

The language of the decisions will indicate to coming generations of legislators and judges that if a particular activity can be classified as a privilege, it can be conditioned. The statute's indirect effect will continue to be subordinated to its express wording and constitutional rights will be constantly placed in jeopardy. Should the courts continue their present course, any right may be abolished by the circuitous method of conditioning some necessary privilege upon its surrender. This danger becomes more acute with the realization that the courts consider rights to be only those enumerated in the Constitution; everything else, no matter how essential to the individual's economic, social, or personal well-being, is a privilege which can be conditioned. Not until the issue is recognized for what it is—the basic freedoms of the individual balanced against the interests of the state—will the mandates of the Constitution be properly considered in judicial scrutiny of legislative action against real or supposed threats from unpopular minority groups.⁹⁸

AN ANALYSIS OF SUBDIVISION CONTROL LEGISLATION

Preoccupation with the amazingly rapid expansion of suburban areas,¹ usually achieved through the process of large-scale subdividing,² may easily obscure perception of the haphazard manner of the typical city's movement to its outer limits. The most unfortunate aspect of such uncontrolled growth is the failure to realize its detrimental affect upon the health, safety, and economic well-being of the community.

(dissent). First Amendment liberties should occupy their "preferred place," not only in calm times, but especially in times of crisis and peril.

98. When it is granted that many direct conditions imposed upon governmental privileges operate as indirect abridgements of recognized constitutional rights, and, further, that many activities which bear the courts' label of privilege are, in reality, so important to the individual as to assume the status of a right, grave doubts must be cast upon the constitutional validity of the current procedures being employed against undesirable groups. See SHEARP, *The Old Constitution*, 20 U. OF CHI. L. R., 529, 534-44 (1953).

1. For a discussion of the post-war construction boom, see Fortune, June 1950, p. 67, col. 1. The results of the 1950 census show that the greatest increase in population in the past decade occurred in suburbs of metropolitan areas. See BUREAU OF THE CENSUS, POPULATION OF URBANIZED AREAS (DEPT. COMMERCE P-C-3, No. 2, 1950).

2. Subdividing is usually defined as division of a parcel of land into a specified number of lots for the purpose of sale or building. See notes 99-102 *infra* and accompanying text. See also Appendix, p. 574, col. 11 *infra*.

Concentration of the dangers to health, safety and general well-being in a given residential area is often described by the term "slum." Slums result, of course, from numerous diverse elements,³ among them factors affecting the quality of the land itself,⁴ such as swamps and periodic flooding,⁵ and the development of surrounding areas, often industrial,⁶ which renders residential use undesirable. Also contributing to slum development is the lack or insufficiency of such basic utilities as water and sanitary sewers,⁷ and occasionally, the absence of other physical improvements, typically sidewalks and curbs.

Unregulated subdividing which results in an excessive supply of lots may also threaten the economic stability of the community and

3. One noted authority lists six slum-inducing factors. For a complete discussion of these elements see FORD, *SLUMS AND HOUSING* c. 19 (1936).

4. Listed first among the causative factors by Ford is "physical factors," which is said to comprise topography, land configuration, climate, and natural resources. In discussing the relation of slum areas to these factors, Ford states: "Many cities show slums on the edges of swamps, in hollows . . . on hillsides where street systems and housing were not conformed to topography." *Id.* at 444. The causes of blight, which is usually considered the first step towards a slum area were outlined for the Presidents Conference on Home Building and Home Ownership. Included among the secondary causes were swampy soil and steep hillsides. PRESIDENTS CONFERENCE ON HOME BUILDING AND HOME OWNERSHIP, *SLUMS, LARGE-SCALE HOUSING AND DECENTRALIZATION*, 42-44 as cited in FORD, *op. cit. supra* note 3, at 447. Similarly, a newspaper editorial, in discussing the now flooded areas which were sold by wildcat subdividers, stated that such areas "in any sensible bystanders eyes are a blight on the community and deserve to be stopped." Louisville Courier-Journal, March 15, 1953, p. 17, col. 4.

5. Certainly every buyer of a home site should thoroughly investigate the topography of the territory of which his land is a part and cursory consideration suggests that today's buyer would always conduct such an examination and would therefore not purchase such property. Yet, such ignorance remains and is vividly demonstrated by the situation involving Louisville, Kentucky. Subdivision control is successfully being avoided by subdividers and a local newspaper reports that: "During the last 14 months, many wildcat lots have been sold off in the County's wettest, worst-drained flatlands. The early March rains flooded scores of families." Louisville Courier-Journal, March 15, 1953, p. 17, col. 4. This would seem to substantiate the generalization advanced by the American Planning Institute that "[p]erhaps the majority of purchasers of lots in such wild-cat subdivisions are ignorant of the responsibilities involved in making lots suitable for healthful building." Statement of the AMERICAN PLANNING INSTITUTE, quoted in, McMICHAEL, *REAL ESTATE SUBDIVISIONS*, 25 (1949).

