* 57 Misc. 2d 751.
- A proceeding to review a decision of a zoning board of appeals may be maintained by owners of property in immediate vicinity, even though properties are over 500 yards away (*Mueller vs. Anderson,* 60 Misc. 2d 568).
- For general discussion of powers of zoning boards of appeals, variances and special permits, see Bibliography Item 14.
- With respect to area variances the basic rule which has evolved is that where the property woner will suffer significant economic injury by the application of an area standard contained in an ordinance, that standard can be justified only by a showing that the public health, safety and welfare will be served by upholding the application of the standard and denying the variance (*Matter of Fulling vs. Palumbo,* 21 N.Y. 2d. 30).
- Nothing in *Fulling vs. Palumbo* has changed the principle that a denial of an area variance will be upheld by the courts where the substandard condition results from the owner's own decision to subdivide his property in such a way as to create one or more substandard plots (*Matter of 113 Hillside Avenue Corp. vs. Zaino,* 27 N.Y. 2d. 258).

Subdivision control

Section 276 has been rewritten by Chapter 964 of the Laws of 1972. The new section becomes effective January 1, 1973. Until that time, the following language remains in effect.

§ 276. Approval of plats

Purposes

1. For the purpose of providing for the future growth and development of the town and affording adequate facilities for the housing, transportation, distribution, comfort, convenience, safety, health and welfare of its population such town board may by resolution authorize and empower the planning board to approve plats showing lots, blocks or sites, with or without streets or highways, and to conditionally approve preliminary plats, within that part of the town outside the limits of any incorporated city or village. For the same purposes and under the same conditions the town board may, by resolution, authorize and empower the planning board to pass and approve the development of plats already filed in the office of the clerk of the county in which such plat is located if such plats are entirely or partially undeveloped.

Authority of planning board to approve plats

Approval of plats already filed

2. When used in this article, the term "preliminary plat" means a drawing showing the salient features of a proposed subdivision submitted to the planning board for purposes of consideration prior to submission of the plat in final form; the term "plat" means a drawing, in final form, showing a proposed subdivision containing all information or detail required by this article or any other applicable state law or local law, ordinance, rule, regulation or resolution and, if modified, as a conditionally approved preliminary plat, such modification; and the term "conditional approval" of a preliminary plat means approval of the layout of the proposed subdivision as set forth in such preliminary plat, but subject to approval of the plat, in final form, in accordance with the provisions of subdivision four of this section.

Definitions: plat, preliminary plat, conditional approval

3. All plats shall be submitted to the planning board for approval in their final form provided, however, that where the planning board has been empowered to conditionally approve preliminary plats, the owner may submit or the planning board may require that he submit a preliminary plat for consideration. A preliminary plat shall be clearly marked "preliminary plat" and shall be of sufficient detail to apprise the planning board of the layout of the proposed subdivision. Within forty-five days after the time of submission of a preliminary plat, the planning board shall take action to conditionally approve, with or without modifications, or disapprove such preliminary plat and the ground of any modification required or the ground for disapproval shall be stated upon the

Submission of plats to planning board

Action by planning board

Effect of inaction by planning board; conditional approval; final plat submission

records of such planning board. Failure of the planning board to act within such forty-five day period shall constitute a conditional approval of the preliminary plat. If the final plat is not submitted within six months of the conditional approval of the preliminary plat, the planning board may refuse to approve the final plat.

Notice and hearing

4. A public hearing shall be held by the planning board within thirty days after the time of submission of a plat, in final form, for approval, which hearing shall be advertised in a newspaper of general circulation in such town at least five days before such hearing. The planning board may thereupon approve, modify and approve, or disapprove such plat.

Final approval

The approval required by this section, or the refusal to approve, shall take place within forty-five days from and after the time of the hearing for the approval or disapproval of the plat.

Effect of lack of hearing or timely disapproval; certificate of town clerk

In the event that such hearing shall not be held, or that such plat shall not have been disapproved after such hearing, within the time prescribed therefor, such plat shall be deemed to have been approved, and the certificate of the clerk of such town as to the date of submission or hearing for the approval or disapproval of the plat, as the case may be, and the failure to take action thereon within such time, shall be issued on demand and shall be sufficient in lieu of the written endorsement or other evidence of approval herein required. The ground of refusal of any plat submitted shall be stated upon the records of such planning board.

Filing of town planning board authority with county clerk

5. The clerk of every town which has authorized its planning board to approve plats showing lots, blocks or sites, with or without streets or highways, or the entire or partial development of plats already filed in the office of the clerk of the county in which such plats are located, or to conditionally approve preliminary plats, as provided in this article, shall immediately file a certificate of that fact with the clerk or register of the county in which such town is located.

Expiration of planning board approval or certificate of town clerk unless filed or recorded with county clerk within specified time

6. The approval by the planning board of a plat showing lots, blocks or sites, with or without streets or highways, or the approval by such board of the development of a plat or plats already on file in the office of the clerk of the county in which such plat or plats are situated, or the certificate of the town as to the date of the submission for which no hearing was duly held, or the date of the hearing for the approval or disapproval of such plat, as the case may be, and the failure of the planning board to take action thereon within the time prescribed, shall expire ninety days from the date of such approval or of such certificate, unless within such ninety day period such plat or a section thereof shall have been duly filed or recorded by the owner in the office of the county clerk or register. Prior to granting its approval, the town planning board may permit the plat to be subdivided into two or more sections and may impose such conditions upon the filing of the sections as it may deem necessary to assure the orderly development of the plat. Approval to the sections, subject to any conditions imposed by the board, shall be granted concurrently with the approval of the plat. If the owner shall file only a section of an approved plat within such ninety day period, such section shall encompass at least ten per cent of the total number of lots contained

Approval of plats by sections

in the approved plat and the approval of the remaining sections of the approved plat shall expire unless said sections are filed before the expiration of the exemption period to which such plat is entitled under the provisions of subdivision two of section two hundred sixty-five-a of this article. In the event the owner shall file only a section of such approved plat in the office of the county clerk or register, the entire approved plat shall be filed within thirty days of the filing of such section with the town clerk in each town in which any portion of the land described in the plat is situated.

Filing of entire plat with town clerk

7. Not withstanding the foregoing provisions of this section, the planning board may extend the time for filing and recording such plat, if in its opinion such intention is warranted by the particular circumstance thereof, for not to exceed two additional periods of ninety days each.

Extension of time for filing

Notes:

- Referral to county superintendent of highways and/or county planning agency of certain proposed subdivision plats – see General Municipal Law, Sec. 239, k and n.
- A town planning board has no authority to prescribe, on its own motion, requirements and procedures preliminary to the public hearing on a subdivision plat (16 Op. St. Compt. 144).
- Failure of planning board to take action on "preliminary plat," not in final form, was not tantamount to approval *(Pellillo vs. Fine,* 32 A.D. 2d. 788).
- Planning boards are not required to pass on parcels of land which are not subdivided into more than one lot or building site (19 Op. St. Compt. 352).
- A public hearing is mandatory following submission of a properly processed plat. The hearing may not be withheld by reason of town planning boards predisposition to disapprove *(Fisherman vs Arnzen,* 52 Misc. 2d. 329).
- The approval of a plat, its filing within the time required and action promptly taken in reliance on the approval vest in the developer the right to improve the subdivision in accordance with the regulations as they existed on the date the final plat is signed by the designated official *(Northbury Estates, Inc. vs. Long Island Lighting Company,* 47 Misc. 2d. 134).
- For a discussion of subdivision regulation enforcement, see Bibliography Item 3.

Effective January 1, 1973, the following language will be in force

§ 276. Approval of plats; development of filed plats

Purposes

Authority of planning board to approve plats

1. For the purpose of providing for the future growth and development of the town and affording adequate facilities for the housing, transportation, distribution, comfort, convenience, safety, health and welfare of its population, the town board may by resolution, authorize and empower the planning board to approve plats showing lots, blocks, or sites, with or without streets or highways, and to approve preliminary plats, within that part of the town outside the limits of any incorporated city or village. For the same purposes and under the same conditions, the governing body may by resolution authorize and empower the planning board to approve the development of plats already filed in the office of the county clerk or register of the county in which such plat is located if such plats are entirely or partially undeveloped. The term "undeveloped" shall mean those

Approval of plats already filed

plats where twenty percent or more of the lots within the plat are unimproved unless existing conditions, such as poor drainage, have prevented their development. The clerk of every town which has so authorized its planning board shall immediately file a certificate of that fact with the clerk or register of the county in which such town is located. When so authorized, a planning board may adopt such rules and regulations as it deems necessary, consistent with the provisions of this article, to approve such plats.

Definitions:

2. Definitions. When used in this article the following terms shall have the respective meanings set forth herein except where the context shows otherwise:

preliminary plat

(a) Preliminary plat – a preliminary plat is a drawing prepared in a manner prescribed by local regulation, showing the layout of a proposed subdivision including but not restricted to, road and lot layout and approximate dimensions, key plan, topography and drainage, all proposed facilities unsized, including preliminary plans and profiles, at suitable scale and in such detail as local regulation may require.

final plat

(b) Final plat – a final plat is a drawing prepared in a manner prescribed by local regulation, showing a proposed subdivision, containing in such additional detail as shall be provided by local regulation all information required to appear on a preliminary plat and the modifications if any, required by the planning board at the time of approval of a preliminary plat of such proposed subdivision if such preliminary plat has been so approved.

preliminary plat approval

(c) Preliminary plat approval – approval by a planning board of a preliminary plat is the approval of the layout of proposed subdivision as set forth in a preliminary plat, but subject to approval of the plat in final form in accordance with the provisions of subdivision seven of this section.

conditional approval of a final plat

(d) Conditional approval of a final plat – conditional approval by a planning board of a final plat is the approval of a final plat subject to conditions set forth by the planning board in a resolution conditionally approving such plat. Such conditional approval does not qualify a final plat for recording nor authorize issuance of building permits prior to the signing of the plat by a duly authorized officer of the planning board and recording of the plat in the office of the county clerk or register in accordance with provisions of this article.

final plat approval

(e) Final plat approval – final approval of a plat in final form is the signing of a final plat by a duly authorized officer of a planning board after a resolution granting final approval to the plat, or after conditions specified in a resolution granting conditional approval of the plat are

completed. Such final approval qualifies the plat for recording in the office of county clerk or register, in the county in which such plat is located.

Submission of plats to planning board

3. All plats shall be submitted to the planning board for approval in final form provided however, that where the planning board has been authorized to approve preliminary plats, the owner may submit or the planning board may require that he submit a preliminary plat for consideration. Such a preliminary plat shall be clearly marked "preliminary plat" and shall conform to the definition provided in this section. Within forty-five days after the receipt of such preliminary plat by the clerk of

Notice and hearing

the planning board the planning board shall hold a public hearing, which hearing shall be advertised at least once in a newspaper of general circulation in the town at least five days before such hearing. The planning board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such preliminary

Action by planning board

plat. Within forty-five days after the date of such hearing, the planning board shall approve with or without modification or disapprove such preliminary plat, and the ground of a modification if any, or the ground for disapproval shall be stated upon the records of the planning board. Notwithstanding the foregoing provisions of the subdivision the time in which a planning board must take action on such plat, may be extended by mutual consent of the owner and the planning board. When so approving a preliminary plat, the planning board shall state in writing modifications if any, as it deems necessary for submission of the plat in final form. Within five days of the approval of such preliminary plat it shall be certified by the clerk of the planning board as granted preliminary approval and a copy filed in his office and a certified copy mailed to the owner. Within six months of the approval of the preliminary plat the owner must submit the plat in final form. If such plat is not so submitted, approval of the preliminary plat may be revoked by the planning board. In the event a plan-

Effect of inaction

ning board fails to take action on a preliminary plat within the time prescribed therefor, such plat shall be deemed granted preliminary approval. The certificate of the clerk of the town as to the date of submission and the failure to take action within such prescribed time shall be issued on demand and shall be sufficient in lieu of written endorsement or other evidence of approval herein required.

Hearing on final plat

4. Within forty-five days of the submission of a plat in final form for approval by the planning board a hearing shall be held by the planning board, which hearing shall be advertised at least once in a newspaper of general circulation in the town at least five days before such hearing, provided however, that when a planning board deems the final plat to be in substantial agreement with a preliminary plat approved under subdivision

three of this section and modified in accordance with requirements of such approval if such preliminary plat has been approved with modification, the planning board may waive requirement for such public hearing. The planning board shall by resolution conditionally approve, conditionally approve with or without modification, disapprove, or grant final approval and authorize the signing of such plat, within forty-five days of its receipt by the clerk of the planning board if no such hearing is held, or in the event such hearing is held, within forty-five days after the date of such hearing. Notwithstanding the foregoing provisions of this subdivision, the time in which a planning board must take action on such plat, may be extended by mutual consent of the owner and the planning board. In the event a planning board fails to take action on a final plat within the time prescribed therefor, the plat shall be deemed approved and a certificate of the clerk of the town as to the date of submission and the failure to take action within such prescribed time shall be issued on demand and shall be sufficient in lieu of written endorsement or other evidence of approval herein required. Upon resolution of conditional approval of such final plat the planning board shall empower a duly authorized officer to sign the plat subject to completion of such requirements as may be stated in the resolution. Within five days of such resolution the plat shall be certified by the clerk of the planning board as conditionally approved and a copy filed in his office and a certified copy mailed to the owner including a certified statement of such requirements which when completed will authorize the signing of the conditionally approved final plat. Upon completion of such requirements the plat shall be signed by said duly authorized officer of the planning board. Conditional approval of a final plat shall expire within one hundred eighty days after the date of the resolution granting conditional approval unless such requirements have been certified as completed.

Waiver of hearing

Action by planning board

Conditional approval

5. Notwithstanding the foregoing provisions of this section, the planning board may extend the time in which a conditionally approved plat in final form must be submitted for signature, if in its opinion such intention is warranted by the particular circumstances thereof, for not to exceed two additional periods of ninety days each.

Extension of time

6. Prior to granting conditional or final approval of a plat in final form the town planning board may permit the plat to be subdivided into two or more sections and may in its resolution granting conditional or final approval state that such requirements as it deems necessary to insure the orderly development of the plat be completed before such sections may be signed by the duly authorized officer of the planning board. Conditional or final approval of the sections of a final plat, subject to any conditions imposed by the board, shall be granted concurrently with conditional or final approval of the plat.

Approval of sections

Time for filing approved plat

7. The signature of the duly authorized officer of the planning board constituting final approval by a planning board of a plat showing lots, blocks or sites, with or without streets or highways, or the approval by such board of the development of a plat or plats already filed in the office of the county clerk or register of the county in which such plat or plats are located if such plats are entirely or partially undeveloped, or the the certificate of the town as to the date of the submission of the final plat and the failure of the planning board to take action thereon within the time prescribed, shall expire within thirty days from the date of such approval, or from the date such certificate is issued, unless within such thirty day period such plat or a section thereof shall have been duly filed or recorded by the owner in the office of the county clerk or register. In the event the owner shall file only a section of such approved plat in the office of the county clerk or register, the entire approved plat shall be filed within thirty days of the filing of such section with the town clerk in each town in which any portion of the land described in the plat is situated. Such section shall encompass at least ten percent of the total number of lots contained in the approved plat and the approval of the remaining sections of the approved plat shall expire unless said sections are filed before the expiration of the exemption period to which such plat is entitled under the provisions of subdivision two of section two hundred sixty-five-a of this article.

§ 277. Approval of plats; additional requisites

Authority of planning board to require parks for playgrounds or other recreational purposes

1. Before the approval by the planning board of a plat showing lots, blocks or sites, with or without streets or highways, or the approval of a plat already filed in the office of the clerk of the county wherein such plat is situated if such plat is entirely or partially undeveloped, such plat shall also show in proper cases and when required by the planning board, a park or parks suitably located for playground or other recreational purposes. If the planning board determines that a suitable park or parks of adequate size can not be properly located in any such plat or is otherwise not practical, the board may require as a condition to approval of any such plat a payment to the town of a sum to be determined by the town board, which sum shall constitute a trust fund to be used by the town exclusively for neighborhood park, playground, or

Authority to require monetary payment in lieu of reservation of land

recreation purposes including the acquisition of property. In approving such plats the planning board shall require that the streets and highways shall be of sufficient width and suitable grade and shall be suitably located to accomodate the prospective traffic, to afford adequate light and air, to facilitate fire protection, and to provide access of fire-fighting equipment to buildings, and if there be an official map or master plan, they shall be coordinated so as to compose a convenient system conforming to the official map and properly related to the proposals shown by the planning board on the master plan; that where a zoning ordinance has been adopted by the town the plots shown on said plat shall at least comply with the requirements thereof; that the land shown on such plats shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood or other menace; that suitable monuments have been placed at such block corners and other necessary points as may be required by the board and the location thereof is shown on the map of such plat; and that the parks shall be of reasonable size for neighborhood playgrounds or other recreational uses; that all streets or other public places shown on such plats shall be suitably graded and paved and that street signs, sidewalks, street lighting standards, curbs, gutters, street trees, water mains, fire alarm signal devices including necessary ducts and cables or other connecting facilities, sanitary sewers and storm drains or combined sewers shall be installed all in accordance with standards, specifications and procedure acceptable to the appropriate town departments except as hereinafter provided, or alternatively that a performance bond sufficient to cover the full cost of the same as estimated by the planning board or other appropriate town departments designated by the planning board shall be furnished to the town by the owner. In the event that the owner shall be authorized to file the approved plat in sections, as provided in subdivision three of section two hundred seventy-six of this article, approval of the plat may be granted upon the installation of the required improvements in the section of the plat filed in the office of the county clerk or register or the posting of a bond covering the cost of such improvements. The owner shall not be permitted to begin construction of buildings in any other section until such section has been filed in the office of the county clerk or register and the required improvements have been installed in such section or a bond covering the cost of such improvements is posted. Such performance bond shall be issued by a bonding or surety company approved by the town board or by the owner with security acceptable to the town board, and shall also be approved by such town board as to form, sufficiency and manner of execution. Such performance bond shall run for a term to be fixed by the planning board, but in no case for a longer term than three years, provided, however, that the term of such performance bond may be extended by the planning board with consent of the parties thereto. If the planning board shall decide at any time during the term of the performance bond that the extent of building development that has taken place in the subdivision is not sufficient to warrant all the improvements covered by such performance bond, or that required improvements have been installed as provided in this section and by the planning board in sufficient amount to warrant reduction in the face amount

Requirements for streets and highways

Compliance with zoning ordinance

Other specific requisites

Posting of bond to insure performance

Term of performance bond

of said bond, and upon approval by the town board, the planning board after due notice and public hearing may modify its requirements for any or all such improvements, and the face value of such performance bond shall thereupon be reduced by an appropriate amount so that the new face value will cover the cost in full of the amended list of improvements required by the planning board and any security deposited with the bond may be reduced proportionately. In the event that any required improvements have not been installed as provided in this section within the term of such performance bond the town board may thereupon declare the said performance bond to be in default and collect the sum remaining payable thereunder and upon the receipt of the proceeds thereof the town shall install such improvements as are covered by such performance bond and are commensurate with the extent of building development that has taken place in the subdivision but not exceeding in cost the amount of such proceeds.

Modification of requirements by planning board

Power of town to act in event of default of conditions of performance bond

Guides to planning board determination

2. In making such determination regarding streets, highways, parks and required improvements, the planning board shall take into consideration the prospective character of the development, whether dense residence, open residence, business or industrial.

Waiver of requisites

3. Notwithstanding, the foregoing provisions of this section the planning board may waive, subject to appropriate conditions, the provision of any or all of such improvements and requirements as in its judgment of the special circumstances of a particular plat or plats are not requisite in the interest of the public health, safety and general welfare, or which in its judgment are inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the subdivision.

Provisions dealing with fire alarm signal devices

4. The installation of fire alarm signal devices including necessary connecting facilities shall be required or waived pursuant to this section only with the approval of (1) the board of supervisors of the county if the installation is to be made in an area included in a central fire alarm system established pursuant to paragraph (h) of subdivision one of section two hundred twenty-five of the county law or (2) the town board in any other case unless the installation is to be made in a fire district in a town in which no central fire alarm system has been established pursuant to subdivision eleven-c of section sixty-four of the town law, in which event only the approval of the board of fire-commissioners of such fire district shall be necessary. Required installations of fire alarm signal devices including necessary connecting facilities shall be made in accordance with standards, specifications and procedure acceptable to the appropriate board.

Provisions dealing with disposal of sewage in Suffolk County plats

5. If in the county of Suffolk the plat is not situate within a county or town sewer district and the county department of environmental control or the health department shall have directed that disposal of sewage shall be provided for by a communal sewerage system, consisting of a treatment plant and collection system, then the Suffolk county sewer agency shall determine, specify and direct the means and method by which the aforesaid system shall be best provided by and at the expense of the developer. Among the alternative means and methods the Suffolk county sewer agency may direct, shall be, (a) that the developer, at its

own cost and expense, install, build and construct such system according to such plans, specifications, conditions and guarantees as may be required by the Suffolk county sewer agency, and upon satisfactory completion thereof, the developer shall dedicate and donate same, without cost to the Suffolk county sewer agency, or its nominee and the developer shall also petition to form a county district, but if the Suffolk county sewer agency shall determine that a suitable complete communal sewerage system of adequate size cannot be properly located in the plat or is otherwise not practical, then (b) the developer shall install, build and construct temporary cesspools or septic tanks together with a sewage collection system according to such plans, specifications, conditions and guarantees as may be required by the Suffolk county sewer agency, and upon satisfactory completion thereof, the developer shall dedicate and donate same, without cost, to the Suffolk county sewer agency or its nominee, and in addition thereto, the agency may also require the payment to the Suffolk county sewer agency of a sum of money in an amount to be determined by the Suffolk county sewer agency, and the developer shall also petition to form a county district, or (c) the developer shall install, build and construct temporary cesspools or septic tanks and in addition thereto, shall pay to the Suffolk county sewer agency, a sum of money in an amount to be determined by the Suffolk county sewer agency and the developer shall also petition to form a county district, or (d) the developer shall provide such other means and methods or combination thereof as the Suffolk county sewer agency may determine, specify and direct.

Any sums paid to the Suffolk county sewer agency pursuant to any provisions of this section, shall constitute a trust fund to be used exclusively for a future communal sewerage system which shall be owned and operated by a county sewer district, which district shall include the subject plat within its bounds. Such monies and accrued interest, if any, when paid to such district, shall be credited over a period of time determined by the district, pro rata, against the sewer assessment of each tax parcel of the subject plat as may exist at the time of the payment of such monies and accrued interest to such district.

The useable value of any sewage collection system built under subparagraphs (b), (c) and (d) above shall be credited over a period of time determined by the district, pro rata, against the sewer assessment of each tax parcel of the plat as may exist at the time such system is incorporated into a county sewer district which shall include the subject plat within its bounds.

Notes:

- A town planning board may require a monetary payment in lieu of land reservation for recreational purposes even though recreational facilities are provided and reserved solely for the exclusive use of residents of a garden apartment or condominium (Op. St. Compt. 68-551).
- A town may not require, as a condition for plat approval, that a dedication of property for school purposes be made (Op. St. Compt. 68-939).
- A town planning board may not require an applicant to improve a pre-existing substandard town road as a condition either to subdivision approval or to the granting of a building permit (21 Op. St. Compt. 73).
- Where a performance bond has been declared to be in default pursuant to this section, the town can complete such work either by contract or by using town employees (18 Op. St. Compt. 252).
- Town board may empower a planning board to approve plats containing a specified minimum number of lots or sites therein, so that plats which have a lesser number of lots or

sites therein do not require planning board approval (Op. St. Compt. 69-447).

– Town planning board's requirement that subdivider of $208,000 tract dedicate $92,000 worth of beach front to town is confiscatory *(East Neck Estates vs. Luchsinger,* 61 misc. 2d. 619).

– **For information on requirements for the installation of underground electric service, see Bibliography Item 1.**

§ 278. Record of plats

No plat to be recorded without planning board approval and endorsement

1. No plat of a subdivision of land showing lots, blocks or sites, with or without streets or highways, shall be filed or recorded in the office of the county clerk or register until it has been approved by a planning board which has been empowered to approve such plats, and such approval be endorsed in writing on the plat in such manner as the planning board may designate. Such endorsement shall stipulate that the plat does not conflict with the county official map, where one exists, or, in cases where plats do front on or have access to or are otherwise related to roads or drainage systems shown on the county map, that such plat has been approved in the manner specified by section two hundred thirty-nine-k of the general municipal law. It shall be the duty of the county clerk or register to notify the planning board in writing within three days of the filing or recording of any plat approved by such planning board, identifying such plat by its title, date of filing or recording, and official file number. After such plat is approved and filed, subject, however, to review by court as hereinafter provided, the streets, highways and parks shown on such plat shall be and become a part of the official map or plan of the town. The owner of the land, or his agent who files the plat, may add as part of the plat a notation, if he so desires, to the effect that no offer of dedication of such streets, highways or parks, or any of them, is made to the public. If the owner of the land or his agent who files the plat does not add as part of the plat a notation to the effect that no offer of dedication of such street, highways or parks, or any of them, is made to the public, the filing of the plat in the office of the county clerk or register shall constitute a continuing offer of dedication of the streets, highways or parks, or any of them, to the public and said offer of dedication may be accepted by the Town Board at any time prior to revocation of said offer by the owner of the land or his agent.

Contents of endorsement

Notification to planning board by county clerk of recording of plat

Streets and highways on recorded plat

Offer of dedication of streets and highways unless otherwise noted

Formal offer of cession of streets and highways shown on plat

2. Formal offers of cession to the public of all streets, highways or parks not marked with such notation on the plat shall be filed with the planning board prior to the approval of the plat by the planning board. In the event that the owner or his agent shall elect not to file his plat prior to the expiration date of the validity of such approval provided in section two hundred seventy-six, then such formal offers of cession shall be deemed to be invalid, void and of no effect on and after such expiration date.

Streets shown on plat to be private until offered to town and accepted

3. Every street shown on a plat that is hereafter filed or recorded in the office of the county clerk or register as provided in this section, shall be deemed to be a private street until such time as it has been

formally offered for cession to the public and formally accepted as a public street by resolution of the town board, or alternatively until it has been condemned by the town for use as a public street.

Effect of other provisions of law relating to approval of plats

4. Insofar as provisions of law other than those contained in this article require the approval of a plat, map or plan of land within that part of the town outside the limits of any incorporated city or village by some authority of said town as a prerequisite to the record of said plat, map or plan, or allow it to be recorded on its failure to receive such approval within given time, such provisions shall not be in force in any town which has established an official map or plan and authorized a planning board appointed by it to approve plats of land showing new streets and highways in accordance with the provisions of this article.

Notes:

- County official maps, see General Municipal Law Secs. 239-g to 239-k.
- Approval of plats related to roads or drainage systems shown on county official map – see General Municipal Law, Sec. 239-k.
- To constitute a dedication, there must not only be an offer and acceptance, but there must be a formal opening of the street by the public authorities or a user *(Bayer vs. Pugsley,* 13 Misc. 2d. 610; aff'd 7 A.D. 2d. 828);
- The filing of a map of a subdivision constitutes an offer of dedication of all streets shown thereon for use as public highways in the absence of a reservation to the contrary. Such offers are continuing offers until a valid revocation or rescission is effected (*Sauchelli vs. Town of Hempstead,* 143 N.Y.S. 2d. 889; aff'd, 1 A.D. 2d. 689).
- A town may accept dedication of streets in a subdivision prior to their completion on condition that the subdivider will thereafter complete the streets (Op. St. Compt. 69-181).

§ 265-A. Exemption of lots shown on approved subdivision plats

Zoning ordinances adopted or amended, increasing lot areas or dimensions not to affect certain subdivision plats previously approved and filed

1. Notwithstanding any inconsistent provision of this chapter or of any general, special or local law, the provisions of a zoning ordinance hereafter adopted, and the provisions of a change or amendment hereafter adopted to a zoning ordinance, which provisions establish or increase lot areas, lot dimensions which are greater than or in excess of the lot areas or lot dimensions of the lots shown and delinated on a subdivision plat of land into lots for residential use and which said subdivision plat also shows and delineates one or more new streets, roads or highways in addition to lot lines and dimensions of the lots thereon delineated and which said subdivision plat has been duly approved by the planning board, if any, of the town in which the land shown on said plat is situate, or approved by such other board or officer, if any, of such town vested with authority to approve subdivision plats, and which said subdivision plat or the first section thereof has been duly filed in the office of the recording officer of the county in which the land shown on said subdivision plat is situate, or which provisions establish or increase side, rear or front yard or set back requirements in excess of those applicable to building plots under the provisions of the zoning ordinance, if any, in force and effect at the time of the filing of the said subdivision plat or first section thereof, shall not, for the period of time prescribed in subdivision two of this section, be applicable to or in any way affect any of the lots shown and delineated on such subdivision plat.

Periods of exemption of such plats

2. If at the time of filing of the subdivision plat or first section thereof referred to in subdivision one of this section there was in the town both a zoning ordinance and a planning board vested with authority to approve subdivision plats, then the exemption provided for in such

Three-year exemption

subdivision shall apply for a period of three years after the filing of the subdivision plat or first section thereof. If at the time of the filing of the subdivision plat or first section thereof referred to in subdivision one of this section there was a zoning ordinance in effect in the town but there was no planning board in said town vested with authority to approve subdivision plats, then the exemption provided for in such sub-

Two-year exemption

division shall apply for a period of two years after the filing of the subdivision plat or first section thereof. If at the time of the filing of the subdivision plat or first section thereof referred to in subdivision one of this section there was no zoning ordinance in the town but there was a planning board vested with authority to approve subdivision plats, then the exemption provided for in such subdivision shall apply for a period of two years after the filing of the subdivision plat or first section thereof. If at the time of the filing of the subdivision plat or first section thereof referred to in subdivision one of this section there was no zoning ordinance in the town and no planning board vested with authority to approve subdivision plats, then the exemption provided for in such sub-

One-year exemption

division shall apply for a period of one year after the filing of said subdivision plat or first section thereof. If such period of exemption would expire within one year from the date of the filing of a section of the

Extension of period of exemption

approved plat, it shall be extended for that section for a period of one year from the date of the filing of such section.

Notes:

– Petitioner acknowledges that this section denies to towns the right to change lot areas and dimensions on lots existing on subdivision plats already filed with county clerk. (*De-Jo Construction Corp. vs. Building Inspector of Town of Hempstead*, 36 Misc. 2d. 288).

§ 281. Approval of plats; conditions for changes in zoning provisions

Authority of planning board, simultaneously with plat approval, to modify provisions of zoning ordinance, if so authorized

The town board is hereby empowered by resolution to authorize the planning board, simultaneously with the approval of a plat or plats pursuant to this article, to modify applicable provisions of the zoning ordinance, subject to the conditions hereinafter set forth and such other reasonable conditions as the town board may in its discretion add thereto.

Where authorization applicable

Such authorization shall specify the lands outside the limits of any incorporated village to which this procedure may be applicable.

Purposes

The purposes of such authorization shall be to enable and encourage flexibility of design and development of land in such a manner as to promote the most appropriate use of land, to facilitate the adequate and economical provision of streets and utilities, and to preserve the natural and scenic qualities of open lands.

Conditions:

The conditions hereinabove referred to are as follows:

a) benefit to town

(a) If the owner makes written application for the use of this procedure, it may be followed at the discretion of the planning board if, in said board's judgment, its application would benefit the town.

b) density not to exceed that in applicable zoning ordinance

(b) The application of this procedure shall result in a permitted number of building plots or dwelling units which shall in no case exceed the number which could be permitted, in the planning board's judgment, if the land were subdivided into lots conforming to the minimum lot size and density requirements of the zoning ordinance applicable to the district or districts in which such land is situated and conforming to all other applicable requirements.

c) type of structure allowed

(c) In the case of a residential plat or plats, the dwelling units permitted may be, at the discretion of the planning board and subject to the conditions set forth by the town board, in detached, semi-detached, attached, or multi-story structures.

d) preservation of land for park and recreational use as condition for plat approval; approval by town board

(d) In the event that the application of this procedure results in a plat showing lands available for park, recreation, open space, or other municipal purposes directly related to the plat, then the planning board as a condition of plat approval may establish such conditions on the ownership, use, and maintenance of such lands as it deems necessary to assure the preservation of such lands for their intended purposes. The town board may require that such conditions shall be approved by the town board before the plat may be approved for filing.

Public hearing and review by planning board

(e) The proposed site plan, including areas within which structures may be located, the height and spacing of buildings, open spaces and their landscaping, off-street open and enclosed parking spaces, and streets, driveways and all other physical features as shown on said plan or otherwise described, accompanied by a statement setting forth the nature of such modification, changes, or supplementations of existing zoning provisions as are not shown on said site plan, shall be subject to review and public hearing by the planning board in the same manner as set forth in sections two hundred seventy-six and two hundred seventy-seven of this article for the approval of plats.

Filing

(f) On the filing of the plat in the office of the county clerk or register, a copy shall be filed with the town clerk, who shall make appropriate notations and references thereto in the town zoning ordinance or map.

Change in permissible use prohibited

(g) The provisions of this section shall not be deemed to authorize a change in the permissible use of such lands as provided in the zoning ordinance applicable to such lands.

Notes:

- The standards of reasonableness in the change, maintenance of average population density, safeguarding adjoining lands and consistency with public welfare are sufficient to empower the board to perform the limited functions granted by the enabling statute *(Hiscox vs. Levine,* 31 Misc. 2d. 151).
- Where a town permits a developer to provide park area by means of cluster zoning, it may not require him to make cash payments in lieu of land (23 Op. St. Compt. 633).
- "Cluster zoning" is a means of site planning whereby the sizes of individual building lots are reduced and houses are grouped closer together and in such manner as will leave large areas open for the use of the home owners for park and recreational facilities (23 Op. St. Compt. 633).
- The power to amend the zoning regulations of the land does not carry with it the power to change the zoning district of the land *(Hiscox vs. Levine,* 31 Misc. 2d. 151).
- For a discussion of cluster development under this section, see Bibliography Items 13 and 18.

§ 282. Court review

Review of decisions of planning board before supreme court

Any person or persons, jointly or severally aggrieved by any decision of the planning board concerning such plat or the changing of the zoning regulations of such land, or any officer, department, board or bureau of the town, may have the decision reviewed by a special term of the supreme court in the manner provided by article seventy-eight of the civil practice law and rules provided the proceeding is commenced within thirty days after the filing of the decision in the office of the board.

Time to commence proceeding

Commencement of the proceeding shall stay proceedings upon the decision appealed from.

Appointment of referee by court

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs

Costs shall not be allowed against the planning board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

Preference over other civil actions

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

Official maps

§ 270. Official map, establishment

Establishment by town board

Contents of official map

Effect of official map

Purpose

Filing

The town board may establish an official map of that part of the town outside the limits of any incorporated city or village showing the streets, highways and parks therefore laid out, adopted and established by law and drainage systems may also be shown on such map. Such map shall be final and conclusive with respect to the location and width of streets and highways, drainage systems and the location of parks shown thereon. Such official map is hereby declared to be established to conserve and protect the public health, safety and general welfare. The clerk of every town which has established such an official map shall immediately file a certificate of that fact with the clerk or registrar of the county in which said town is located.

Note:

– Effect of change in county official map on official map of municipality, affected – see General Municipal Law, 2394.

– For general information on official maps, see Bibliography Item 19.

§ 273. Official map, changes

Authority of town board to change or add to official map

Purposes

Notice, hearing and publication

Referral to town planning board

Effect of changes

Such town board is authorized and empowered, whenever, and as often as it may deem it for the public interest, to change or add to the official map of the town so as to lay out new streets, highways, drainage systems or parks, or to widen or close existing streets, highways, drainage systems or parks within that part of the town outside the limits of any incorporated city or village. At least ten days' notice of a public hearing on any proposed action with reference to any such change in the official map shall be published in a newspaper of general circulation in such town. Before making any such addition or change, the town board shall refer the matter to the planning board for report thereon, but if the planning board shall not make its report within thirty days of such reference, it shall forfeit the right further to suspend action. Such additions and changes, when adopted, shall become a part of the official map of the town, and shall be deemed to be final and conclusive with respect to the location of the streets, highways, drainage systems and parks shown

Changes in streets and highways pursuant to other provisions of law deemed to be addition or change to official map

thereon. The layout, widening or closing, or the approval of the layout, widening or closing, of streets, highways, drainage systems or parks, by the town board, or the town superintendent of highways, under provisions of law other than those contained in this article, shall be deemed to be an addition or change of the official map, and shall be subject to all the provisions of this article with regard to such additions or changes.

Note:

– Same as those following 270.