6. The usual situation involves subdividing of land for residential purposes which is near or adjacent to railroad tracks or industry, and is better suited to industrial purposes. Such land seldom becomes fully developed, and often develops into a slum area, while also adversely affecting land further out, which might originally have been suitable for residential purposes. See FORD, *op. cit. supra* note 3, at 444.

7. The relationship between the physical improvements, represented by sanitary sewers, water, electricity, gas, and storm sewer facilities, and the development of slums in areas of such high density as the urban residential district cannot be doubted. "Characteristics of slum areas are types of house design—now outmoded, inadequate provision for sanitation, lighting, heating, obsolescent fixtures. . . ." FORD *op. cit. supra* note 3, at 12. Lack of basic improvements is generally encompassed by the term bad housing. "Bad housing, as a matter of practical fact, is profoundly detrimental to health. . . ." Winslow, *Health and Housing*, AMERICAN PUBLIC HEALTH ASSOC., HOUSING FOR

may eventually result in a slum area. Excessive subdividing causes tax delinquency,⁸ impairments of taxable values of adjacent property,⁹ and increased per capita cost for police, fire and health protection.¹⁰ Since these factors, when existing in one area, clearly constitute a severe economic drain on the community,¹¹ it is not surprising that excessive subdividing is a recognized primary cause¹² of blighted areas,¹³ which are commonly, but not invariably, the first stage of slum development.¹⁴

Summarily, slum-inducing conditions arise from physical factors involving the instant and surrounding land, and from the need for improvements upon the land, while economic instability¹⁵ arises primarily from excessive residential subdividing.¹⁶ While the elements involving the development of contiguous land and excessive residential subdividing are usually considered zoning problems because of the use

HEALTH 9 (1941). The standards of quality relating to these improvements presents more difficult problems. See notes 132-137 *infra* and accompanying text.

8. The extent of such delinquency is vividly reflected by the situation in Chicago, where in 1946 there existed 250,000 parcels of tax delinquent land. For an excellent article on this point see Aschman, *Chronically Tax Delinquent Land in Cook County*, 25 LAND ECONOMICS 240 (1946), in which the author stated that such delinquency unquestionably resulted from excessive subdividing.

9. See SEGOE, LOCAL PLANNING ADMINISTRATION 479 (1st ed. 1941).

10. Thousands of dollars are required to service these vacant subdivisions. Indeed, the cost of assessment alone was over \$1,000,000 a year in Cook County in 1946. Aschman, *supra* note 8, at 243. See also MONCHOW, REAL ESTATE SUBDIVIDING c. 1 (1939); SEGOE, *op. cit. supra* note 9, at 497.

11. See HARVARD CITY PLANNING STUDIES XII, WALKER, URBAN BLIGHT AND SLUMS 69 (1938).

12. The Presidents Conference on Home Building and Home Ownership concluded that one of the primary causes of blighted areas was the "uneconomic use of land." In urban areas such blight results when the "wrong type of development is attempted, as too large an area zoned for business or apartment houses, or an over-supply of building lots put on the market." PRESIDENTS CONFERENCE ON HOME BUILDING AND HOME OWNERSHIP, SLUMS, LARGE-SCALE HOUSING AND DECENTRALIZATION, 111, 42-44, quoted in FORD, SLUMS AND HOUSING 446 (1936).

13. Definition of the term blighted area, like slum, is not without considerable difficulty. Almost every writer on the general subject has established a different definition. Clearly, however, the term does have economic connotations and is usually considered in that context. See WALKER, URBAN BLIGHT AND SLUMS 3 *et seq.* (1938).

14. See FORD, SLUMS AND HOUSING 446 (1936).

15. Indeed, excessive subdividing has often resulted in a more direct drain on public funds, and accordingly an increase in city taxation, the precise amount of which is usually readily determinable. Thus, where the city finances improvements through bonds which are to be retired by special assessments on the lots, and the lots remain vacant, the city is forced to pay the ultimate bill. See CORNICK, PREMATURE SUBDIVISION OF URBAN LANDS 290 (1938); FEDERAL HOUSING AND HOME FINANCE AGENCY, SUGGESTED LAND SUBDIVISION REGULATIONS 4 (1952).

16. The extent of excessive subdividing during the boom of the twenties is demonstrated by statistics which show that by 1930 there were 175,000 vacant lots in both Cleveland and Chicago, enough in Los Angeles to accommodate an 85% increase in population, and 224,092 vacant lots in Detroit. SEGOE, LOCAL PLANNING ADMINISTRATION 514-515 (1st ed. 1941).

aspect involved, they are commonly associated with subdividing and suggest the need for a determination of how they may best be attacked.