§ 279. Permits for buildings in bed of mapped streets

Purpose

No permit to be issued for any building in bed of street shown on official map or plan

For the purpose of preserving the integrity of such official map or plan no permit shall hereafter be issued for any building in the bed of any street or highway shown or laid out on such map or plan, provided, however, that if the land within such mapped street or highway is not yielding a fair return on its value to the owner, the board of appeals, or other similar board, in any town which has established such a board having power to make variances or exceptions in zoning regulations, shall have power in a specific case by the vote of a majority of its members to grant a permit for a building in such street or highway which will as little as practicable increase the cost of opening such street or highway, or tend to cause a change of such official map or plan, and such board may impose reasonable requirements as a condition of granting such permit, which requirements shall inure to the benefit of the town. Before taking any action authorized in this section, the board of appeals or similar board shall give a hearing at which parties in interest and others shall have an opportunity to be heard. At least ten days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in such town. Any such decision shall be subject to review in the same manner and pursuant to the same provisions as in appeals from the decisions of such board upon zoning regulations.

Authority to vary terms of section under certain circumstances and to impose conditions

Notice, hearing, publication

Judicial review

§ 280-a. Permits for buildings not on improved mapped streets

Requisites for issuance of permit

1. No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plan, or if there be no official map or plan, unless such street or highway is (a) an existing state, county or town highway, or (b) a street shown upon a plat approved by the planning board as provided in sections two hundred seventy-six and two

hundred seventy-seven of this article, as in effect at the time such plat was approved, or (c) a street on a plat duly filed and recorded in the office of the county clerk or register prior to the appointment of such planning board and the grant to such board of the power to approve plats.

Adequacy of street or highway as condition for issuance of permit

2. Before such permit shall be issued such street or highway shall have been suitably improved to the satisfaction of the town board or planning board, if empowered by the town board in accordance with standards and specifications approved by the town board, as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street or highway. Alternatively, and in the discretion of such board, a performance bond sufficient to cover the full cost of such improvement as estimated by such board shall be furnished to the town by the owner. Such performance bond shall be issued by a bonding or surety company approved by the town board or by the owner with security acceptable to the town board, and shall also be approved by such town board as to form, sufficiency and manner of execution. The term, manner of modification and method of enforcement of such bond shall be determined by the appropriate board in substantial conformity with section two hundred seventy-seven of this article.

Performance bond in lieu of improvement

Variance procedure in event of practical difficulty or unnecessary hardship

3. Where the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, or where the circumstances of the case do not require the structure to be related to existing or proposed streets or highways, the applicant for such a permit may appeal from the decision of the administrative officer having charge of the issue of permits to the board of appeals or other similar board, in any town which has established a board having power to make variances or exceptions in zoning regulations, and the same provisions are hereby applied to such appeals and to such board as are provided in cases of appeals on zoning regulations. The board may in passing on such appeal make any reasonable exception and issue the permit subject to conditions that will protect any future street or highway layout. Any such decision shall be subject to review by certiorari order issued out of a special term of the supreme court in the same manner and pursuant to the same provisions as in appeals from the decisions of such board upon zoning regulations.

Power of appropriate board to issue permit subject to conditions

Review of decision

Establishment of open development areas by town board

4. The town board may, by resolution, establish an open development area or areas within the town, wherein permits may be issued for the erection of structures to which access is given by right of way or easement, upon such conditions and subject to such limitations as may be prescribed by general or special rule of the planning board, if one exists, or of the town board if a planning board does not exist. If a planning board exists in such town, the town board, before establishing any such open development area or areas, shall refer the matter to such planning board for its advice and shall allow such planning board a reasonable time to report.

Referral to planning board

"Access" defined

5. For the purposes of this section the word "access" shall mean that the plot on which such structure is proposed to be erected directly abuts on such street or highway and has sufficient frontage thereon to allow the ingress and egress of fire trucks, ambulances, police cars and other emergency vehicles, and, a frontage of fifteen feet shall presumptively be sufficient for that purpose.

Notes:

- This statute was enacted not only for the purpose of protecting the health, safety and general welfare of the community, but for the protection of the residents of the proposed buildings *(Robinson vs. Jagger* 57 Misc. 2d. 507).
- A building permit may not be issued for a parcel within a filed subdivision plat where developer has defaulted in construction of required improvements (Op. St. Compt. 68-888).
- Although no particular form of physical access between a roadway and a proposed structure is required, the physical access must be to each proposed structure and not merely to a portion of the plat on which the structures are to be built *(N.Y.S. Electric and Gas Co. vs. McCabe,* 32 Misc. 2d. 898).
- Whether or not such a permit is to be issued is not in any way made dependent by this section upon the fact that access to the proposed structure be by a dedicated highway, but rather upon factors enumerated in the statute *(Bayer vs. Pugsley,* 13 Misc. 2d. 610).
- A town planning board may not require an applicant to improve a pre-existing substandard town road as a condition either to subdivision approval or to the granting of a building permit (21 Op. St. Compt. 73).

§ 280. Municipal improvements in streets

No construction or improvement unless street or highway is public and is placed on official map

Exception for certain improvements

No public municipal street utility or improvement shall be constructed by the town in any street or highway within that part of the town outside the limits of any incorporated city or village until it has become a public street or highway and is duly placed on the official map or plan, provided, however, that subject to the discretion of the town board, a subsurface utility or improvement operated for revenue by the town or by a special district may be constructed by the town in a private street, provided a public easement satisfactory to the town board is obtained for such utility or improvement.

Other provisions

§ 268. Enforcement and remedies

Enforcement by town board by ordinance

Fine and/or imprisonment

1. The town board may provide by ordinance for the enforcement of this article and of any ordinance or regulation made thereunder. A violation of this article or of such ordinance or regulation is hereby declared to be an offense punishable by a fine not exceeding fifty dollars or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this article or of such ordinance or regulation shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

Actions or proceedings for violations by appropriate local authorities

Taxpayer's action

2. In case any building or structure is erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is used in violation of this article or of any ordinance or other regulation made under authority conferred thereby, the proper local authorities of the town, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstructed, alteration, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure, or land or to prevent any illegal act, conduct, business or use in or about such premises; and upon the failure or refusal of the proper local officer, board or body of the town to institute any such appropriate action or proceeding for a period of ten days after written request by a resident taxpayer of the town so to proceed, any three taxpayers of the town residing in the district wherein such violation exists, who are jointly or severally aggrieved by such violation, may institute such appropriate action or proceeding in like manner as such local officer, board or body of the town is authorized to do.

Notes:

- "Enforcement and remedy" provisions of this section are applicable to town zoning regulations adopted by local law as well as those adopted by ordinance (1965 Atty. Gen. 106).
- A town may proceed against zoning or building violators upon enactment of a zoning or building code and provision for enforcement thereof (16 Op. St. Compt. 453).

  A town board had power under this section to institute action for mandatory injunction requiring a landowner to demolish or remove a building, or in the alternative to conform it to the town building zone ordinance, even though the ordinance made it the duty of a building official to enforce construction codes and zoning ordinance of the town (Town of North Hempstead vs. Eckerman, 30 Misc. 2d 798; aff'd 21 A.D. 2d. 751).
- For a discussion of subdivision regulation enforcement, see Bibliography Item 3.

§ 283. Issuance of licenses and permits in certain towns

If, in any town of the first class at the time of the enactment of this chapter, there exists a building department, set up as an adjunct of the planning board, all licenses or permits, whenever and in the manner required by any building zone ordinance or building code, shall be issued by said department, and all fees therefore be collected as provided by the requirements of the building zone ordinance or building code.

Note:

– In the absence of any provision therefor in a building code, a building permit fee cannot be refunded even though construction was never begun (21 Op. St. Compt. 526; Op. St. Compt. 69-438).

§ 269. Conflict with other laws

Stricter regulations to control

Wherever the regulations made under authority of this article require a greater width or size of yards or courts, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this article shall govern. Whenever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards, than are required by the regulations made under authority of this article, the provisions of such statute, or local ordinance or regulation shall govern.

Ratification of town zoning ordinances adopted under previous town law provisions

In towns where the town boards have already adopted a zoning ordinance, pursuant to the provisions of chapter three hundred twenty-two of the laws of nineteen hundred twenty-two, or chapter seven hundred fourteen or chapter seven hundred fifteen of the laws of nineteen hundred twenty-six, such board shall not be required to adopt a new ordinance and all actions taken and proceedings had by such town boards and boards of appeal under the provisions of said chapter, are hereby ratified and confirmed.

All necessary expenses incurred by any such board in connection with the adoption and enforcement of the zoning ordinance shall be a town charge.

§ 284. Separability clause

If any part or provision of this article or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation

to the part, provision or application directly involved in the controversy in which said judgment shall have been rendered and shall not affect or impair the validity of the remainder of this article or the application thereof to other persons or circumstances and the legislature hereby declares that it would have enacted this article or the remainder thereof had the invalidity of such provision or application thereof been apparent.

from the VILLAGE LAW

Chapter 892 of the Laws of 1972 enacted an entirely new Village Law. The planning and zoning provisions of the new Village Law will become effective September 1, 1973. Until that time, the following provisions are applicable.

Planning boards

§ 179-f. Planning board; appointments; terms of office

Appointment by board of trustees; number of members; removal for cause

The board of trustees of each village is hereby authorized and empowered to appoint a planning board of five members, and shall have authority to remove any member of such planning board for cause and after public hearing. The respective terms of the members of the board first appointed shall be one, two, three, four and five years from and after their appointment. Their successors and the successors of those in office at the time this section as hereby amended takes effect shall be appointed for the term of five years from and after the expiration of the term of their predecessors in office; provided, however, that the members first appointed as successors to members of any such boards now in office who are officials of the village and who were appointed as such members because of being officials of the village shall be appointed for terms of such period of years, not more than five, as shall integrate with the terms of successors to other members of such boards in such manner that after the expiration of the terms of office of members now in office the term of one member of the board shall expire each year. The members of such board in office at the time this section as hereby amended takes effect shall continue in office until the end of the term for which they were appointed and their successors have been appointed as provided in this section as so amended and have qualified. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by appointment for the unexpired term. Any officials of the village on such board shall not, by reason of membership thereon, forfeit their right to exercise the powers, perform the duties or receive the compensation of the municipal office held by them during such membership.

Terms of office

Filling of vacancy

Membership of village officials not cause to forfeit rights of office

Appointment of existing planning commission as planning board

In any village in which there is a planning commission created under article twelve-a of the general municipal law, the board of trustees, instead of authorizing the appointment of a planning board under this article, may provide that the existing commission shall continue, the members thereof thereafter to be appointed in accordance with the provisions of such article twelve-a, and to have the powers and duties as therein specified in addition to the powers and duties as specified for a planning board appointed under this article, provided, however, that in any such village section two hundred and thirty-eight of the general municipal law shall not be in force.

Notes:

- For village participation in establishment of metropolitan, county and regional planning boards, see General Municipal Law, Sec. 239-b et. seq.
- A village mayor may be a member of the village planning board (16 Op. St. Compt. 373).
- Language of section 179-f of the village law, which authorizes and empowers the trustees to appoint a planning board, is entirely permissive. In absence of separate planning board, village board of trustees has authority to perform statutory duties of planning boards *(Russell Oaks, Inc vs. Planning Board of Incorporated Village of Russell Gardens,* 28 A.D. 2d. 569, aff'd. 21 N.Y. 2d. 784).
- For a discussion of incompatibility of office and conflict of interest imposing bars on planning board membership, see Bibliography Item 4.

§ 179-g. Organization of planning board; employees

Designation of chairman

Employment of experts

Appropriation; expenses

Adoption of rules and regulations; public hearing; approval by board of trustees

The board of trustees shall designate a member of said planning board to act as chairman thereof; or on failure so to do, the planning board shall elect a chairman from its own members. It shall have the power and authority to employ experts, clerks and a secretary, and to pay for their services and such other expenses as may be necessary and proper, not exceeding in all the appropriation that may be made for such planning board. The board of trustees is hereby authorized and empowered to make such appropriation as it may see fit for such expenses. The planning board may adopt rules and regulations in respect to procedure before it and in respect to any subject matter over which it has jurisdiction under this article or any other statute, after public hearing by the planning board and subject to the approval of the board of trustees.

Note:

- Members of village planning board are appointed by village board of trustees for a term of five years; but board's designation of a chairman is for one year only (*Olesen vs. Dorner,* 8 Misc. 2d. 656).

§ 179-i. Referring proposed changes to planning board

Authority of board of trustees to refer matters

The board of trustees may by general or special rule provide for the reference of any matter or class of matters to the planning board before final action thereon by the public body or officer of said village having final authority thereon with or without the provision that final action thereon shall not be taken until said planning board has submitted its report thereon or has had a reasonable time to be fixed by the board of trustees in said rule to submit the report.

Note:

- Village ordinance requiring planning commission to prescribe height, length and width of buildings, setbacks, etc., of certain buildings not an unlawful delegation of authority, but prescribed standards sufficient to guide discretionary powers of planning commission *(Westchester Reform Temple vs. Griffin,* 52 Misc. 2d. 726).

§ 179-j. Power of planning board to make investigations

Authority of planning board

Extent of expenditures

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

§ 179-gg. Master plan

Comprehensive master plan – contents

The planning board may prepare and change, a comprehensive master plan for the development of the entire area of the village, which master plan shall show desirable streets, bridges and tunnels and the approaches thereto, viaducts, parks, public reservations, roadways in parks, sites for public buildings and structures, zoning districts, pierhead and bulkhead lines, waterways and routes of public utilities and such other features existing and proposed as will provide for the improvement of the village and its future growth, protection, and development, and will afford adequate facilities for the public housing, transportation, distribution, comfort, convenience, public health, safety and general welfare of its population.

Notice and hearing

Such planning board may advertise and hold public hearings when it desires, which hearings shall be advertised at least once in a newspaper of general circulation in said village and post a notice of hearing in at least three prominent places at least five days before each such hearing.

Filing

The master plan and all modifications thereof shall be on file in the office of the planning board, and the planning board shall file certified copies in the offices of the village engineer and the village clerk.

– For a discussion of the elements of a comprehensive plan, see Bibliography Items 5 and 15.

– For information on available financial and technical assistance in preparing a comprehensive plan, see Bibliography Item 16.

Zoning

§ 175. Grant of power

Purposes; exercise of police power

Scope of grant of power

1. For the purpose of promoting the health, safety, morals, or the general welfare of the community, the board of trustees of a village is hereby empowered, by ordinance, to regulate and restrict 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. As a part of the comprehensive plan and design, the village board is empowered by local ordinance or amendment of existing ordinances, to regulate and restrict certain areas as national historic landmarks, special historic sites, places and buildings for the purpose of conservation, protection, enhancement and perpetuation of these places of natural heritage. Such regulations may provide that a board of appeals may determine and vary their application in harmony with the general purpose and intent, and in accordance with general or specific rules therein contained.

Regulation and protection of historic sites

Authority to vary regulations

Maintenance of home of deceased U.S. President

2. The home of a deceased president of the United States of America, occupied by him as such at the time of his death, may be maintained and conducted as a memorial, shrine, historical museum or park by a non-profit association incorporated under the laws of the state of New York or by act of congress notwithstanding the terms of any ordinance or regulation enacted pursuant to this chapter.

Notes:

1. Height, bulk, open-spaces – Multiple Dwelling Law, Sec. 26.
2. Two or more buildings on same lot – Multiple Dwelling Law, Section 28.

– The ultimate purpose of zoning regulations is to promote the health, safety, morals and general welfare of the community *(Incorporated Village of Upper Brookville vs. Torr,* 7 Misc. 2d. 725).

– Right of village to zone, granted under this section, is a basic power of incorporated villages. It is so basic that section 261 of the town law specifically states that a town's zoning regulations "affect only such part of a town as is outside the limits of any incorporated village," *(Incorporated Village of Atlantic Beach vs. Town of Hempstead,* 47 Misc. 2d. 29).

– Zoning ordinance, being in derogation of the common law, must be strictly construed *(Flanagan vs. Zoning Board of Appeals of Village of Bayville,* 2 Misc. 2d. 922; aff'd. 1 A.D. 2d. 979).

– To be valid, a zoning ordinance must be in substantial conformity with the enabling act authorizing it *(Nardone vs. Ryan,* 49 Misc. 2d. 93).

§ 176. Districts

Division of village into districts

Regulation and restrictions within districts

Uniformity of regulations

For any or all of said purposes the board of trustees may divide the village into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings throughout each district but the regulations in one district may differ from those in other districts.

Notes:

- The extent of a commercial zone in a village is primarily a legislative question *(Otto vs. Steinhiber,* 282 N.Y. 71).

§ 177. Purposes in view

Regulations in accordance with comprehensive plans

Specific purposes

Consideration to character of district, suitability, etc.

Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, floods and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the over-crowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

Notes:

- Recommendation of metropolitan, regional or county planning board of comprehensive zoning plan to cities, towns and villages, see General Municipal Law, 239-d (5).
- Good zoning or planning connotes community development in accordance with consistent plans and policies of legislative body *(Hyde vs. Incorporated Village of Baxter Estates,* 140 N.Y.S. 2d. 890; aff'd 2 A.D. 2d. 889; 3 N.Y. 2d. 875).
- The phrase "in accordance with a comprehensive plan" may be understood to mean conforming to a master plan, broad in scope of coverage, all-inclusive in control of use, height or area, or internally consistent zoning based on a rational underlying policy (*Udell vs. McFadyen,* 40 Misc. 2d. 265).
- For a discussion of New York judicial interpretation of the comprehensive plan requirement, see Bibliography Item 5.
- For a discussion of interim zoning to preserve the status quo pending the adoption of an ordinance furthering the comprehensive plan, see Bibliography Item 2.
- For a discussion of spot zoning, see Bibliography Item 10.

§ 179-a. Zoning commission

Power available to board of trustees in villages which adopted zoning ordinances prior to 1923 pursuant to Village Law section 89 (30)

The powers conferred upon boards of trustees by this act shall be available to the board of trustees of any village which, prior to May twenty-first, nineteen hundred and twenty-three, adopted a zoning

Also to any other village in which board of trustees shall appoint zoning commission to recommend districts and regulations

Commission to hold hearings and make preliminary report before final report

Board of trustees not to hold hearings or take action until receipt of final report of commission

ordinance pursuant to the provisions of subdivision thirty of section eighty-nine of the village law; but in order to avail itself of the powers conferred by this act, the board of trustees of any other village shall appoint a commission to be known as the zoning commission to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report; and such board of trustees shall not hold its public hearings, or take action, until it has received the final report of such commission.

Notes:

- A zoning commission is only necessary to recommend the boundaries of the original districts and appropriate regulations to be enforced therein (7 Op.St. Compt. 221).
- This section is only applicable where a village is about to enact a zoning ordinance for the first time *(Hermann vs. Incorporated Village of East Hills,* 104 N.Y.S. 2nd. 592; aff'd. 279 A.D. 753).
- This section unequivocably requires that the zoning commission hold public hearings. This mandate must be considered jurisdictional and a preliminary requirement to any action or consideration by the board of trustees *(Incorporated Village of Muttontown vs. Friscia,* 58 Misc. 2d. 912).
- Public hearings must be held by a village zoning commission on its preliminary report on an original zoning ordinance before any action may be taken thereon by the board of trustees (23 Op. St. Compt. 512).

§ 178. Method of procedure

Authority of village board

Notice and public hearing

Written notice of zoning changes within housing projects or within 500 feet of boundaries of county, city, village, town, state park or parkway

1. The board of trustees shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established and enforced, and from time to time amended, supplemented or changed. However, no such regulation, restriction or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in the official newspaper. A written notice of any proposed change or amendment affecting property within the protectively zoned area of a housing project authorized under the public housing law, as such area is shown on an approved zoning map filed with the village officer charged with enforcement of zoning regulations, shall be given to the housing authority erecting or owning the project and to the government providing financial aid or assistance thereto at least ten days prior to the date of such public hearing. A written notice of any proposed change or amendment affecting property within five hundred feet of the boundaries of any state park or parkway or city, village, town or country shall be given in the case of a city, village or town to the clerk of such city, village or town, and in the case of a county, to the clerk of the board of supervisors or other person performing like duties, and in the case of any state park or parkway, to the regional state park commission having jurisdiction over such state park or parkway at least ten days prior to the date of such public hearing. Such city, village, town or county shall have the right to appear and to be heard at such public hearing with respect to any such proposed change

or amendment, but shall not have the right of review by a court as hereinafter provided.

Zoning ordinance or amendment (including map) to be entered in minutes of village board

Publication and posting

Effective date of ordinance

2. Every zoning ordinance and every amendment to a zoning ordinance (including any map incorporated therein) adopted pursuant to the provisions of this chapter shall be entered in the minutes of the village board and a copy thereof (exclusive of any map incorporated therein) shall be published once in the official newspaper and a copy of such ordinance or amendment together with a copy of any map incorporated therein shall be posted conspicuously at or near the main entrance to the office of the village clerk and affidavits of the publication and posting thereof shall be filed with the village clerk. Such ordinance shall take effect ten days after such publication and posting, but such ordinance or amendment shall take effect from the date of its service as against a person served personally with a copy thereof, certified by the village clerk; and showing the date of its passage and entry in the minutes.

Notes:

- Notice of certain proposed municipal zoning actions to be submitted to county, metropolitan or regional planning agency – see General Municipal Law, 239-m.
- The procedural steps required by the enabling acts of municipalities are regarded as mandatory and failure to comply therewith invalidates the enactment *(Keeney vs. Village of LeRoy)* 22 A.D. 2d. 159).
- Any manner of giving actual written notice to a clerk of a town or village within 500 feet of a village which proposes to change its zoning regulations or boundaries will suffice. There is no requirement that personal service be made on such clerk (23 Op. St. Compt. 270).
- Local laws relating to zoning changes, adopted without post-publication thereof, *may* be subject to attack as unconstitutional (Op. St. Compt. 69-838).
- For a discussion of zoning maps in towns and villages, see Bibliography Item 6.

§ 179. Changes

Power of board of trustees to amend, modify, change or repeal regulations

Procedure in event of protest

1. Such regulations, restrictions and boundaries may from time to time be amended, supplemented, changed, modified or repealed by the board of trustees on its own motion or on petition. In case, however, of a protest against such change signed by the owners of twenty per centum or more of the area of the land included in such proposed change, or by the owners of twenty per centum or more of the land immediately adjacent extending one hundred feet therefrom, or by the owners of twenty per centum or more of the land directly opposite thereto, extending one hundred feet from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of two-thirds of the members of the board of trustees in villages having three members on the board of trustees and three-fourths of the members of the board of trustees in all the other villages. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments.

Zoning ordinances adopted or amended increasing lot areas or dimensions not to affect certain subdivision plats previously approved and filed

2. (a) Notwithstanding any inconsistent provision of this chapter or of any general, special or local law, the provisions of a zoning ordinance hereafter adopted, and the provisions of a change or amend-

ment hereafter adopted to a zoning ordinance, which provisions establish or increase lot areas, lot dimensions which are greater than or in excess of the lot areas or lot dimensions of the lots shown and delineated on a subdivision plat of land into lots for residential use and which said subdivision plat also shows and delinates one or more new streets, roads or highways in addition to lot lines and dimensions of the lots thereon delineated and which said subdivision plat has been duly approved by the planning board, if any, of the village in which the land shown on said plat is situate, or approved by such other board or officer, if any, of such village, vested with authority to approve subdivision plats, and which said subdivision plat or the first section thereof has been duly filed in the office of the recording officer of the county in which the land shown on said subdivision plat is situate, or which provisions establish or increase side, rear or front yard or set-back requirements in excess of those applicable to building plats under the provisions of the zoning ordinance, if any, in force and effect at the time of the filing of the said subdivision plat or first section thereof, shall not, for the period of time prescribed in paragraph (b) of this subdivision, be applicable to or in any way affect any of the lots shown and delineated on such subdivision plat.

Periods of exemption of such plats

(b) If at the time of the filing of the subdivision plat or first section thereof referred to in paragraph (a) of this subdivision there was in the village both a zoning ordinance and a planning board vested with authority to approve subdivision plats, then the exemption provided for in such

Three-year exemption

paragraph shall apply for a period of three years after the filing of the subdivision plat or first section thereof. If at the time of the filing of the subdivision plat or first section thereof referred to in paragraph (a) of this subdivision there was a zoning ordinance in effect in the village but there was no planning board in said village vested with authority to approve subdivision plats, then the exemption provided for in such para-

Two-year exemption

graph shall apply for a period of two years after the filing of the subdivision plat or first section thereof. If at the time of the filing of the subdivision plat or first section thereof referred to in paragraph (a) of this subdivision there was no zoning ordinance in the village but there was a planning board vested with authority to approve subdivision plats, then the exemption provided for in such paragraph shall apply for a period of two years after the filing of the subdivision plat or first section thereof. If at the time of the filing of the subdivision plat or first section thereof referred to in paragraph (a) of this subdivision there was no zoning ordinance in the village and no planning board vested with authority to approve subdivision plats, then the exemption provided for in

One-year exemption

such paragraph shall apply for a period of one year after the filing of said subdivision plat or first section thereof.

Notes:

- Notice of certain proposed municipal zoning actions to be submitted to county, metropolitan or regional planning agency – see General Municipal Law, 239-m.
- An ordinance covering the whole field of zoning in a village repeals by necessary implication earlier ordinances which are inconsistent therewith (1967 Atty. Gen. 90).
- In some instances, after a public hearing has been held on a proposed ordinance and thereafter certain changes are made, a further public hearing must be held to consider such changes before the ordinance can be finally adopted. However, the changes made must be substantial changes as distinguished from those which are minor and inconsequential *(Village of Island Park vs. J.E.B. Associates, Inc.,* 21 Misc. 2d. 249).

– A traffic problem was a valid basis for action by a board to change a zoning ordinance to lessen congestion in the streets and facilitate the adequate provision of transportation *(Udell vs. McFadyen* 40 Misc. 2d. 265).

– Under this section and Section 178, it is not essential that a new map be drawn in zoning districts *(Levitt vs. Incorporated Village of Sands Point.* 2 A.D. 2d. 688).

– The provisions of this statute, providing for three-fourths vote of trustees where protest is made by owners of 20 percent or more of immediately adjacent land, is clear and unambiguous and provides for a certain percentage of owners of adjacent land, even in a situation where an adjacent owner is the municipality itself or owner of land for which change of zone has been requested *(Hittl vs. Buckhout, 13 Misc. 2d. 230).*

§ 179-b. Board of appeals

Appointment of members; number, term

Member of village board precluded

Removal for cause

Filling of vacancies

Such board of trustees shall provide for the appointment of a board of appeals consisting of three or five members, each to be appointed for three years. No person who is a member of the village board of trustees shall be eligible for membership on such board of appeals. The board of trustees shall have the power to remove any member of the board for cause and after public hearing. Vacancies shall be filled for the unexpired term of the member whose place has become vacant. All meetings of the board of appeals shall be held at the call of the chairman and at such other times as such board may determine. Such chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of such board shall be open to the public. Such board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the board shall immediately be filed in the office of the board and with the village clerk and shall be a public record.

Meetings

Filing of decisions

Powers and duties of board of appeals

Majority vote

Such board of appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this act. It shall also hear and decide all matters referred to it upon which it is required to pass under any such ordinance. The concurring vote of a majority of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the village.

Appeal procedure

Such appeal shall be taken within such time as shall be prescribed by the board of appeals by general rule, by filing with the officer from whom the appeal is taken and with the board of appeals a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all of the papers constituting the record upon which the action appealed from was taken.

Stay of proceedings except if life or property is imperiled

An appeal stays all proceedings in furtherance of the action appealed

from, unless the officer from whom the appeal is taken certifies to the board of appeals after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.

Notice and hearing

The board of appeals shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties, and decide the same within sixty-two days after the final hearing. Upon the hearing, any party may appear in person or by agent or by attorney. The

Action by board

board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises and to that end shall have all the powers of the officer from whom the appeal is taken. Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of such ordinance, the board of appeal

Power to grant variances

shall have the power in passing upon appeals, to vary or modify the application of any of the regulations or provisions of such ordinance relating to the use, construction or alteration of buildings or structures, or the use of land, so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done.

Any person or persons, jointly or severally aggrieved by any decision of the board of appeals or any officer, department, board or bureau of

Appeal to supreme court from decision of board

the village, may apply to the supreme court for relief by a proceeding under article seventy-eight of the civil practice law and rules. It must

Time limit for appeal

be instituted within thirty days after the filing of a decision in the office of the village clerk. The court may take evidence or appoint a referee to take such evidence as it may direct and report the same with his findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter. The court at special term shall itself dispose of the cause on the merits, determining all questions which may be presented for determination.

Costs

Costs shall not be allowed against the board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

Preference

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

Notes:

- Notice of certain proposed municipal zoning actions to be submitted to county, metropolitan or regional planning agency – see General Municipal Law Sec. 239-m.
- For illustrative zoning ordinance provisions regarding boards of appeals, see Bibliography Item 10.
- Before the zoning board of appeals may grant a variance upon the ground of unnecessary hardship, the record must show that (1) the land in question cannot yield a reasonable return it used only for a purpose allowed in that zone; (2) that the plight of the owner is due to unique circumstances and not to the general conditions in the neighborhood which may reflect the unreasonableness of the zoning ordinance itself; and (3) that the use to be authorized by the variance will not alter the essential character of the locality *(Otto vs. Steinhilber*, 282 N.Y. 75).

- As a general rule, where the landowner has made the requisite showing of financial hardship and compatability of his proposed use with the existing land use pattern, it would seem preferable to grant the variance. To deny the variance solely on the ground that "Unique circumstances" had not been shown leaves open the prospect of a successful assault on the zoning ordinance as being confiscatory *(Matter of Jayne Estates vs. Raynor,* 22 N.Y. 2d. 417).
- The spirit and intent of zoning, combined with justice itself requires that under section 179-b of the Village Law the broadest possible interpretation should be given to the works "Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the village" (*Horan vs. Board of Appeals,* 6 Misc. 2d. 571).
- If a variance is not authorized under an ordinance, the board must then consider the application as one for a variance under Village Law, 179-b, for no ordinance may abridge the variance power granted by the Legislature to the board under that section *(Matter of Fina Homes vs. Beckel,* 24 Misc. 2d. 823).
- With respect to area variances the basic rule which has evolved is that where the property owner will suffer significant economic injury by the application of an area standard contained in an ordinance, that standard can be justified only by a showing that the public health, safety and welfare will be served by upholding the application of the standard and denying the variance *(Matter of Fulling vs. Palumbo,* 21 N.Y. 2d. 30).
- Nothing in *Fulling vs. Palumbo* has changed the principle that a denial of an area variance will be upheld by the courts where the substandard condition results from the owner's own decision to subdivide his property in such a way as to create one or more substandard plots. (*Matter of 113 Hillside Avenue Corp. vs. Zaino,* 27 N.Y. 2d. 258).

Subdivision control

§ 179-k. Approval of plats; development of filed plats

Purposes

1. For the purpose of providing for the future growth and development of the village and affording adequate facilities for the housing, transportation, distribution, comfort, convenience, safety, health and welfare of its population, such board of trustees may by resolution authorize and empower the planning board to approve plats showing lots, blocks or sites, with or without streets or highways, and to conditionally approve preliminary plats. For the same purposes and under the same conditions, the board of trustees may, by resolution, authorize and empower the planning board to approve the development of plats, entirely or partially undeveloped and which have been filed in the office of the clerk of the county in which such plat is located prior to the appointment of such planning board and the grant to such board of the power to approve plats.

Authority of planning board to approve plats

Approval of plats already filed

Definition of "plat" and "preliminary plat"

2. When used in this article, the term "preliminary plat" means a drawing showing the salient features of a proposed subdivision submitted to the planning board for purposes of consideration prior to submission of the plat in final form; the term "plat" means a drawing, in final form, showing a proposed subdivision containing all information or detail required by this article or any other applicable state law or local law, ordinance, rule, regulation or resolution and, if modified as a conditionally approved preliminary plat, such modification; and the term "conditional approval" of a preliminary plat means approval of the layout of the proposed subdivision as set forth in such preliminary plat, but subject to approval of the plat, in final form, in accordance with the provisions of subdivision four of this section.

Conditional approval

Submission of plats

3. All plats shall be submitted to the planning board for approval in their final form provided, however, that where the planning board has been empowered to conditionally approve preliminary plats, the owner may submit or the planning board may require that he submit a preliminary plat for consideration. A preliminary plat shall be clearly marked "preliminary plat" and shall be of sufficient detail to apprise the planning board of the layout of the proposed subdivision. Within forty-five days after the time of submission of a preliminary plat, the planning board shall take action to conditionally approve, with or without modifications, or disapprove such preliminary plat and the ground of any modification required or the ground for disapproval

Action by planning board on preliminary plats

Effect of inaction

shall be stated upon the records of such planning board. Failure of the planning board to act within such forty-five day period shall constitute a conditional approval of the preliminary plat. If the final plat is not submitted within six months of the conditional approval of the preliminary plat, the planning board may refuse to approve the final plat.

Notice and hearing

4. A public hearing shall be held by the planning board after the submission of a plat, in final form, for approval, which hearing shall be advertised at least once in a newspaper of general circulation in such village and a notice of hearing posted in at least three prominent places at least five days before such hearing. The planning board may thereupon approve, modify and approve, or disapprove such plats or the proposed development thereof. The approval required by this section or the refusal to approve shall take place within forty-five days from and after the time of the submission of the plat or the proposed development thereof for approval; otherwise such plat or such proposed development shall be deemed to have been approved, and the certificate of the clerk of such village as to the date of the submission of the plat or the proposed development thereof for approval and the failure to take action thereon within such time, shall be issued on demand and shall be sufficient in lieu of the written endorsement or other evidence of approval herein required. The ground of refusal of any plat or proposed development submitted shall be stated upon the records of such planning board.

Action by planning board; effect of inaction

Filing of planning board authority with county clerk

5. The clerk of every village which has authorized its planning board to approve plats showing lots, blocks or sites, with or without streets or highways or the entire or partial development of plats filed in the office of the clerk of the county in which such plats are located, or to conditionally approve preliminary plats, as provided in this article shall immediately file a certificate of that fact with the clerk or register of the county in which such village is located.

Expiration of planning board approval or certificate of village clerk unless plat filed or recorded within specified time and development completed or bond posted

6. The approval by the planning board of a plat showing lots, blocks or sites, with or without streets or highways, or the approval by such board of the development of a plat filed in the office of the clerk of the county in which such plat or plats are situated prior to the appointment of such planning board and the grant to such board of the power to approve plats, or the certificate of the village as to the date of the submission of such plats or such proposed development and the failure of the planning board to take action thereon within forty-five days, shall expire ninety days from the date of such approval or of such certificate unless within such ninety day period such plat or a section thereof shall have been duly filed or recorded by the owner in the office of the county clerk or register and the proposed development of such plat has been either completed or a bond therefor posted with the village board as provided in section one hundred seventy-nine-1 of the village law. Prior to granting its approval, the village planning board may permit the plat to be subdivided into two or more sections and may impose such conditions upon the filing of the sections as it may deem necessary to assure the orderly development of the plat. Approval to the sections, subject to any conditions imposed by the board, shall be granted concurrently with the approval of the plat. If the owner shall

Approval of plat by sections

file only a section of an approved plat within such ninety day period, such section shall encompass at least ten per cent of the total number of lots contained in the approved plat and the approval of the remaining sections of the approved plat shall expire unless said sections are filed before the expiration of the exemption period to which such plat is entitled under the provisions of subdivision two of section one hundred seventy-nine of this article. In the event the owner shall file only a section of such approved plat in the office of the county clerk or register, the entire approved plat shall be filed within thirty days of the filing of such section with the village clerk.

Filing of entire plat with village clerk

Extension of time for filing

7. Notwithstanding the foregoing provisions of this section, the planning board may extend the time for filing and recording such plat, if in its opinion such intention is warranted by the particular circumstances thereof, for not to exceed two additional periods of ninety days each.