Subdivision control, like zoning,¹⁷ must be recognized as a tool¹⁸ of city planning.¹⁹ It has sought, in the past, to guide development by establishing standards for the desirable transition of land.²⁰ Meanwhile, use control, the most frequently recognized aspect of zoning, has evolved from a device initiated to preserve use and land values²¹ into a recog-

17. An excellent discussion of the inter-relation between zoning and planning may be found in a case involving subdivision control. The court rejected the contention that zoning and planning are a single conception and embrace identical areas, and concluded that zoning was but a part of the broader term of city planning. *Mansfield & Swett v. Town of West Orange*, 120 N.J.L. 145, 149, 198 Atl. 225, 228 (1938).

18. Both zoning and subdivision control are methods of effectuating the proper development of the community. Such physical development is usually represented by a master plan which is established to serve as a guide. Zoning, subdivision control, prevention of building in right-of-ways, and the programing of public works represent the four major methods of carrying out comprehensive city planning. *SEGOE, LOCAL PLANNING ADMINISTRATION* 27 (2d ed. 1948).

19. While considerable writings have been devoted to defining the term city planning, one of the most concise and comprehensive statements emerges from a New Jersey zoning decision. "Municipal planning, in a word, is the accommodation, through unity in construction, of the variant interests seeking expression in the local physical life to the interest of the community as a social unit. Planning is a science and an art concerned with land economics and land policies in terms of social and economic betterment." *Grosso v. Board of Adjustment*, 137 N.J.L. 630, 631, 61 A.2d 167, 168 (1948). Recognition of the vital relation of city planning to slums has evolved rapidly since the 1930's. In 1936, one writer observed. "[w]hen one considers city planning as a device for slum prevention, one notes that in writings on housing little specific attention has so far been paid to the problem. City planners have dealt with the rehabilitation of blighted districts or of slums, but in so doing have been dealing with curative rather than preventative aspects of the problem." *FORD, SLUMS AND HOUSING* 495 (1936). Today, however, recognition of the preventive aspects of city planning, as effectuated through zoning and subdivision control, is established. See *AMERICAN SOCIETY OF PLANNING OFFICIALS, PLANNING ADVISORY SERVICE INFORMATION REPORT No. 10, CONSIDERATIONS IN SUBDIVISION CONTROL* 1 (1950). The realization of the necessary role of subdivision control as a preventative measure is certainly not limited, today, to planning officials. Louisville, Kentucky, which is striving to clean up its slum areas through either rehabilitation or redevelopment, has also been recently prompted to reconsider its subdivision control regulations as a vital aspect of the entire program. See *Louisville Courier-Journal*, Feb. 21, 1953, p. 6, col. 1-2.

20. See notes 53-57 *infra* and accompanying text.

21. These early zoning cases largely consisted of ordinances classifying certain areas as residential and industrial, and often prohibiting specific industrial uses within the residential area. While such uses were not classified as nuisances *per se*, *Reinman v. City of Little Rock*, 237 U.S. 171, 174 (1915); *Ex parte Quong Wo*, 161 Cal. 220, 232, 118 Pac. 714, 719 (1911), the cases are clearly based on the harm to surrounding land values, although ostensibly often relying on the broad phrase "health, safety, and general welfare." In the *Reinman* case, which involved an ordinance forbidding the existence of a livery stable within a designated area, the court pointed out that the ordinance was passed in belief that such stables were damaging to the "prosperity in that vicinity," which consisted of the "most valuable real estate in the entire state." *Reinman v. City of Little Rock*, 237 U.S. 171, 174 (1915). Similarly, in *Ex parte Quong Wo*, where a laundry was being operated in a zone classified as residential, the

nized means for guiding development by assuring future use consistent with the general welfare.²² The intimate relationship between these two implements is readily evidenced by comparing subdivision regulations, concerning the necessary improvements for the land, and the less prevalent aspect of zoning which regulates height, area, and bulk of buildings²³ upon the property. Both devices tend to determine how the transition from one use to another shall be effectuated so as to assure desirable change.²⁴ Hence, any dichotomy, however intriguing, that classifies zoning as the determinant of what use can be made and subdivision control as determining the standards for development is an over-simplification of existing relationships.²⁵ The current question, however, is whether subdivision control can and should also be directed towards controlling use in an effort to combat the evils of excessive and inappropriately located residential subdividing.

The ideal subdivision offers numerous advantages to the buyer of a home or home site.²⁶ Included among these are: (1) the ability to anticipate the general character of the surrounding area; (2) appreciation of the lot sizes and topography of the immediately contiguous land; (3)

court observed that the ordinance "was undoubtedly [designed] to protect such portions of the city of Los Angeles as are devoted principally to residence purposes from the dangers and discomfort attendant upon the operation of certain kinds of business" which, while not necessarily nuisances per se, have always been recognized as proper subjects of police regulation. *Ex parte Quong Wo*, 161 Cal. 220, 232, 118 Pac. 714, 719 (1911). Additional cases demonstrating this point are *Hadacheck v. City of Los Angeles*, 239 U.S. 394 (1915) (brick manufacturing); *Ex parte Montgomery*, 163 Cal. 457, 125 Pac. 1070 (1912) (lumber yard).