Notes:

- Approval of subdivisions by Health Department – see Public Health Law, Article 11.
- Notice required of certain proposed subdivision plats requiring referral to county planning agency and/or county superintendent of highways – see General Municipal Law, 239-k and 239-n.
- This section must be read together with 179-l, which requires the planning board to estimate the amount of the performance bond to be filed to cover the cost of improvements *(Levin vs. Thornbury,* 2 A.D. 2d. 774).
- Failure of planning board to approve, modify or disapprove plat within 45 days of submission shall be deemed approval, and certificate of village clerk as to date of submission and failure to take action shall be issued on demand and be sufficient in lieu of written endorsement of approval *(Levin vs. Thornbury, above).*
- For a discussion of subdivision regulation enforcement, see **Bibliography Item 3.**

§ 179-*l*. Approval of plats; development of filed plats; additional requisites

Authority of planning board to require parks for playgrounds or other recreational purposes

1. Before the approval by the planning board of a plat showing lots, blocks or sites, with or without streets or highways, or the approval of the development of a plat entirely or partially undeveloped and which has been filed in the office of the clerk of the county wherein such plat is situated prior to the appointment of such planning board and the grant to such board of the power to approve plats, such plat or plan of proposed development shall also show in proper cases and when required by the planning board, a park or parks suitably located for playground or other recreation purposes. If the planning board determines that a suitable park or parks of adequate size can not be properly located in any such plat or is otherwise not practical, the board may require as a condition to approval of any such plat a payment to the village of a sum to be determined by the board of trustees, which sum shall constitute a trust fund to be used by the board of trustees exclusively for neighborhood park, playground or recreation purposes including the acquisition of land. In approving such plats the planning board shall require that the streets and highways shall be of sufficient width

Authority to require monetary payment in lieu of reservation of land

Requirement for streets and highways

and suitable grade and shall be suitably located to accommodate the prospective traffic, to afford adequate light and air, to facilitate fire protection, and to provide access of fire-fighting equipment to buildings, and to be co-ordinated so as to compose a convenient system conforming to the official map and properly related to the proposals shown by the planning board on the master plan; that the land shown on such plats shall be of such a character that it can be used safely for building purposes without danger to health or peril from fire, flood or other menace; that suitable monuments have been placed at such block corners and other necessary points as may be required by the board and the location thereof is shown on the map of such plats; and that the parks shall be of reasonable size for neighborhood playgrounds or other recreation uses; that all streets or other public places shown on such plats shall be suitably graded and paved and that sidewalks, street lighting standards, curbs, gutters, street trees, water mains, fire alarm signal devices including necessary ducts and cables or other connecting facilities, water mains, sanitary sewers and storm drains or combined sewers and storm drains shall be installed all in accordance with standards, specifications and procedure acceptable to the appropriate village departments except as hereinafter provided, or alternatively that a performance bond sufficient to cover the full cost of the same as estimated by the planning board or other appropriate village departments designated by the planning board shall be furnished to the village by the owner; provided, however, that the planning board may waive subject to appropriate conditions and guarantees, for such period as it may determine, the provision of any or all such improvements as in its judgment of the special circumstances of a particular plat or plats are not requisite in the interests of the public health, safety and general welfare. In the event that the owner shall be authorized to file the approved plat in sections as provided in subdivision three of section one hundred seventy-nine-*l* of this article, approval of the plat may be granted upon the installation of the required improvements in the section of the plat filed in the office of the county clerk or register or the posting of a bond covering the cost of such improvements. The owner shall not be permitted to begin construction of buildings in any other section until such section has been filed in the office of the county clerk or register and the required improvements have been installed in such section or a bond covering the cost of such improvements is posted. Such performance bond shall be issued by a bonding or surety company approved by the board of trustees, or by the owner with security acceptable to the board of trustees, and such performance bond shall also be approved by the village attorney as to form, sufficiency and manner of execution. Such performance bond shall run for a term to be fixed by the planning board, but in no case for a longer term than three years, provided, however, that the term of such performance bond may be extended by the planning board with the consent of the parties thereto. If the planning board shall decide at any time during the term of the performance bond that the extent of building development that has taken place in the subdivision is not sufficient to warrant all the improvements covered by such performance bond, or that required improvements have been installed as provided in this section and by the planning board in sufficient amount to war-

Other specific requisites

Posting of performance bond

Waiver by planning board

Approval of plat filed in sections

Performance bond requirements

rant reduction in the face amount of said bond, or that the character and extent of such development requires additional improvements previously waived for a period stated at the time of fixing the original terms of such bond, the planning board may modify its requirements for any or all such improvements, and the face value of such performance bond shall thereupon be reduced or increased by an appropriate amount so that the new face value will cover the cost in full of the amended list of improvements required by the planning board and any security deposited with the bond may be reduced or increased proportionately. In the event that any required improvements have not been installed as provided in this section within the term of such performance bond, the village board may thereupon declare the said performance bond to be in default and collect the sum remaining payable thereunder, and upon the receipt of the proceeds thereof the village shall install such improvements as are covered by such performance bond and are commensurate with the extent of building development that has taken place in the subdivision but not exceeding in cost the amount of such proceeds. In making such determination regarding streets, highways, parks and required improvements, the planning board shall take into consideration the prospective character of the development, whether dense residence, open residence, business or industrial.

Modification of requirements by planning board

Power of village board to act in event of default of conditions of performance bond

Notes:

- Approval of subdivisions by Health Department – see Public Health Law, Article 11.
- Filing of subdivision plats – see Real Property Law, Sec. 334.
- For information on requirement for the installation of underground electric service, see Bibliography Item 1.
- There is a sufficient grant of power in this section to permit developers to pay cash in lieu of setting aside areas for parks, playgrounds and similar purposes and it is valid and enforcible (*Jenad, Inc. vs Village of Scarsdale*, 18 N.Y. 2d. 78).
- A village may require a cash deposit, in lieu of a specific reservation of park land, by a subdivider if the ordinance requiring such payments specifically requires that the monies be used for permanent parks available to the residents of the subdivision concerned (17 Op. St. Compt. 79).
- Land conveyed to a village by a developer for park purposes under the authority of this section becomes impressed with a public trust and may not be alienated without a special act of the Legislature (Op. St. Compt. 68-976).

§ 179-m. Approval of plat for filing or recording; notification of filing; notation against dedication; offer of cession

No plat to be recorded without planning board approval and endorsement

No plat of a subdivision of land showing lots, blocks or sites, with or without new streets or highways, shall be filed or recorded in the office of the county clerk or register until it has been approved by a planning board which has been empowered to approve such plats, and such approval be endorsed in writing on the plat in such manner as the planning board may designate. Such endorsement shall stipulate that the plat does not conflict with the county official map, where one exists, or, in cases where plats do front on or have access to or are otherwise related to roads or drainage systems shown on the county map, that such plat has been approved in the manner specified by section two hundred thirty-nine-k of the general municipal law, it shall be the duty of the county clerk or register to notify the planning board in writing within three days of the filing or recording of any plat approved by such plan-

Contents of endorsement

Notification to planning board by county clerk of recording of plat

ning board, identifying such plat by its title, date of filing or recording, and official file number. After such plat is approved and filed, subject however, to review by court as hereinafter provided, the streets, highways and parks shown on such plat shall be and become a part of the official map or plan of the village. The owner of the land or his agent who filed the plat may add as part of the plat a notation if he so desires to the effect that no offer of dedication of such streets, highways or parks or any of them is made to the public. Formal offers of cession to the public of all streets, highways or parks not marked with such notation on the plat shall be filed with the planning board prior to the approval of the plat by the planning board. In the event that the owner or his agent shall elect not to file his plat prior to the expiration date of the validity of such approval provided in section one hundred seventy-nine-k, then such formal offers of cession shall be deemed to be invalid, void and of no effect on and after such expiration date.

Streets and highways on recorded plat

Notation that no offer of dedication intended

Formal offer of streets to be filed with planning board

Every street shown on a plat that is hereafter filed or recorded in the office of the county clerk or register as provided in this section, shall be deemed to be a private street until such time as it has been formally offered for cession to be public and formally accepted as a public street by resolution of the village or alternatively until it has been condemned by the village for use as a public street.

Streets private until formal cession and acceptance or condemnation

In so far as provisions of law other than those contained in this article, require the approval of a plat, map or plan of land by the authority of the village, as a prerequisite of its record, or allow it to be recorded on failure of the village to approve or disapprove of the same within a given time, said provisions shall not be in force in so far as they apply to plats, maps or plans of land within the limits of any village which has established an official map or plan and authorized a planning board appointed by it to approve plats of land within said village showing new streets and highways, under this article.

Effect of other provisions of law relating to approval of plats

Notes:

- County official maps – see General Municipal Law, Sec. 239-g to Sec. 239-k.
- Approval of plats related to roads or drainage systems shown on county official map – see General Municipal Law, Sec. 239-k.
- Where a map of a subdivision improvement was approved by village planning board, and thereafter filed in the office of the county clerk, streets shown thereon thereafter were a part of the official map or plan of the village *(Application of Simonson,* 191 N.Y.S. 2d. 857).
- Proposed realty subdivision layouts must be approved by the local planning board and department of health and the map thereof must then be filed of record. A tract owner cannot evade these requirements by showing no new streets on his unfiled map, and by conveying portions of the tract to two grantees in a sort of checkerboard pattern *(Village of Nissequogue vs. Meixsell,* 55 Misc. 2d. 1069).

§ 179-p. Approval of plats. conditions for changes in zoning provisions

Authority of planning board, simultaneously with plat approval, to modify provisions of zoning ordinance

The board of trustees is hereby empowered by resolution to authorize the planning board, simultaneously with the approval of a plat or plats pursuant to this article, to modify applicable provisions of the zoning ordinances, subject to the conditions hereinafter set forth and such other reasonable conditions as the board of trustees may in its discretion

Purposes

add thereto. Such authorization shall specify the lands to which this procedure may be applicable. The purposes of such authorization shall be to enable and encourage flexibility of design and development of land in such a manner as to promote the most appropriate use of land, to facilitate the adequate and economical provisions of streets and utilities, and to preserve the natural and scenic qualities of open lands. The conditions hereinabove referred to are as follows:

Conditions:

a) benefit to village;

(a) If the owner makes written application for the use of this procedure, it may be followed at the discretion of the planning board if, in said board's judgement, its application would benefit the village.

b) residential purposes only – density not to exceed that in applicable zoning ordinances;

(b) This procedure shall be applicable only to lands zoned for residential purposes, and its application shall result in a permitted number of dwelling units which shall in no case exceed the number which could be permitted, in the planning board's judgment, if the land were subdivided into lots conforming to the minimum lot size and density requirements of the zoning ordinance applicable to the district or districts in which such land is situated and conforming to all other applicable requirements.

c) type of structure allowed;

(c) The dwelling units permitted may be, at the discretion of the planning board and subject to the conditions set forth by the board of trustees, in detached, semi-detached, attached, or multi-story structures.

d) preservation of land for park and recreational use as condition for plat approval; approval by village board of trustees

(d) In the event that the application of this procedure results in a plat showing lands available for park, recreation, open space, or other municipal purposes directly related to the plat, then the planning board as a condition of plat approval may establish such conditions on the ownership, use, and maintenance of such lands as it deems necessary to assure the preservation of such lands for their intended purposes. The board of trustees may require that such conditions shall be approved by the board of trustees before the plat may be approved for filing.

e) review and public hearing by planning board

(e) The proposed site plan, including areas within which structures may be located, the height and spacing of buildings, open spaces and their landscaping, off-street open and enclosed parking spaces, and streets, driveways and all other physical features as shown on said plan or otherwise described, accompanied by a statement setting forth the nature of such modifications, changes, or supplementations of existing zoning provisions as are not shown on said site plan, shall be subject to review and public hearing by the planning board in the same manner as set forth in sections one hundred seventy-nine-k and one hundred seventy-nine-l of this article for the approval of plats.

Filing

(f) On the filing of the plat in the office of the county clerk or register, a copy shall be filed with the village clerk, who shall make appropriate notations and references thereto in the village zoning ordinance or map.

Notes:

– Notice of certain proposed municipal zoning actions to be submitted to county, metropolitan or regional planning agency – see General Municipal Law, Sec. 239-m.

– For a discussion of cluster development under this Section, see Bibliography Items 13 and 18.

§ 179-q. Review of decisions of planning board

Persons aggrieved by decision of planning board, or officer or department, may apply for review

Any person or persons, jointly or severally aggrieved by any decision of the planning board concerning such plat or the changing of the zoning regulations of such land, or any officer, department, board or bureau of the village, may bring a proceeding to review in the manner provided by article seventy-eight of the civil practice law and rules in a court of record on the ground that such decision is illegal, in whole or in part.

Time to commence proceeding

Such proceeding must be commenced within thirty days after the filing of the decision in the office of the board.

Commencement of the proceeding shall stay proceedings upon the decision appealed from.

Appointment of referee

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs

Costs shall not be allowed against the planning board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

Preference over other civil actions

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

Notes:

- Plaintiffs sufficiently alleged pecuniary loss in the value of their land, as distinguished from prospective loss, so as to constitute them aggrieved parties to contest the validity of the rezoning ordinance *(Westchester Motels Inc. vs. Village of Elmsford,* 20 A.D. 2d. 818).
- In our opinion, the complaint sufficiently alleged pecuniary loss so as to constitute plaintiffs aggrieved parties who could contest the validity of the zoning enactment *(Marcus vs. Incorporated Village of Spring Valley, 24 A.D. 2d. 1021).*

Official maps

§ 179-e. Official maps

May be established by resolution of village board of trustees

Contents and effect of official map

Purpose

Filing

Every village may by resolution of its board of trustees establish an official map of the village showing the streets, highways and parks heretofore laid out, adopted and established by law. Drainage systems may also be shown on this map. Such map is to be deemed to be final and conclusive with respect to the location and widths of streets, highways, drainage systems and the location of parks shown thereon. Such official map is hereby declared to be established to conserve and promote the public health, safety and general welfare. The clerk of every village which has established such an official map shall immediately file a certificate of that fact with the clerk or register of the county in which said village is located.

Notes:

- An official map of a village should be properly certified by the village clerk on its face that it was the proper one incorporated in a designated resolution and adopted by it (1967 Atty. Gen 162).
- Effect of change in county official map on official map of municipality affected – see General Municipal Law, Sec. 239-i.
- For general information on official map, see Bibliography Item 19.

§ 179-h. Changes in official map; notice of hearing

Authority of board of trustees

Notice, hearing and publication

Report of planning board

Effect of adoption

Such board of trustees is authorized and empowered, whenever and as often as it may deem it for the public interest, to change or add to the official map of the village so as to lay out new streets, highways or parks, or to widen or close existing streets, highways or parks. At least five days' notice of a public hearing on any proposed action with reference to any such change in the official map shall be published at least once in a newspaper of general circulation in such village and posted in at least three prominent places. Before making any such addition or change the board of trustees shall refer the matter to the planning board for report thereon, but if the planning board shall not make its report within thirty days of such reference, it shall forfeit the right further to suspend action. Such additions and changes when adopted shall become a part of the official map of the village, and shall be deemed to be final and con-

clusive with respect to the location of the streets, highways and parks shown thereon. The granting by the board of trustees of a petition for the approval of the laying out, altering, widening, narrowing or discontinuing of a street, shall be deemed to be an addition or change of the official map and shall be subject to all the provisions of this article with regard to such additions or changes. Drainage systems may also be shown on this map.

Changes in streets

Drainage systems

Notes:

- Effect of change in county official map on official map of municipality affected – see General Municipal Law, Sec. 239-i.
- For general information on official maps, see Bibliography Item 4.

§ 179-n. Buildings in streets; permits; hearings; review

Purpose

No permit to be issued for building in bed of street shown on official map

For the purpose of preserving the integrity of such official map or plan no permit shall hereafter be issued for any building in the bed of any street or highway shown or laid out on such map or plan, provided, however, that if the land within such mapped street or highway is not yielding a fair return on its value to the owner, the board of appeals or other similar board in any village which has established such a board having power to make variances or exceptions in zoning regulations shall have power in a specific case by the vote of a majority of its members to grant a permit for a building in such street or highway which will as little as practicable increase the cost of opening such street or highway, or tend to cause a change of such official map or plan, and such board may impose reasonable requirements as a condition of granting such permit, which requirements shall inure to the benefit of the village. Before taking any action authorized in this section, the board of appeals or similar board shall give a hearing at which parties in interest and other shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in such village. Any such decision shall be subject to review in the same manner and pursuant to the same provisions as in appeals from the decisions of such board upon zoning regulations.

Variance procedure

Imposition of conditions

Notice and hearing

Review of decision

Notes:

- This section deals only with buildings proposed to be erected in the bed of any street or highway shown or laid out on any official map or plan *(Henry Norman Associates vs. Ketler,* 16 Misc. 2d. 764).

§ 179-o. Construction of municipal utility in streets; permits for erection of buildings; appeal; review by court

No construction or improvement unless street or highway is public and is placed on official map

1. No public municipal street utility or improvement shall be constructed by the village in any street or highway until it has become a public street or highway and is duly placed on the official map or plan;

Exception for certain improvements

except that the board of trustees may authorize the construction of a public municipal street utility or improvement in or under a street which has not been dedicated, but which has been used by the public as a street for five years or more, prior to March second, nineteen hundred thirty-eight, and is shown as a street on a plat of a subdivision of land which had been filed prior to March second, nineteen hundred thirty-eight, in the office of the county clerk or register of the county in which such village is located.

Requisites for issuance of permit

2. No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plan, or if there be no official map or plan, unless such street or highway is (a) an existing state, county, town or village highway, or (b) a street shown upon a plat approved by the planning board as provided under the provisions of this article, as in effect at the time such plat was approved, or (c) a street on a plat duly filed and recorded in the office of the county clerk or register prior to the appointment of such planning board and the grant to such board of the power to approve plats. Before such permit shall be issued such street or highway shall have been suitably improved to the satisfaction of the planning board in accordance with standards and specifications approved by the appropriate village officers as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street or highway, or alternatively, and in the discretion of such board, a performance bond sufficient to cover the full cost of such improvement as estimated by such board or other appropriate village departments designated by such board shall be furnished to the village by the owner. Such performance bond shall be issued by a bonding or surety company approved by the board of trustees or by the owner with security acceptable to the board of trustees, and shall also be approved by the village attorney as to form, sufficiency and manner of execution. The term, manner of modification and method of enforcement of such bond shall be determined by the appropriate board in substantial conformity with section one hundred seventy-nine-l of this article.

Adequacy of street or highway as condition for issuance of permit

Performance bond in lieu of improvement

Variance procedure in event of practical difficulty or unnecessary hardship

3. Where the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, or where the circumstances of the case do not require the structure to be related to existing or proposed streets or highways, the applicant for such a permit may appeal from the decision of the administrative officer having charge of the issue of permits to the board of appeals or other similar board in any village which has established a board having power to make variances or exceptions in zoning regulations, and the same provisions are hereby applied to such appeals and to such board as are provided in cases of appeals on zoning regulations. The board may in passing on such appeal make any reasonable exception and issue the permit subject to conditions that will protect any future street or highway layout. Any such decision shall be subject to review in the same manner and pursuant to the same provisions as in appeals from the decisions of such board upon zoning regulations.

Power of appropriate board to issue permit subject to conditions

Review of decision

Notes:

- The power and authority of a village to regulate the improvement of public streets within the village as a prerequisite to the granting of building permits for structures abutting on public streets is not open to question *(Brous vs. Smith,* 304 N.Y. 164).
- Improvement of "paper streets" so as to provide access from certain lots to existing public streets does not per se entitle defendants to building permits. Observance of the provisions of Section 179-o of the Village Law is still requisite; but in the event application is made for building permits, the determination of the village authorities cannot be arbitrary or fail to accord due process of law to the owners' vested property rights *(Village of Baxter Estates vs. G.N.M. Construction Co.,* 49 Misc. 2d. 333).
- Planning board should not have been directed to act on petitioner's application in the absence of proof that the paper street which is the subject of the application had been placed on the official map of the village or, if there was no such map, that the street met other requirements of subdivision 2 of Section 179-o of the Village Law *(Russell Oaks Inc. vs. Planning Board of Incorporated Village of Russell Gardens,* 28 A.D. 2d. 569, aff'd. 21 N.Y. 2d. 784).

Other provisions

§ 179-c. Remedies

Action by village board in event of violations

Authority to restrain, correct or abate violations

Preference of proceeding

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or any building, structure or land is used in violation of this act, or of any ordinance or other regulation made under authority conferred thereby, the proper local authorities of the village, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises. All issues in any action or proceeding for any of the purposes herein stated shall have preference over all other civil actions and proceedings.

Notes:

– A provisions in a village zoning ordinance which provided that an official of the village should enforce the ordinance did not prevent a private property owner who suffered special damage by reason of violation of ordinance from maintaining action for redress *(Marcus vs. Village of Mamaroneck,* 283 N.Y. 330).

§ 179-d Conflict with other laws

If this act imposes strictor controls than other statute or local ordinance, this act governs

If other statute or ordinance imposes stricter controls, that statute or ordinance governs

Wherever the regulations made under authority of this act require a greater width of size of yards or courts, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this act shall govern. Whenever the provision of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this act, the provisions of such statute, or local ordinance or regulation shall govern.

§ 179-r. Separability clause

If any part of provision of this article or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which said judgment shall have been rendered and shall not affect or impair the validity of the remainder of this article or the application thereof to other persons or circumstances and the legislature hereby declares that it would have enacted this article or the remainder thereof had the invalidity of such provision or application thereof been apparent.

GENERAL MUNICIPAL—LAW ARTICLE 12-A

City and village planning commissions

§ 234. Creation, appointment and qualifications

Authority of cities and villages to create planning commissions

Creation by legislative body

Membership

Term of office

Residence requirement

Each city and incorporated village is hereby authorized and empowered to create a commission to be known as the city or village planning commission. Such commission shall be so created in incorporated villages by resolution of the trustees, in cities by ordinance of the common council, except that in cities of the first class, having more than a million inhabitants, it shall be by resolution of the board of estimate and apportionment or other similar local authority. In cities of the first class such commission shall consist of not more than eleven, in cities of the second class of not more than nine, in cities of the third class and incorporated villages of not more than seven members. Such ordinance or resolution shall specify the public officer or body of said municipality that shall appoint such commissioners, and shall provide that the appointment of as nearly as possible one-third of them shall be for a term of one year; one-third for a term of two years; and one-third for a term of three years; and that at the expiration of such terms, the terms of office of their successors shall be three years; so that the term of office of one-third of such commissioners, as nearly as possible, shall expire each year. All appointments to fill vacancies shall be for the unexpired term. Not more than one-third of the members of said commission shall hold any other public office in said city or village. In a county containing a population of over three hundred thousand one of the members of any such commission may reside outside of such village or city as the case may be.

§ 235. Officers, expenses and assistance

Election of chairman

Employment of staff

The commission shall elect annually, a chairman from its own members. It shall have the power and authority to employ experts, clerks, and a secretary, and to pay for their services and such other expenses as may be necessary and proper, not exceeding, in all, the annual ap-

Compensation

Appropriations

propriation that may be made by said city or village for said commission. The body creating the commission shall by ordinance or resolution provide what compensation if any, each of such commissioners shall receive for his services as such commissioner. Each city and incorporated village is hereby authorized and empowered to make such appropriation as it may see fit for such expense and compensation, such appropriations to be made by those officers or bodies in such city or village having charge of the appropriation of the public funds.

§ 236. General powers

Provision for referral of certain matters to planning commission

Specific matters

The body creating such planning commission may, at any time, by ordinance or resolution, provide that the following matters, or any one or more of them, shall be referred for report thereon, to such commission by the board, commission, commissioner or other public officer or officers of said city or village which is the final authority thereon before final action thereon by such authority; the adoption of any map or plan of said city or incorporated village, or part thereof, including drainage and sewer or water system plans or maps, and plans or maps for any public water front, or marginal street, or public structure upon, in or in connection with such front or street, or for any dredging, filling or fixing of lines with relation to said front; any change of any such maps or plans; the location of any public structure upon, in or in connection with, or fixing lines with relation to said front; the location of any public building, bridge, statue or monument, highway, park, parkway, square, playground or recreational ground, or public open place of said city or village. In default of any such ordinance or resolution all of said matters shall be so referred to said planning commission.

Fixing, by ordinance or resolutions, time for commission's report on referred matters

No action to be taken until report received, in absence of ordinance or resolution

Ordinance or resolution not to deprive commission of right to report

The body creating such planning commission may, at any time, by ordinance or resolution, fix the time within which such planning commission shall report upon any matter or class of matters to be referred to it, with or without the further provision that in default of report within the time so fixed, the planning commission shall forfeit the right further to suspend action, as aforesaid with regard to the particular matter upon which it has so defaulted. In default of any such ordinance or resolution, no such action shall be taken until such report is so received, and no adoption, change, fixing or location as aforesaid by said final authority, prior thereto, shall be valid. No ordinance or resolution shall deprive said planning commission of its right or relieve it of its duty, to report, at such time as it deems proper upon any matter at any time referred to it.

This section shall not be construed as intended to limit or impair the power of any art commission, park commission, or commissioner, now or hereafter existing by virtue of any provision of law, to refuse consent to the acceptance by any municipality of the gift of any work of art to said municipality, without reference of the matter, by reason of its proposed location or otherwise, to said planning commission.

Section not to impair power of art commission

Nor shall this section be construed as intended to limit or impair any other power of any such art commission or affect the same, except in so far as it provides for reference or report, or both, on any matter before final action thereon by said art commission.

§ 237. Maps and recommendations

Preparation and contents of maps and plans

Such planning commission may cause to be made a map or maps of said city or village or any portion thereof, or of any land outside the limits of said city or village so near or so related thereto that in the opinion of said planning commission it should be so mapped. Such plans may show not only such matters as by law have been or may be referred to the planning commission, but also any and all matters and things with relation to the plan of said city or village which to said planning commission seem necessary and proper, including recommendations and changes suggested by it; and any reports at any time made, may include any of the above. Such planning commission may obtain expert assistance in the making of any such maps or reports, or in the investigations necessary and proper with relation thereto.

Expert assistance in preparation of maps and reports

§ 238. Private streets

Authority to provide that no plan, plot, etc., showing streets on private property or building lots in relation to a private street be recorded until approved by commission

The body creating such planning commission may at any time, by ordinance or resolution provide that no plan, plot or description, showing the layout of any highway or street upon private property, or of building lots in connection with or in relation to such highway or street shall, within the limits of any municipality having a planning commission, as aforesaid, be received for record in the office of the clerk of the county where such real property is situated, until a copy of said plan, plot or description has been filed with said commission and it has certified, with relation thereto, its approval thereof. Such certificate shall be recorded as a part of the record of said original instrument containing said plan, plot, or description. No such street or highway which has not received the approval of the planning commission shall be accepted by said city or village until the matter has been referred to such commission under the provision of section two hundred and thirty-six of this article. But if any such street is plotted or laid out in accordance with the map of said municipality, adopted according to law, then it shall not be necessary to file such copy, or obtain or record such certificate.

No street to be accepted without approval of planning commission, except if laid out in accordance with map of municipality

§ 239. Rules

Such commission may make rules not contrary to law, to govern its action in carrying out the provisions of this article.

§ 239-a. Construction of article

Grant of additional power, not impairment of existing power

This article shall be construed as the grant of additional power and authority to cities and incorporated villages, and not as intended to limit or impair any existing power or authority of any city or village.

Any city or incorporated village in order to appoint a planning commission under this article shall recite, in the ordinance or resolution so creating the commission, the fact that it is created under this article.

Metropolitan regional and county planning boards— Article 12-B

§ 239-b. Establishment of metropolitan, regional or county planning boards

Establishment by board of supervisors of regional or county planning board

Membership

Ex officio members

Establishment of regional or metropolitan planning board by governing bodies of cities, towns and villages

The board of supervisors of any county alone or in collaboration with the governing bodies of the cities, towns and villages in such county or any of them or in collaboration with the board or boards of supervisors of any adjacent county or counties may establish a regional or county planning board to consist of representatives of such county or counties and where the local governments of the municipalities participate in the formation of such regional or county planning board, such board may also contain representatives of such municipalities to be selected in a manner to be determined by the board or boards of supervisors. The county engineer or superintendent of highways or district superintendent in each county participating shall be a member ex-officio of any such regional or county planning board, and in a county which has established the office of comptroller, or commissioner of finance, such official shall also be a member ex-officio of such regional or county planning board. Said board of supervisors may also designate the chief engineers of any special county improvement commissions or bodies to serve as members ex-officio of such regional or county planning board. The members of such regional or county board shall receive no salary or compensation for their services as members of such board. The governing bodies of cities, towns and villages in any county or counties may collaborate in establishing a regional or metropolitan planning board to consist of representatives of the constituent municipalities to be selected in a manner to be determined by agreement among the participating municipalities.

Notes:

- A member of village board of trustees may not serve as a member of a regional planning (Op. St. Compt. 68-172)
- For a discussion of incompatability of office and conflict of interest imposing bars on board membership, see Bibliography Item 4.

§ 239-c. Expenses

Governing body of county, town, city and village authorized to appropriate money for expenses of board

The board of supervisors of a county, the town board of a town, the common council of a city, and the board of trustees of a village, or the governing bodies of the participating municipalities comprising membership in a regional or metropolitan planning agency are hereby authorized independently or in collaboration with the other local governments, in their discretion, to appropriate and raise by taxation money for the expenses of such metropolitan, regional or county planning board; and such municipal corporations shall not be chargeable with any expenses incurred by such planning board except pursuant to such an appropriation.

Notes:

– Participating municipalities should enter into an agreement providing for allocating cost, custody by fiscal officer of one of the participants of any or all monies made available for the regional planning board and how claims shall be submitted and audited (18 Op. St. Compt. 327).

§ 239-d. Powers of board; authority to receive funds

Powers of board

1. Said planning board is hereby empowered to perform planning work, including but not limited to surveys, land use studies, urban renewal plans and technical services, and shall study the needs and conditions of metropolitan, regional, county and community planning in such county or counties or the area covered by constituent municipalities and

Preparation and adoption of master plan

prepare and adopt in whole or in part and, whenever and as often as such board may deem it for the public interest, to change or add to, a comprehensive master plan for the development of the entire area of the county or counties or municipalities participating, which master plan shall in-

Contents of master plan

clude the highways, parks, parkways and sites for public buildings or works including sub-surface facilities, in the acquisition, financing or construction of which the county or the constituent municipalities has participated or may be called upon to participate, acquire, finance or construct.

Power of board of supervisors to change or add to county plan

2. The board of supervisors in any county is hereby empowered to adopt and establish and whenever and as often as such board may deem it for the public interest, to change or add to a county plan showing the highways, parks, parkways and sites for public buildings or works, including sub-surface facilities, other than state or federal projects, in the acquisition, financing or construction of which the county has participated or may be called upon to participate. Before acting thereon in the first instance and before adopting any amendments thereto, such board of supervisors shall give two weeks' notice thereof and hold a

Notice and hearing

public hearing or hearings thereon at which representatives of the regional or county planning board, the state commissioner of transportation or his representative, the county departments, municipalities, property owners and others interested therein shall be heard. When so approved in whole or in part by the board of supervisors in any county or counties such approved county plan or part thereof shall be deemed

Approval binding on county and its departments; no expenditure for acquisition of land or public improvements to be made except in accordance with county plan

to be binding upon the board of supervisors of the county and the several county departments thereof, and no expenditure of public funds by such county for the acquisition of land except for state or federal projects or for any public improvements shown on such county plan shall be made except in accordance with such county plan, and no expenditure of public funds by the county shall be made for any other public improvements other than state or federal projects not shown on such county plan or on the acquisition of land therefor, which would necessitate the modification of such county plan, until such county plan has been amended as hereinafter provided. Before holding any such public hearing with respect to a proposed change in or addition to the county plan such board of supervisors shall submit such proposed change or addition to the regional or county planning board for its consideration and advice and shall fix a reasonable time in which such regional or county planning board may report thereon. Upon receipt of such advisory report from the county or regional planning board or upon the failure of such board to report within the time limit so fixed such board of supervisors after public hearing thereon as hereinbefore provided may thereupon act upon the proposed change, but any action adverse to the report of the county or regional planning board shall require affirmative vote of a majority of all the members of such board of supervisors. Before the final approval of any plan involving the construction or reconstruction of any state or county highway, either with or without federal aid, the county or regional planning board shall be given an opportunity to examine such plans and offer suggestions with respect thereto. This section shall in no wise be construed as nullifying or contravening in any manner the provisions of section three hundred and twenty-b of the highway law with respect to the final approval of the state superintendent of highways.

Submission of plan to regional or county planning board

Report – majority vote in event of adverse report

3. Such county or regional planning board shall also through its own staff or such agencies as it may designate, collect and distribute information relative to metropolitan, regional and community planning and zoning in such county or counties, or the area of the participating municipalities and the exercise of such powers is hereby declared to be for a public purpose and all moneys expended for such purposes are declared to be for municipal use.

Collection and distribution of planning information

4. Such planning board may conduct researches into business and industrial conditions in the county and the municipal subdivisions thereof and may seek to cooperate with official and unofficial bodies organized for such purposes.

Research into business and industrial conditions

5. Such planning board may recommend to the governing bodies of the several cities, villages and towns whose jurisdictions are served by the regional or county planning board a comprehensive zoning plan which shall designate suitable areas to be zoned for residential, commercial and industrial uses, taking into consideration, but not limited to, such factors as existing and projected highways, parks, parkways, public works, public utilities, public transportation facilities, population trends, topography and geologic structure.

Recommendation of comprehensive zoning plan to municipalities

6. Every such metropolitan, county or regional planning board shall

Annual report

make a report to the board of supervisors or the governing bodies of the constituent municipalities on or before January first of each year.

Designation of county or regional subdivision control areas outside of cities and villages

Adoption of regulations for subdivision within such area

Not applicable in towns without consent of town board

Filing of resolution

Definition of "subdivision"

Filing of subdivision regulations with county clerk

Effect of filing

Action by planning board to conform to town law provisions

Public hearings

Assignment by cities and villages of subdivision control powers

Approval of subdivision map not acceptance of dedication

7. Any such county or regional planning board may designate one or more areas of the county or region, outside the limits of any incorporated village or city or any area beyond such limits over which a city exercises powers of plat approval, as a county or regional subdivision control area or areas. In order to exercise the power authorized by this paragraph, such planning board shall adopt regulations for the subdivision of lands within such areas, which regulations shall be in accord with the requirements set forth in section two hundred seventy-seven of the town law. Upon approval by the board of supervisors of a county, such regulations shall become effective and shall be enforced within the subdivision control area of such county; provided, however, that such regulations shall not apply, except pursuant to a resolution of the town board consenting thereto, in any town where there is a town planning board in existence or which is subsequently created pursuant to the provisions of section two hundred seventy-one of the town law, with given power to approve subdivision plats pursuant to the provisions of section two hundred seventy-six of the town law, and which has adopted subdivision regulations approved by the town board. A certified copy of such consenting resolution shall be filed in the office of the county clerk and a copy thereof transmitted to the board of supervisors and to the county or regional planning board. For the purposes of this section, the term "subdivision" shall mean the division of any parcel of land into two or more lots, blocks or sites, with or without streets or highways. Upon the approval by the board of supervisors of the subdivision regulations submitted by the county or regional planning board, which approval shall include the approval of a majority of the town supervisors voting thereon, the clerk of such board of supervisors shall forthwith file a certified copy of the resolution approving such regulations in the office of the clerk of the county. Thereafter no subdivision map of any land which is subject to such control and regulations shall be filed or recorded in the office of the county clerk unless it shall have been approved by said county or regional planning board. The county or regional planning board shall act in relation to such subdivision maps in the same manner and in conformity with the provisions imposed upon a town planning board pursuant to the provisions of sections two hundred seventy-six, two hundred seventy-seven, and two hundred seventy-eight of the town law, provided that public hearings shall be held within the town in which the proposed subdivision is located. The common council of any city or the board of trustees of any village or town wholly or partially situated within any county or region for which a county or regional planning board has been established, may assign to such planning board the authority herein set forth in relation to subdivisions within or adjacent to such city, village or town, in the same manner and with the same force and effect as though such authority has been assigned to a duly established city, village or town planning agency. After acceptance in writing such county or regional planning board shall exercise the authority so vested in it and shall continue to do so until terminated by the local governing body or in writing by the county or regional planning board. The approval of a

subdivision map by the county or regional planning board shall not be deemed to be the acceptance by any town, city or village of a dedication of or responsibility for any street, highway, park, area, facility or program shown on such map.

Furnishing of services to municipalities

8. The planning board of any county with the approval of the board of supervisors is hereby authorized and empowered to furnish to communities within the county, its services when such services are requested by the municipality. The board of supervisors shall establish the charges to be made for the services furnished under the provisions of this subdivision.

Acceptance by planning boards of grants

9. In furtherance of the purposes of this article, such county, metropolitan or regional planning board may receive and expend grants from private foundations or agencies and may apply for and accept grants from the federal government or the state government and enter into contracts for and agree to accept such grants, donations or subsidies in accordance with such reasonable conditions and requirements as may be imposed thereon.

Notes:

- For provisions imposed upon town planning board re subdivision control, see Town Law, Secs. 276, 277, 278.
- A county planning board may hire experts for the purpose of drafting maps (13 Op. St. Compt. 190).

§ 239-e. Planning associations or federations

Association of cities, towns and villages

Purposes

In any county or counties the cities, towns and villages may associate themselves together in a federation to promote community or intercommunity planning within or by such municipalities, to provide for the collection and distribution of information on planning, platting and zoning matters and kindred subjects to co-operate with appropriate state and county authorities in matters affecting the master plan of such county and the county plan.

§ 239-f. Money for maintaining a planning federation of municipalities within a county or counties and any of its activities

Authorization to appropriate money, to be raised by taxation

The common council of a city, the board of trustees of a village, the town board of a town, or the board of supervisors of a county is hereby authorized to include annually in the budget and raise by taxation in such city, village, town or county a sum to meet the actual and necessary expenses of establishing, maintaining and continuing a federation of municipalities within a county or counties and any of its activities in this state for the purpose of devising practical ways and means for ob-

Purposes of planning federation

taining greater economy and efficiency in the design, layout and development of such city, town, village or county or for promoting the public health, safety, morals and general welfare by means of local and intercommunity planning, platting and zoning activities, or for establishing and maintaining information and bulletin services with relation to such above enumerated and similar purposes.