22. One of the earliest cases recognizing the full breadth of zoning was the *Zahn* decision, where the court observed, "[t]he power of the city council to zone is not limited in our opinion to the protection of established districts. . . . Zoning in its best sense looks, not only backward to protect districts already established, but forward to aid in the development of new districts according to a comprehensive plan having as its basis the welfare of the city as a whole." *Zahn v. Board of Public Works*, 195 Cal. 497, 503, 234 Pac. 388, 395 (1925), *aff'd* 274 U.S. 325 (1927).

23. This aspect of zoning seeks to assure proper density of population, sufficient light, and adequate open space around buildings through devices which regulate size, area, and placement of such buildings. The devices employed often include height limitations, set-back lines and yard requirements. See Comments, 66 HARV. L. REV. 1051 (1953); 60 YALE L.J. 506 (1951).

24. Such subdivision regulations require certain utility installations and other improvements, typically sidewalks, curbs and gutters. Obviously these seek to prepare satisfactorily the land for future building, while bulk regulations immediately follow to establish certain regulations as to how the building may be placed upon the property.

25. See Note, 65 HARV. L. REV. 1226 (1952).

26. "Recent years have brought startling changes to the business of subdividing real estate. The selling of lots has been merged with the building of houses until today the buyer acquires a complete new home." McMICHAEL, *op. cit. supra* note 5, at 1. "The trend today is toward the complete package of improved lot with streets, utilities, and house." Communication to the INDIANA LAW JOURNAL from Max Wehrly, Executive Director of the Urban Land Institute.

participation in restrictive covenant agreements;²⁷ (4) expected development of neighborhood shopping districts in reasonably sizable subdivisions; and, (5) adequate streets and other improvements.²⁸ Control over subdividing serves the dual purpose of preserving these benefits for the buyer, while insuring the community of sound physical growth.²⁹

Significantly, the subdivision industry has not voiced disapproval of regulation on the grounds that it represents an undue governmental interference with business.³⁰ The organized industry reflects an appreciation for the desirability of social control to avoid economic waste³¹ and protect the ethical subdivider and the reputation of the industry from the irresponsible "wildcat" subdivider. However, while agreeing in principle, the industry often does not approve of the improvement requirements which have been established to effectuate the control program. Its common assertion that compliance with established regulations often prohibits erection of low cost housing,³² suggests that a balance must

27. The important role which protective covenants play in assuring individual property maximum protection against inharmonious land use is well recognized. The F.H.A. in its General Advice on Protective Covenants stated, "[p]rotective covenants are essential to the sound development of proposed residential areas. Covenants properly prepared and legally sound contribute to a neighborhood and to the maintenance of value levels through the regulation of type, size and placement of buildings, lot size, reservation of easement, and prohibition of nuisances. . . ." Quoted in FEDERAL HOUSING AND HOME FINANCE AGENCY, SUGGESTED LAND SUBDIVISION REGULATIONS 53 (1952).

28. See notes 53-57 *infra* and accompanying text.

29. See *Brous v. Smith*, 304 N.Y. 164, 167, 106 N.E.2d 503, 506 (1952).

30. One of the best known books on subdividing, written from the subdivider's viewpoint, reflects this feeling: "Government domination is not relished by the American people; yet here is a field in which the average citizen does not seem to be fearful that any of his rights are being abridged. . . ." MCMICHAEL, REAL ESTATE SUBDIVISIONS 30 (1949).

31. Accordingly, consultants for the National Association of Home Builders stated: "The progressive community builders and Home Builders today accept the desirability and necessity of municipal subdivision regulations." Communication to the INDIANA LAW JOURNAL from Max Wehrly, Executive Director of the Urban Land Institute. Similarly, Guy Rush, former chairman of the Subdividing and Homebuilders Division of the California Real Estate Association, after making a nation wide survey, concluded: ". . . [R]eal estate activity, even when conducted by the most conservative and ethical operators requires some common means of direction if great economic loss is not to be entailed. . . . The conclusion is that subdivision regulation, therefore, is not only necessary but also desirable." Quoted in MCMICHAEL, REAL ESTATE SUBDIVISIONS 28-29 (1949).

32. The Executive Director of the Urban Land Institute, which is the consultant body for the National Association of Home Builders, after stating that the progressive builders accept the desirability and necessity of municipal subdivision regulations, continued: "Their chief quarrel with these regulations has been directed against those cities which have adopted excessive provisions or unreasonable requirements which the developer must meet in order to comply. These include, for instance, such items as excessive widths on roadway pavements on purely local streets; heavy duty construction on local streets. . . .; installation of over sized utilities at the developer's expense to serve property beyond his development; . . . and similar items." Communication to the INDIANA LAW JOURNAL from Max S. Wehrly, Executive Director of the Urban Land Institute.

be achieved between the admitted desirability of avoiding slum conditions and the equally significant social benefits of sufficient low cost housing.³³

Assuredly, it would be desirable if satisfactory direction could be achieved without governmental control by the subdivision industry and buyers. The industry, whose speculative practices³⁴ in the booming twenties³⁵ underscored the control problem³⁶ can measurably improve present conditions by seeking to eliminate the "wildcat" subdivider whose only aim is the greatest possible profit.³⁷ While the industry, not only in its code of ethics³⁸ but in representative literature vows to comply with both the letter and spirit of the law,³⁹ no specific content has been imbued into these broad statements, nor do any sanctions within the industry suggest themselves.⁴⁰ Indeed, the industry, in its avowed attempt to satisfy low cost housing needs would apparently voluntarily establish only the most minimal standards.⁴¹ The buyer, of course, by

33. See notes 123-137 *infra* and accompanying text.

34. For a detailed account of such practices in large metropolitan areas see CORNICK, PROBLEMS CREATED BY PREMATURE SUBDIVISION c. 1 (1938); MONCHOW, REAL ESTATE SUBDIVIDING c. 1 (1939).

35. One noted planning authority, as late as 1941, felt the subdivider still was almost exclusively a "profit" animal. See SEGOE, LOCAL PLANNING ADMINISTRATION 495 (1st ed. 1941).

36. During the boom, however, the unfortunate results were evidently not readily foreseen. Indeed, the subdivider was at the time eulogized by one writer as the "magician of modern times. . . . The subdivider is truly the advance guard of civic progress . . . the unsung and unromantic hero of modern civilization." Malbrough, *The Magician*, *Economist*, Aug. 22, 1925, p. 25, quoted in MONCHOW, REAL ESTATE SUBDIVIDING 159 (1939).

37. The subdivision industry is well aware of the "wildcat" subdivider and has made every effort to eliminate him from recognized organizations. Accordingly, one representative for the industry stated: ". . . [Y]ou will, of course, find a few operators in these fields attempting to sidestep *all* regulations. This is not unique in this industry, as I am sure you are aware. . . . normally, however, you will not find them within the recognized organizations." (emphasis added) Communication to the INDIANA LAW JOURNAL from Max Wehrly, Executive Director of the Urban Land Institute.

38. "'(F) Members shall comply both in spirit and letter with rules and regulations prescribed by law and government agencies for the health, safety and progress of the community.'" CODE OF ETHICS OF NATIONAL ASSOCIATION OF HOME BUILDERS OF THE UNITED STATES, quoted in McMICHAEL, REAL ESTATE SUBDIVISIONS 336 (1949).

39. The industry, in fact, realizes that further regulations, some of which will be even more restrictive, will probably be imposed in years to come. "When these restrictions are not unreasonable they will be welcomed by the operator, who will pass on their cost to the ultimate consumer." *Id.* at 10 (1949).

40. This is probably due, in part, to the nature of the subdivision business, which thrives during boom periods and disappears in less prosperous times. Hence the subdivider is the real estate man or the contractor most of the time, turning to subdividing only in selected business periods. This factor, coupled with the individual owner who turns subdivider, by dividing his own property, tends to produce a divergent group and necessarily loosely bound industry. For an interesting discussion on this point, pertaining especially to Wisconsin, see MELLI, SUBDIVISION CONTROL IN WISCONSIN, 44 *et seq.* (1953).

41. This is reflected primarily in relation to statutes requiring the subdivider to

demanding higher quality and by making a thorough examination of the property before buying might thereby better the situation. Unfortunately, however, the buyer, even when he is in a strong bargaining position, is usually woefully unaware of the necessities for an improved lot⁴² and is often prompted to buy because he believes he can resell for a quick profit, especially in boom periods.⁴³

Inherent in any otherwise effective control by the industry, the buyer, or both is the severe limitation of piecemeal planning.⁴⁴ Hence, governmental control of the subdivision process⁴⁵ has become, especially in the past three decades,⁴⁶ increasingly prevalent. While considerable indirect influence is exerted by the Federal Housing Administration which demands compliance with certain standards before an insured mortgage can be obtained,⁴⁷ the most substantial control emanates from

install improvements, such as sidewalks, curbs, gutters, gas mains and sanitary sewers, by protestations as to the number of requirements and the specifications therefor. See notes 123-137 *infra* and accompanying text.

42. See note 5 *supra*.

43. One survey of seventy-three prominent subdividers resulted in a finding that "considerably" over 50% of the buyers purchased lots for their own home sites rather than for investment or speculation. From a survey by the NATIONAL ASSOCIATION OF REAL ESTATE BOARDS, cited in McMICHAEL, REAL ESTATE SUBDIVISIONS 19 (1949).