Notes:

– A county is authorized to appropriate money to meet the expenses of maintaining a planning federation in such county (11 Op. St. Compt. 191).

§ 239-g. County official map, declaration of legislative policy and intent

Intent of sections authorizing county official maps

It is the general purpose of sections two hundred thirty-nine-g to two hundred thirty-nine-k inclusive to enable counties to utilize certain regulatory powers which are essential for the purpose of providing for orderly growth and development, for affording adequate facilities for the safe, convenient, and efficient means for the traffic circulation of its population and the vehicular movement of goods, for safeguarding the public against flood damage, and for providing needed space for public development. Such purposes are declared to be in promotion of the safety, convenience, and general welfare of the community.

Purposes

Adoption by counties of official maps

Purpose of official map

In order to facilitate the planning and development of roads and drainage systems and sites for public development, provision is hereby made for the adoption by counties of official maps, analogous in function and operation to municipal official maps, which will assist in the protection of rights-of-way that will be needed for widened, realigned or new roads and which will protect drainage systems from encroachment or from excessive runoff, and sites for public development and for the adoption and administration of regulations for the control of development located along or otherwise related to roads, drainage channels and sites for public development.

Note:

– For a discussion of official maps, see Bibliography Item 4.

§ 239-h. County official map, establishment

May be established by board of supervisors

The county board of supervisors may establish an official map covering the entire county, or selected portions thereof, showing existing and proposed rights-of-way for county roads as established pursuant to article six of the highway law; and drainage systems; provided, however, that in counties where the county or regional planning board has prepared and adopted a comprehensive master plan, there may also be

Contents

included in the official map rights-of-way required for any proposed transportation network, whether to be constructed under county, state or federal authority, and sites for any proposed county, state or federal development facilities, including parks, drainage and water courses, and public buildings, whether such development facilities require acquisition of fee or less than fee interests in land. Provided, however, no state or federal development facility shall be included, changed or deleted in the official map until receipt of written approval by the appropriate state or federal agency.

No state or federal facility to be shown without approval

Effect of official map

Such map shall be final and conclusive with respect to the location, width and dimensions of all rights-of-way and sites as shown thereon. The term county planning board as used in sections two hundred thirty-nine-g through two hundred thirty-nine-k shall mean any county planning board, commission, department or agency.

Definition of "county planning board"

Note:

– See note under Sec. 239-g.

§ 239-i. County official map, changes

May be changed by board of supervisors

The county board of supervisors is authorized and empowered, whenever and as often as it may deem it in the public interest, to add new elements and change or delete existing elements on the official map of the county. A public hearing shall be held on any proposed action with reference to any such change in the official map. At least ten days' notice of such public hearing shall be published in a newspaper of general circulation in the county and, in the case of each municipality affected by such proposed action, in a newspaper of general circulation in such municipality. Notice shall also be given to the appropriate state or federal agency for the development facilities affected. Before making any such addition or change, the county board of supervisors shall refer the matter to the county or regional planning board, if any, and to the county superintendent of highways or commissioner of transportation for report thereon within thirty days of such reference. The county board of supervisors shall also refer the matter at the same time to the governing body and to the planning board or commission of each of the municipalities affected, which may report thereon to the county board of supervisors and to the county or regional planning board. If the governing body of a municipality affected by such change or addition shall by resolution disapprove of such change or addition to the county official map, then the county board of supervisors may not so change the official map except by a two-thirds vote of said board, except that in counties where the county or regional planning board has adopted a comprehensive master plan the county board of supervisors may change the official map by a majority vote notwithstanding such municipal disapproval so long as the change is in accordance with the comprehensive master plan. The county official map, together with

Notice and hearing

Referral to county or regional planning board and county superintendent of highways for report

Referral to governing body of municipalities

Effect of disapproval by municipality

Effect on municipal official maps

such changes and additions as may be authorized pursuant to the provisions of this section, shall be deemed to be in addition to or change of the official map of any municipality affected. If any such municipality shall not have an official map, then the county official map as it affects such municipality shall be considered to be the official map of such municipality and all the provisions of law applying to municipal official maps shall be applicable in the case of county official maps

Certified copies to be sent to affected municipalities

where they affect municipalities. Certified copies of such county official maps, and all amendments thereto, shall be sent to each affected municipality and appropriate state and federal agency affected, within ten days of the date of adoption. For the purposes of this section, the word municipality shall refer to a city, a village, or to a town with respect to the unincorporated portions thereof. The adoption of such a

Not to supersede highway maps

map shall in no way supersede or otherwise substitute for highway maps or procedures adopted pursuant to the state highway law.

Note:

– See note under Sec. 239-g.

§ 239-j. Permits for buildings in rights-of-way or sites preserved by the official map

Purpose

For the purpose of preserving the integrity of such official map, no permit shall hereafter be issued for any building in any right-of-way or site, shown or laid out on such map, provided, however, that if the land within such right-of-way or site is not yielding a fair return on its value to the owner, the board of appeals, or other similar board, in any municipality which has established such a board having power to

Authority to vary terms of section under certain circumstances, and to impose conditions

make variances or exceptions in zoning regulations, shall have power in a specific case by the vote of two-thirds of its members to grant a permit for a building in such right-of-way or site which will as little as practicable increase the cost of acquiring such right-of-way or site or tend to cause change of such official map, and such board may impose reasonable requirements as a condition of granting such permit, which requirements shall inure to the benefit of the county and of the municipality affected. In the case of municipalities which do not have zoning regulations or a board of appeals, for the purposes of this section such board may nevertheless be established in a manner elsewhere prescribed by law. Before taking any action authorized in this section, the board of appeals or similar board shall give a hearing at which

Notice, hearing, publication

parties in interest, which for the purposes of this section shall include the county, and others shall have an opportunity to be heard. At least ten days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in such municipality, and ten days' notice of such hearing shall also be given to the county by a registered

Notice to superintendent of highways, clerk of board of supervisors and county planning board

letter to the superintendent of highways or commissioner of public works, to the clerk of the board of supervisors of such county, and to

Review

the county planning board if any, and appropriate state and federal agency affected. Any such decision shall be subject to review by the supreme court by a proceeding under article seventy-eight of the civil practice law and rules in the same manner and pursuant to the same provisions as in appeals from the decisions of such board upon zoning regulations.

§ 239-k. Regulations for control of development

No building permit to be issued when proposed building is related to right-of-way shown on official map, except as provided

No building permit shall be issued or approved by any municipality when such proposed building shall have frontage on, access to, or be otherwise directly related to any existing or proposed right-of-way or site shown on the county official map, except in accord with the following procedures. Upon receipt of application for such building permit, the municipal building inspector or other authorized municipal official shall notify the county planning board and the county superintendent of highways or commissioner of public works. The county superintendent of highways or commissioner of public works shall notify appropriate state or federal agency affected. Such state and federal agency may file their objections within five days. Within ten days of receipt of such notification, the county superintendent or commissioner shall report to the municipality on his approval or disapproval, or on his approval subject to stated conditions, of the application for a building permit insofar as such building, including curb cuts or other means of access, may be related to any existing or proposed right-of-way or site shown on the county official map. In making such report, the county superintendent of highways or commissioner of public works may consult with the county planning board, if any, and shall take into consideration the prospective character of the development, any appropriate access standards or non-access or limited access provisions of state and federal agencies, the traffic which it will generate, and the effect of said traffic upon existing or proposed rights-of-way or sites shown on the county official map. He shall also consider the design and frequency of access, the effect of this development upon drainage as related to drainage systems, and the extent to which such development may impair the safety and traffic carrying capacity of existing and proposed rights-of-way affected. If the superintendent or commissioner shall not make his report within ten days of such reference, the county shall forfeit the right further to suspend action. The subsequent issuance of a building permit shall be in accord and consistent with such report, provided that the board of appeals, or other similar body, may vary the requirements of such report by a two-thirds vote of all the members where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such report. The provisions of section two hundred thirty-nine-j relative to notification and hearing shall prevail. The superintendent or commissioner in cooperation with the county planning board, if any, shall promulgate rules and regulations governing the approval of building permits and curb

Procedure for building permit:

a) Notification of county planning board and superintendent of highways
b) Notification of state or federal agency affected
c) Report of superintendent of highways – matters to be considered

Effect of failure to report

Variance procedure

Promulgation of rules and regulations

cuts relating to elements contained in the county official map, including provision for direct application to him by prospective builders or by persons desiring to secure access to existing or proposed rights-of-way, or alter existing means of access. Any approval of such application shall be subject to all the provision of law pertaining in the municipality affected.

No subdivision plat to be approved when proposed structures or right-of-way shown on official map

No subdivision plat shall be approved by any municipality when such proposed structures or proposed new streets shall have frontage on, access to, or be otherwise directly related to any existing or proposed right-of-way or site shown on the county official map, except in accord with the following procedures. Upon receipt of application for approval of such subdivision plat, the clerk of the municipal planning board, or the clerk of the municipality if there be no municipal planning board, shall so notify the county planning board, if any, and the county superintendent of highways or commissioner of public works. The county superintendent of highways or commissioner of public works shall notify appropriate state or federal agency affected. Within thirty days of receipt of such notification, the county planning board shall report to the municipality on its approval or disapproval, or on its approval subject to stated conditions, of the proposed subdivision plat, insofar as the proposed structures or new streets may be related to any existing or proposed right-of-way or site as shown on the county official map. In making such report, the county planning board shall take into consideration the prospective character of the development, any appropriate access standards of state and federal agencies, the traffic which it will generate, the effect of said traffic upon existing or proposed rights-of-way and sites as shown by the official map, the design and frequency of access, the effect of this development upon drainage as related to drainage systems, and the extent to which such development may impair the safety and traffic carrying capacity of the existing and proposed rights-of-way affected. The plat may be approved by the municipality subject to stated conditions, notwithstanding such report, by a two-thirds vote of all the members, when the application of such report will act to deprive the owner of the reasonable use of his land.

Procedure for approval:

a) Notification of county planning board and county superintendent of highways

b) Notification of state or federal agency affected

c) Report of county planning board – matters to be considered

Two-thirds vote for approval subject to conditions in certain circumstances

Note:

– The whole tenor of this section anticipates a reaction by a planning commission or department of public works *before* a local planning board acts with finality as to a subdivision plat filed with it for approval. Notice is to be given *upon receipt* of an application *(Matter of Connecticut River Estates vs. Luchsinger,* 52 Misc. 2d. 620).

§ 239-*l.* Coordination of certain municipal zoning and planning actions; legislative policy and intent

Legislative intent; review by county or regional planning board of certain proposed planning and zoning actions

It is hereby declared that it is in the public interest that certain classes of zoning and planning actions by a city, town or village, as proposed by the agencies thereof having jurisdiction, be reviewed by the county planning agency for the county in which such municipality is located or, in the absence of such a county planning agency, by the metropoli-

tan or regional planning agency, if any, established pursuant to law for the territory in which such municipality is located, as an aid in coordinating such zoning actions and planning among municipalities by bringing pertinent inter-community and county-wide considerations to the attention of the aforesaid municipal agencies having jurisdiction.

Considerations

It is the intention of this act that such considerations shall include: compatibility of various land uses with one another; traffic generating characteristics of various land uses in relation to the effect of such traffic on other land uses and to the adequacy of existing and proposed thoroughfare facilities; impact of proposed land uses on existing and proposed county or state institutional or other uses; protection of community character as regards predominant land uses, population density, and relation between residential and nonresidential areas; community appearance; drainage; community facilities; official development policies, municipal and county, as may be expressed through comprehensive plans, capital programs, or regulatory measures; and such other matters as may relate to the public convenience, to governmental efficiency, and to the achieving and maintaining of a satisfactory community environment. This section shall apply to municipal zoning and planning actions including those proposed zoning actions to be submitted to comty, metropolitan or regional planning agencies in accordance with provisions of section two hundred thirty-nine-m of this chapter, and to subdivision plats to be submitted to county planning agencies in accordance with provisions of section two hundred thirty-nine-n of this chapter.

Application of section

§ 239-m. Notice of certain proposed municipal zoning actions to be submitted to county, metropolitan or regional planning agency; report thereon; final action

In any city, town or village which is located in a county which has a county planning board, commission or other agency, hereinafter referred to as a county planning agency, or, in the absence of a county planning agency, which is within the jurisdiction of a metropolitan or regional planning commission, board or other agency, duly created pursuant to the provisions of law, hereinafter referred to as a metropolitan or regional planning agency, each municipal body which has jurisdiction to adopt or amend zoning regulations, or to issue special permits or grant variances pursuant to such regulations, shall, before taking final action on certain of such matters, refer the same to such county, metropolitan or regional planning agency. The term "special permit" shall be deemed to include any special permit, use permit, exception, or other special authorization which a board of appeals, planning board or legislative body is authorized to issue under the provisions of any zoning ordinance.

Referral by municipal body of certain zoning actions to county, metropolitan or regional planning agency

Matters subject to review

The matters covered by this section shall include: (a) any municipal zoning regulation, or any amendment thereof, which would change the district classification of or the regulations applying to real property

lying within a distance of five hundred feet from the boundary of any city, village, or town, or from the boundary of any existing or proposed county or state park or other recreation area, of from the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway, or from the existing or proposed right-of-way of any steam or drainage channel owned by the county or for which the county has established channel lines, or from the existing or proposed boundary of any county or state owned land on which a public building or institution is situated; and (b) any special permit or variance affecting such real property within such distance of five hundred feet. The term "proposed" shall be deemed to include only those recreation areas, parkways, thruways, expressways, roads or highways which are shown on a county plan adopted pursuant to subdivision two of section two hundred thirty-nine-d of the general municipal law or adopted on an official map pursuant to section two hundred thirty-nine-g of such law.

Definition of "proposed"

Within thirty days after receipt of a full statement of such referred matter, the county, metropolitan or regional planning agency to which referral is made, or an authorized agent of said agency, shall report its recommendations thereon to the referring municipal agency, accompanied by a full statement of the reasons for such recommendations. If such planning agency fails to report within such period of thirty days or such longer period as may have been agreed upon by it and the referring agency, the municipal body having jurisdiction to act may do so without such report. If such planning agency disapproves the proposal, or recommends modification thereof, the municipal agency having jurisdiction shall not act contrary to such disapproval or recommendation except by a vote of a majority plus one of all the members thereof and after the adoption of a resolution fully setting forth the reasons for such contrary action.

Recommendation of planning agency

Failure to make recommendation within 30 days

Majority plus one vote needed in event of disapproval

Within seven days after final action by the municipal agency having jurisdiction on the recommendations, modifications or disapproval of a referred matter, such municipal agency shall file a report of the final action it has taken with the county, metropolitan or regional planning agency which had made the recommendations, modifications or disapproval.

Report of final action

Notes:

- Provisions of this section requiring a town board of zoning appeals to refer an application for a variance affecting real property located within 500 feet of certain boundaries to the county planning agency are mandatory and failure to do so is jurisdictional, and any action by such board without such referral is nugatory, even though the vote thereon is unanimous (1967 Atty. Gen 127).
- This section was written generally so as to apply to a city, town or village without repeating it in the General City Law, the Town Law and the Village Law *(Weinstein vs. Nicosia,* 32 Misc. 2d. 246, aff'd. 18 A.D. 2d. 881).
- This legislative mandate imposed on municipal zoning boards of appeal is jurisdictional; it is a condition precedent to the acquiring of jurisdiction by such boards; unless complied with, these boards are powerless to act *(Weinstein vs. Nicosia,* above).

§ 239-n. Notice of certain subdivision plats to be submitted to county planning agency; report thereon; final action

Review of subdivision plats by county planning board when authorized by county legislative body

The planning board of any county when authorized by the county legislative body is hereby authorized to review certain subdivision plats as covered by this section, and to adopt such rules and regulations as are necessary to perform such function.

Referral by municipal agency of certain plats to county planning agency

In any city, town or village which is located in a county which has established a county planning board, commission or other agency, hereinafter referred to as a county planning agency, each municipal agency authorized by a municipal legislative body to approve plats showing lots, blocks, or sites, with or without streets or highways, or the development of plats entirely or partly undeveloped and which have been filed in the office of the clerk of the county in which such plat is located prior to the appointment of such planning board and the grant to such board of the power to approve plats shall refer certain of such plats to the county planning agency for comment if such county planning agency has been authorized by the county legislative body to review such plats, as provided herein.

Plats included in section

The plats covered by this section shall include plats of real property lying within a distance of five hundred feet from the boundary of any city, village, or town, or from the boundary of any existing or proposed county or state park or other recreation area, or from the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway, or from the existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines, or from the existing or proposed boundary of any county or state owned land on which a public building or institution is situated. The term "proposed" shall be deemed to include only those recreation areas, parkways, thruways, expressways, roads or highways which are shown on a county plan adopted pursuant to subdivision two of section two hundred thirty-nine-d of the general municipal law or adopted on an official map pursuant to section two hundred thirty-nine-g of such law.

Definition of "proposed"

Referral of application by municipal clerk

The clerk of the municipal planning agency, shall upon receipt of application for final approval of such subdivision plat shall so notify the county planning agency. Within thirty days of the receipt of such notification the county planning board shall report to the municipality on its approval, disapproval, or on its approval subject to stated conditions of the subdivision plat. The county planning agency in making such report shall consider county wide effects of the proposed subdivision, with respect to considerations stated in section two hundred thirty-nine-l of this chapter. If the county planning agency disapproves, or recommends modification of such a proposed subdivision plat, the municipal agency having jurisdiction, shall not act contrary to such disapproval or recommendation of modification except by a vote of a majority plus one of all the members thereof and after the adoption of a resolution fully setting forth the reasons for such contrary action.

Report of county planning agency

Majority plus one vote needed in event of disapproval

MISCELLANEOUS STATUTES

Public Health Law; Article 11, Title II

§ 1115. Realty subdivisions; definitions

Definition of "subdivision" – tract of land divided into five or more parcels

As used in sections one thousand one hundred fifteen to one thousand one hundred eighteen of this chapter, inclusive, the word "subdivision" shall mean any tract of land which is hereafter divided into five or mote parcels along an existing or proposed street, highway, easement or right-of-way for sale or for rent as residential lots or residential building plots, regardless of whether the lots of plots to be sold or offered for sale, or leased for any period of time, are described by metes and bounds or by reference to a map or survey of the property or by any other method of description.

Notes:

- Since "subdivision" is defined in Sec. 1115 as a tract of land divided into five or more parcels for residential purposes along a street or right-of-way, Sec. 1116 would have no application to a plot of land subdivided into less than five parcels (11 Op. St. Compt. 181).
- For a discussion of subdivision regulation enforcement, see Bibliography Item 14.