44. The realization that the industry cannot possibly adequately plan was evidenced in a report made as the result of a nation-wide survey. See note 31 *supra*.

45. The first attempts at scientific planning emerged in the early 19th century. One of the most comprehensive attempts was made in 1811 in the city of New York where the entire area of Manhattan Island was divided into streets and blocks which allowed room for only extremely narrow residential lots. Unfortunately, this sizable effort resulted in an over concentration of population and inadequate light for residences. See FORD, SLUMS AND HOUSING c. 8 (1936). For a thorough, but brief, discussion of planning history see SEGOE, LOCAL PLANNING ADMINISTRATION c. 1 (1st ed. 1941).

46. The first rush in subdivision legislation was immediately preceded and undoubtedly induced by the speculative practices of the booming twenties. By 1941 at least thirty-two states had enacted provisions, varying tremendously in quality, to control subdividing. See LAUTNER, SUBDIVISION REGULATION 317-342 (1941). In the past 12 years legislation in this area has been prolific, with every state but Vermont now having a statute. Additionally, the great majority of the statutes existing in 1941 have been substantially revised. See Appendix, p. 574 *infra*. Moreover, at least three states, Massachusetts, Pennsylvania and South Carolina, presently have new statutes under consideration.

47. The Federal Housing Administration under the National Housing Act of 1934 provides mortgage insurance to private lending institutions for loans on privately owned homes built by private builders. In order to qualify the subdivision for future mortgage insurance, the subdivider must meet certain specifications as established by the F.H.A. This is important to the subdivider because some purchasers will not be able to buy without getting an F.H.A. insured mortgage. The percentage of subdividers that seek F.H.A. approval has never been established, but one writer states that the "vast majority of them do." McMICHEAL, REAL ESTATE SUBDIVISIONS 140 (1949). While it may be agreed that a sizable portion of all subdividers seek F.H.A. approval, the real impact of this government agency cannot be evaluated without determining the type of requirements it imposes on the subdivider. One recent investigator of this problem determined, from extensive research, that in Wisconsin the F.H.A., while examining a sizable number, exerted very little or no influence on the development

state enabling statutes⁴⁸ which empower local planning authorities to promulgate regulations consistent with their provisions.⁴⁹ Most cases⁵⁰

of most subdivisions. MELLI, *SUBDIVISION CONTROL IN WISCONSIN* 67 (1953). Accordingly, Byron Hanke, Chief of the Land Planning Division of F.H.A., stated that "it is the policy of each of the F.H.A. state or regional offices to require that subdividers applying for approval of a subdivision as a basis for the issuance of F.H.A. insurance observe the requirements of local subdivision regulations where they exist. It will rarely occur that local subdivision regulations are less restrictive than minimum requirements of F.H.A., and the latter would only be applied in the consideration of a proposed subdivision plat when no local regulations are in effect." Byron Hanke, Chief of the Land Planning Division of F.H.A. as quoted in a communication to the *INDIANA LAW JOURNAL* from Paul Middleton, Division of Slum Clearance and Urban Redevelopment of the Housing and Home Finance Agency. Hence, substantial influence will only result in those areas without local regulations in effect, which is about one half of American cities. See note 112 *infra* and accompanying text. The F.H.A. standards are dealt with in *LAND PLANNING BULLETIN* No. 3. Various aspects of such standards have been criticized as being unsound. More specifically, criticism is directed towards F.H.A. approval of roll curbs with 4½ feet sidewalks adjacent. The same report, however, commends the F.H.A. for generally requiring sanitary sewers, graded and surfaced streets, and adequate water supply. *AMERICAN SOCIETY OF PLANNING OFFICIALS, PLANNING ADVISORY REPORT* No. 38 *INSTALLATION OF PHYSICAL IMPROVEMENTS AS REQUIRED IN SUBDIVISION REGULATIONS* 2 (1952).

Two other aspects of F.H.A. influence on the subdivision problem merit consideration. First, without doubt the F.H.A. has exerted a strong educational influence through its publications regarding the problem and the first hand counsel available to subdividers from the state and regional offices. Typical, and perhaps their best publication yet, is the booklet, *SUGGESTED LAND SUBDIVISIONS REGULATIONS*, which was published by the *FEDERAL HOUSING AND HOME FINANCE AGENCY*, of which F.H.A. is a part, in 1952 and is available from the Superintendent of Documents.

Second, the F.H.A., before approving subdivisions, "makes analysis of market demands for property" involved. "There is also obtained from time to time and as need for it arises rather complete market analysis performed by personnel trained in obtaining and analyzing market data." Communication to the *INDIANA LAW JOURNAL* from Shirley Wilcox, Director of Indianapolis, Indiana Division of F.H.A. This is evidently the practice throughout the United States. See F.H.A. *CIRCULAR* No. 5, 1937, cited in *MONCHOW, REAL ESTATE SUBDIVIDING* 191 (1939). Potentially, if the F.H.A. will actually not approve a subdivision where a flooded market appears, this represents an excellent method of combatting excessive subdividing.

48. The vast majority of statutes are permissive, giving the local authority power to create subdivision regulations if the community desires. A few states, however, have statutes which demand that all plats be approved by the local planning authority before being recorded. *E.g.*, *IDAHO CODE ANN.* §§ 50-2502 to 50-2503a (Supp. 1951); *MONT. REV. CODES ANN.* 11-608 (1947); *ORE. COMP. LAWS ANN.* § 95-1310 (1940); *PA. STAT. ANN.* tit. 53, § 9161 (1938); *WIS. STAT.* § 236.06 (1951); *WYO. COMP. STAT. ANN.* § 29-1102 (1945).

49. These statutes, although dealing with plats, should not be confused with those statutes existing in many states which establish the technical standards, *i.e.*, surveying requirements, type of paper on which the plat is drawn, etc., which must be complied with before a plat will be accepted for record.

50. The only possible exception is a notable California decision. This case involved requirements commanding the subdivider to restrict certain areas for the planting of trees and shrubbery and to dedicate a 10 foot strip to widen a highway adjacent to the subdivision, and certain other requirements. The state had passed a "Map Act" which authorized cities to control subdividing, and also had given Los Angeles subdivision control powers through the city charter. Both of these legislative acts had been distinctly interpreted to demand the adoption of a master plan before an area could be regulated. The master plan had not been completed and did not cover the area under

reflect the need for the local authority to act within the scope⁵¹ and through the procedures established by state action.⁵²

Since most local programs can be no more effective than the statutory powers provided, the necessity for statutes affording sufficient control

consideration; yet, the court stated that "subdivision design and improvement obviously include conformance to neighborhood planning and zoning, and it may properly be said that the formulation and acceptance of the uniform conditions in the development of the district constitute the *practical adoption* of a master plan. . . ." *Ayers v. City Council of City of Los Angeles*, 34 Cal.2d 31, 41, 207 P.2d 1, 7 (1949).

Additionally, there was no specific authorization in either the Map Act or the city charter for passage of an ordinance governing dedication of land under these circumstances and accordingly, none had been passed by the city. Yet, the court upheld the action of the planning authority in refusing to approve the subdivision until the subdivider had complied with the requirements established by this same planning authority. One section of the "Map Act" specifically stated: "In case there is *no* local ordinance, the governing body may, as a condition precedent . . . require streets and drainage ways properly located and of adequate width, but may make *no* other requirements." CAL. BUS.-PROF. CODE § 11551 (1951). Admittedly the requirements here exacted were not all included within the above exceptions, yet the court in a very significant opinion stated: "Where as here no *specific restriction or limitation* on the city's power is contained in the Charter, and none *forbidding* the particular conditions is included either in the Subdivision Map Act or the City ordinances, it is proper to conclude that conditions are lawful which are not inconsistent with the Map Act and the ordinances. . . ." (emphasis added) *Ayers v. City Council of City of Los Angeles*, *supra* at 37, 207 P.2d at 5. This conclusion, that anything not specifically forbidden can be required, even without an ordinance, if consistent with the general theory of the Act and Charter, gives the planning authority tremendous power, and does not satisfactorily warn the subdivider of what restrictions he will be forced to comply with upon subdividing. See also *Mefford v. City of Tulare*, 102 Cal. App.2d 919, 228 P.2d 847 (1951) (was an ordinance here, however).

51. *Commissioners Ct. v. Jester Div. Co.*, 211 Ark 28, 199 S.W.2d 1004 (1947); *Lewis v. City Council of Minneapolis*, 140 Minn. 433, 168 N.W. 188 (1910) (could not demand grading since statute referred only to direction and width of streets); *State of Missouri ex rel. Strother v. Chase*, 42 Mo. App. 343 (1890) (could not require specifications as to alleys, since statute applied only to streets); *Magnolia Development Co. v. Coles*, 10 N.J. 223, 89 A.2d 664 (1952) (must act *specifically* within scope); *In re Lake Secor Development Co.*, 141 Misc. 913, 252 N.Y. Supp. 809 (Sup. Ct. 1931) (could not force installation of water system when statute applied only to streets, light and air).