§ 1115-a. Remedy for purchaser of one parcel of unapproved realty subdivision

Application for Health Department approval of single parcel

1. The owner of a parcel of land acquired as one parcel for residential purposes may apply to the local or state health department having jurisdiction for a certificate approving the water supply for said parcel as adequate and satisfactory. The application shall include the description of the parcel as specified in the instrument, by which owner acquired title.

Standards

2. The proper department shall entertain said application and issue said certificate providing that the water supply shall, in the opinion of such department, be adequate in quality and potable and unobjectionable in physical and chemical quality and not be or become so polluted or subject to such pollution as to constitute a menace or potential menace to the public health or the health of persons using or who may use the water thereby supplied.

Certificate of approval

3. The certificate approving the water supply for said parcel shall contain the name of the owner-applicant and the description of the property set forth in the application. The owner shall append the certificate of approval to a verified petition directed to the county clerk of the county wherein the property is located, praying that the petition and certificate of approval annexed be recorded and indexed against the owner-petitioner.

Recording

4. The county clerk upon receiving the petition with annexed certificate of approval, and upon tender of the lawful recording fees, shall record the same in his office and index it against the owner-petitioner. The recording of the petition with annexed certificate of approval shall be deemed compliance with section eleven hundred sixteen of this title, for the parcel described.

Application – single, residential lot acquired without compliance with article

5. This section shall apply only to a single residential lot which was acquired without having complied with the provisions of former section eighty-nine of the public health law or section eleven hundred sixteen of this title but was:

(a) acquired by the owner-applicant prior to January first, nineteen hundred seventy-one; or

(b) acquired by the owner-applicant through devise or intestate succession; or

(c) not at the time of acquisition of title by the owner-applicant, a part of a subdivision, as such term is defined in section eleven hundred fifteen of this title.

In addition, this section shall apply to a single residential lot which the appropriate department deems proper for approval because of hardship or other special circumstances established to its satisfaction by the owner-applicant.

§1116. Realty subdivisions: Plans required to be filed and approved

Map or plan of subdivision must be approved by appropriate health department and recorded in county clerk's office

1. No subdivision or portion thereof shall be sold, offered for sale, leased or rented by any corporation, company or person, and no permanent building shall be erected thereon, until a plan or map of such subdivision shall be filed with and approved by the department or city, county, or part-county department of health having jurisdiction and in the county of Suffolk until a plan or map shall have been also filed with and approved by the county department of environmental control, and such plan or map thereafter filed in the office of the clerk of the county in which such subdivision is located.

Contents of map or plan

2. Such plan or map shall show methods for obtaining and furnishing adequate and satisfactory water supply to said subdivision.

Installation of facilities

3. The installation of such facilities shall be in accordance with the plans or any revision or revisions thereof approved by the department or city, county or part-county department of health having jurisdiction.

Notes:

– A subdivider whose plat contains five or more lots must obtain prior approval of the State Department of Health (or city, county or part county health department having jurisdiction) before proceeding to develop his property (20 Op. St. Compt. 44).

– Where only a single building lot has been sold from a larger tract, a building permit may not be refused on the ground that the subdivision requirements of this section have not been complied with (13 Op. St. Comp. 48).

§ 1117. Realty subdivisions; duty of county clerk or register in respect to filing of plans and map

No subdivision map or plat to be filed or recorded unless water supply approved

The county clerk or register shall not file nor record nor accept for filing or recording any map or plat showing a subdivision of land in any town, village or city having a population of less than one million unless there is endorsed thereon or annexed thereto a certificate of the department or city, county or part-county department of health having jurisdiction and in Suffolk County, unless there is also endorsed thereon or annexed thereto a certificate of the county department of environmental control approving the water supply system proposed or installed for such subdivision and consenting to the filing thereof.

§ 1118. Realty subdivisions; local regulations

Power of certain counties and cities to adopt regulations

1. Any city or county which has established or establishes a city, county or part-county department of health may adopt regulations for the control of such developments. Regulations adopted by a county or city board of health may include, but not be limited to, establishment of such requirements as it may deem necessary to guarantee the installation of such water supply in accordance with the plans heretofore or hereinafter approved by the county or city department of health or any approved revision or revisions thereof.

Section not to impair powers of Water Resources Commission

2. Nothing contained in sections one thousand one hundred fifteen to one thousand one hundred eighteen of this chapter, inclusive, shall be construed to delegate the general powers of the department of environmental conservation nor to impair nor to deprive such department of its powers and functions as now provided by law.

§ 1119 Realty subdivisions; filing fees to accompany plans

Filing fee

1. At the time of submitting a plan for approval as required by this article, a filing fee computed at the rate of one dollar and seventy-five cents per lot shall be paid to the department or to the city, county or part-county health district wherein such plans are filed.

No review until fee is paid

2. The department, or the city, county or part-county health district, shall not review or approve any such subdivision map submitted for approval after this section takes effect until such fee, as herein provided, has been received by it.

Return of plan upon disapproval

3. If any plan submitted to the department, or to a city, county or part-county health district, cannot be approved, such plan shall be returned to the person who submitted the plan with a summary of the reasons for disapproval.

4. Notwithstanding any other provision of this title the commissioner of health is empowered to make administrative arrangements with the commissioner of environmental conservation for joint or cooperative administration of this title and title fifteen of article seventeen of the environmental conservation law, such that only one plan must be filed and only one fee totaling three dollars and fifty cents per lot must be paid.

§ 1120. Realty subdivisions; regulation by commissioner

The commissioner may from time to time establish by rule or regulation standards for subdivisions necessary to effect the purposes of this title and not inconsistent with regulations of a city, county or part-county department of health having jurisdiction, now or hereafter adopted pursuant to law. In the event of and to the extent of such inconsistency, the standards established by the commissioners shall be deemed inapplicable.

Real Property Law; Article 9

§ 334. Maps to be filed; penalty for nonfiling

Map of subdivided property must be filed in county clerk's office

It shall be the duty of every person or corporation who, as owner or agent. subdivides real property into lots, plots, blocks or sites, with or without streets, for the purpose of offering such lots, plots, blocks or sites for sale to the public, to cause a map thereof, together with a certificate of the licensed land surveyor attached showing the date of completion of the survey and of the making of the map and the name of the subdivision as stated by the owner, to be filed in the office of the county clerk or, in any county having a register of deeds, in the office of the register of deeds, of the county where the property is situated prior to the offering of any such lots, plots, blocks or sites for sale; and a duplicate copy of such map shall also be filed in the office of the city, town or village clerk, where the property is situated, and, if situated in a county maintaining a tax map department, a copy shall also be filed with such department, before any such sale. All such maps must be printed upon linen or canvas-backed paper or drawn with a pen and India ink upon tracing cloth, and must be a minimum of eight and one half inches by eleven inches, and a maximum of thirty-four inches by forty-four inches in size, except that in the counties of Westchester, Putnam, Rockland, Clinton and Dutches all maps presented for filing must be printed or drawn with pen and ink upon tracing cloth; except that in the county of Saratoga, all maps presented for filing in the office of the

Map specifications

county clerk must be printed or drawn with pen and India ink upon transparent tracing cloth or polyester film or be photographic copies on transparent tracing cloth or polyester film and further, that such maps to be filed in the county of Saratoga be not less than eight and one-half inches by fourteen inches nor more than thirty inches by forty-two inches in size and in the county of Clinton must be either twenty inches by twenty inches or twenty inches by forty inches in size, and in the county of Putnam must be not less than twenty inches by twenty inches and not more than thirty-six inches by forty-eight inches in size, and in the counties of Westchester and Dutchess must be thirty-six inches by forty-eight inches or less in size. Every such subdivision map of property, in the towns of Tonawanda, Evans, West Senaca, Cheektowaga, Amherst, Lancaster, Grand Island, Aurora, Concord, Collins, Alden, Newstead, Clarence, Elma, Orchard Park and Hamburg, Erie county, located wholly or partly outside an incorporated village, shall before the filing thereof as herein provided, have attached thereto in writing, the approval of the town board of such town, and every such map of property located wholly or partly in an incorporated village in such town, shall, if located wholly within the village have attached the approval of the board of trustees of the village, and if located partly within a village and partly within one of such towns, have attached the approval of both the town board of the town and the board of trustees of the village. Every such map of subdivided land in the counties of Erie, Monroe and Broome, whether intended as an original subdivision or as an alteration of a prior subdivision in such county, shall have annexed thereto at the time such map is offered to be filed the certificate of the county treasurer or of an abstract and title company stating that all taxes which are a lien prior to the time such original or subsequent map is offered to be filed, whether assessed against the entire tract of land or against any lot or other part of such land, have been paid, and the county clerk of any such county shall not file any such map without such certificate. All of such maps shall be placed and kept, by some suitable method, in consecutive order and shall be consecutively numbered in the order of their filing and shall be indexed under the initial letters of all substantives in the title of the subdivision. A failure to file any such map as required by the provisions of this section shall subject the owner of such subdivision, or of the unsold lots therein, to a penalty to the people of the state of twenty-five dollars for each and every lot therein sold and conveyed by or for such owner prior to the due filing of such map.

Provisions respecting certain towns in Erie County

Special provisions affecting counties of Erie, Monroe and Broome

Penalty

Notes:

- This section requires the filing of a map in the office of the county clerk before a subdivider may commence the sale of lots in his subdivision (20 Op. St. Compt. 44).
- Compliance with this section is not required when an individual or corporation sells a portion of land which land had not been subdivided into lots for the purpose of offering such lots for sale to the public (1969 Atty. Gen 98).
- A failure to comply with this section when required is subject to an action to recover a penalty brought by the Attorney General or district attorney of the county wherein the action is triable (1961 Atty. Gen. 98).

General Municipal Law

§ 96-a. Protection of historical places, buildings and works of art.

In addition to any power or authority of a municipal corporation to regulate by planning or zoning laws and regulations or by local laws and regulations, the governing board or local legislative body of any county, city, town or village is empowered to provide by regulations, special conditions and restrictions for the protection, enhancement, perpetuation and use of places, districts, sites, buildings, structures, works of art, and other objects having a special character or special historical or aesthetic interest or value. Such regulations, special conditions and restrictions may include appropriate and reasonable control of the use or appearance of neighboring private property within public view, or both. In any such instance such measures, if adopted in the exercise of the police power, shall be reasonable and appropriate to the purpose, or if constituting a taking of private property shall provide for due compensation, which may include the limitation or remission of taxes.

§ 99-g. Capital program

Authority to undertake program

1. Any municipal corporation, by resolution or ordinance of the governing board, may undertake the planning and execution of a capital program in accordance with the provisions of this section.

Definition of capital program

2. A capital program shall be a plan of capital projects proposed to be undertaken during a six-year period, the estimated cost thereof and the proposed method of financing.

3. The officer charged with the preparation of the tentative budget shall annually cause the capital program to be prepared, and shall submit it to the governing board with the tentative budget. It shall be arranged in such manner as to indicate the order of priority of each project, and to state for each project:

Contents

(a) a description of the proposed project and the estimated total cost thereof;

(b) the proposed method of financing, indicating the amount pro-

posed to be financed by direct budgetary appropriation or duly established reserve fund; the amount, if any, estimated to be received from the federal and/or state governments; and the amount to be financed by the issuance of obligations, showing the proposed type or types of obligations, together with the period of probable usefulness for which they are proposed to be issued;

(c) an estimate of the effect, if any, upon operating costs of the municipal corporation within each of the three fiscal years following completion of the project.

Tentative budget

4. The tentative budget shall include the amount proposed for the capital program to be financed by direct budgetary appropriation during the fiscal year to which such tentative budget pertains.

Budget message

5. There shall be included in the budget message, if any, a general summary of the financial requirements for the capital program for the fiscal year to which the budget message relates. Additional comments and recommendations of any other board, officer or agency may also be included in the budget message.

Annual adoption

6. The governing board shall annually adopt the capital program after review and revisions, if any. The provisions of any law relating to a public hearing on the tentative budget, and to the adoption of the budget, shall apply to the capital program.

Amendment

7. At any time during the fiscal year for which the capital program was adopted, the governing board by the affirmative vote of two-thirds of its total membership, may amend the capital program by adding, modifying or abandoning the projects, or by modifying the methods of financing. No capital project shall be authorized or undertaken unless it is included in the capital program as adopted or amended.

Definition of capital project

8. The term "capital project" as used in this section shall mean: (a) any physical betterment or improvements, including furnishings, machinery, apparatus or equipment for such physical betterment or improvement when first constructed or acquired, or (b) any preliminary studies and surveys relating to any physical betterment or improvement, or (c) land or rights in land, or (d) any combination of (a), (b) and (c).

9. Nothing in this section shall be construed to authorize a municipal corporation to incur indebedness for which obligations may be issued except as provided by the local finance law.

§ 247. Acquisition of open spaces and areas

Definitions

1. Definitions. For the purposes of this chapter an "open space" or "open area" is any space or area characterized by (1) natural scenic beauty or, (2) whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development, or would maintain or

enhance the conservation of natural or scenic resources. For purposes of this section natural resources shall include but not be limited to agricultural lands defined as open lands actually used in bona fide agricultural production.

Public purpose

Acquisition notice and hearing

Acquisition by village

2. The acquisition of interests or rights in real property for the preservation of open spaces and areas shall constitute a public purpose for which public funds may be expended or advanced, and any county, city, town or village after due notice and a public hearing may acquire by purchase, gift, grant, bequest, devise, lease or otherwise, the fee or any lesser interest, development right, easement, covenant, or other contractual right necessary to achieve the purpose of this chapter, to land within such municipality. In the case of a village the cost of such acquisition of interest or rights may be incurred wholly at the expense of the village, at the expense of the owners of the lands benefited thereby, or partly at the expense of such owners and partly at the expense of the village at large as a local improvement in the manner provided by article eleven-A of the village law.

Valuation

3. After acquisition of any such interest pursuant to this act the valuation placed on such an open space or area for purposes of real estate taxation shall take into account and be limited by the limitation on future use of the land.

Notes:

- A village may acquire property for open spaces by condemnation (18 Op. St. Compt. 422).
- The acquisition by a village of lands located outside the village to be used for park and recreational purposes is not subject to the provisions of Sec. 247 (21 Op. St. Compt. 368).

§ 809. Disclosure in certain applications

Applies to application for variance, zoning amendment, change, plat approval, permit under zoning and planning regulations

1. Every application, petition or request submitted for a variance, amendment, change of zoning, approval of a plat, exemption from a plat or official map, license or permit, pursuant to the provisions of any ordinance, local law, rule or regulation constituting the zoning and planning regulations of a municipality shall state the name, residence and the nature and extent of the interest of any state officer or any officer or employee of such municipality or of a municipality of which such municipality is a part, in the person, partnership or association making such application, petition or request (hereinafter called the applicant) to the extent known to such applicant.

Parties deemed to have interest

2. For the purpose of this section an officer or employee shall be deemed to have an interest in the applicant when he, his spouse, or their brothers, sisters, parents, children, grandchildren, or the spouse of any of them

(a) is the applicant, or

(b) is an officer, director, partner or employee of the applicant, or

(c) legally of beneficially owns or controls stock of a corporate applicant or is a member of a partnership or association applicant, or

(d) is a party to an agreement with such an applicant, express or implied, whereby he may recieve any payment or other benefit, whether or not for services rendered, dependent or contingent upon the favorable approval of such application, petition or request.

Nassau county

3. In the county of Nassau the provisions of subdivisions one and two of this section shall also apply to a party officer. "Party officer" shall mean any person holding any position or office, whether by election, appointment or otherwise, in any party as defined by subdivision four of section two of the election law.

Ownership of stock

4. Ownership of less than five per cent of the stock of a corporation whose stock is listed on the New York or American Stock Exchanges shall not constitute an interest for the purposes of this section.

Violation of section

5. A person who knowingly and intentionally violates this section shall be guilty of a misdemeanor.

Bibliography

1. **Municipal Control of Underground Transmission Lines**, OPS Legal Memorandum
2. **Interim – Stop-gap Zoning**, OPS Legal Memorandum
3. **Subdivision Regulation Enforcement**, OPS Legal Memorandum
4. **Planning & Zoning Boards: Incompatibility of Office, Conflict of Interest**, OPS Legal Memorandum
5. **Zoning and the Comprehensive Plan**, OPS Legal Memorandum
6. **Zoning Maps in Towns and Villages**, OPS Legal Memorandum
7. **Regulation of Unsafe Buildings**, OPS Legal Memorandum
8. **Non-Conforming Uses**, OPS Legal Memorandum
9. **Partial Zoning**, OPS Legal Memorandum
10. **Spot Zoning**, OPS Legal Memorandum
11. **Municipal Regulation of Mobile Homes**, OPS Legal Memorandum
12. **Adopting a Zoning Ordinance**, OPS Legal Memorandum
13. **Innovative Zoning – Cluster Design and Planned Unit Development**, OPS Legal Memorandum
14. **The Zoning Board of Appeals**, OPS Legal Memorandum
15. **The Comprehensive Plan**, OPS
16. **A Guide to the Comprehensive Planning Assistance Program**, OPS
17. **Adopting a Zoning Ordinance**, OPS Planning Guide Series
18. **The Open Space Subdivision**, OPS Planning Guide Series
19. **The Official Map**, OPS
20. **Control of Land Subdivision**, OPS

OFFICE OF PLANNING SERVICES
488 Broadway, Albany, New York 12207
Telephone (518) 474-7028

DIRECTOR–RICHARD A. WIEBE

DEPUTY DIRECTOR–Henry G. Williams, Jr.

HEALTH PLANNING ADMINISTRATOR
Edward H. Van Ness

COUNSEL–Richard A. Persico

ASSISTANT DIRECTORS
Charles L. Crangle
William W. Horne
Vincent Stallone

CHIEF, BUREAU OF DATA AND SYSTEMS
Charles R. Guinn

DISTRICT OFFICE DIRECTORS

CAPITAL DISTRICT–James K. VanDervort
488 Broadway
Albany, New York 12207
(518) 474-8640

CENTRAL NEW YORK–Robert C. Hansen
State Tower Building
109 S. Warren Street, Room 302
Syracuse, New York 13202
(315) 474-5951 Ext. 291

METROPOLITAN NEW YORK–Howard S. Quinn
1841 Broadway, Room 711
New York, New York 10023
(212) 586-7800

WESTERN NEW YORK–Myron J Elkins
Ellicott Square Building
295 Main Street
Buffalo, New York 14203
(716) 842-2393

COASTAL ZONE
INFORMATION CENTER

NOAA COASTAL SERVICES CENTER LIBRARY
3 6668 00002 4481