52. The city tried to force the subdivider to install gutters, curbs and sidewalks, improvements which were clearly authorized by the statute, before granting approval of the subdivision. The court held the subdivider did not have to comply, since the ordinance requiring such improvements had not been passed until after the subdivider had applied. *Magnolia Development Co. v. Coles*, 10 N.J. 223, 89 A.2d 664 (1952). In another recent case the Supreme Court of Connecticut held that since the local planning authority had never finally adopted a town plan, the subdivider could not be forced to comply with certain parts of a tentative plan before meriting approval of the planning board. *Lordship Park Ass'n v. Board of Zoning Appeals of Town of Stratford*, 137 Conn. 84, 75 A.2d 379 (1950). *Contra*: *Ayers v. City Council of City of Los Angeles*, 34 Cal.2d 31, 207 P.2d 1 (1949). Finally, in a case which involved an ordinance requiring building lines, the court held that although the statute authorized such requirements, the city, since it had not created a planning commission, was precluded from effectuating such an ordinance. *City of Stuttgart v. Strait*, 212 Ark. 126, 205 S.W.2d 35 (1947). Hence the courts have been alert in requiring compliance with the procedural requirements, which serve to warn the subdivider of the substantive requirements and also define the channels for application to the planning commission, appeal and other safeguards.

methods to achieve the types of subdivisions desired is essential. An accurate evaluation of existing statutes requires an examination of the powers afforded in the context of the factors causing the undesirable social and economic harms associated with subdividing, coupled with the realization that the necessity for eliminating each factor, and perhaps the ability to do so under the police power, must be determined by reference to the severity of the resultant harms. These harms, which involve danger to health, safety, economic instability, increased taxes and aesthetic values, represent divergent interests of varying import.

Once the necessity for eliminating any given undesirable factor has been evaluated, the means utilized must be examined to assure that the desired end can be thereby attained, and if so, that satisfactory procedures will be employed. More specifically, the marginal inquiry will be whether subdivision control can be satisfactorily employed to directly control use in order to alleviate the harms resulting from the factors concerning bad location and excessive subdividing, which evidently have been unsatisfactorily controlled through zoning.

The earlier statutes,⁵³ still the only laws in sixteen states,⁵⁴ which were aimed mainly at street patterns,⁵⁵ represent the accepted "how develop" of the traditional subdividing-zoning dichotomy and are patently inadequate to achieve the other benefits desired.⁵⁶ Substantial progress is indicated by the enactment in thirty-two states of statutes requiring physical improvements on the land at the subdivider's expense.⁵⁷

53. Almost all states have a separate act for subdivision control, although the same body often is responsible for both zoning and subdividing. Of the 47 states having subdivision statutes, 37 vest control in a planning commission or board, while the other 10 vest authority in the local governing body. See Appendix, p. 574 *infra*.

54. See Appendix, p. 574 col. III, *infra*.

55. See Appendix, p. 574 *infra*. While all statutes there reported authorize control over streets, such control is sometimes limited to assuring that the streets in the new subdivision meet those of the contiguous property. These street statutes, moreover, do not generally authorize the local authority to require grading or surfacing of the streets.

56. This is not to infer that comprehensive street statutes, properly administered by the local authority, serve no useful purpose. Indeed, control over traffic facilities is of prime importance for the safety of those within the instant subdivision as well as for the convenience and welfare of the entire community. Ideal design for such streets in new areas is briefly but satisfactorily outlined by the NATIONAL COMMITTEE FOR TRAFFIC SAFETY, with the cooperation of nationally known organizations, in BUILDING TRAFFIC SAFETY INTO RESIDENTIAL DEVELOPMENTS. This is available from 20 N. Wacker Drive, Chicago 6, Illinois.

57. See Appendix, p. 574, col. III *infra*. Two of these statutes provide only for grading or paving of streets. NEV. REV. STAT. § 14-115 (1943); WIS. STAT. § 236.143 (1951). Notably, in those states which have several statutes, one each for city and county, or several according to the population of the city or county, the requirements for improvements may vary from statute to statute within the state. These improvements must be installed before the plat will be approved by the planning authority. Twenty-two of these states provide that a surety bond guaranteeing completion will

The causation factors—physical impairments in the instant land, incompatible development of surrounding land, necessity of improvements, excessive subdividing—are all variously affected by this requirement.

These statutes, still reflecting the “how develop” approach, obviously eradicate the dangers to health and safety arising from lack of improvements,⁵⁸ while serving to indirectly alleviate the problems of residential subdividing in excess and in incompatible surroundings. Since installation of utilities and other improvements necessitates expenditure of sizable sums,⁵⁹ the subdivider will be considerably more certain before subdividing that home buyers await completion of the project.⁶⁰ However, excessive subdividing, while somewhat abated, will continue, especially in boom periods. Similarly, lots in undesirable locations, due to surrounding uses, can only be sold for minimal prices and the increased cost will substantially reduce the subdividing of such areas. However, inherent latent impairments in the instant land are virtually unaffected by improvement requirements, unless the undesirable quality is solid rock, which would necessitate prohibitive expenditures for utility installation.

Power to cope with swampy or seasonally flooded land, which is intimately associated with health, is explicit in at least two statutes⁶¹ and has been rightly suggested, by judicial decision, as being implicit within the remaining statutes.⁶² Significantly, this element is similar to the improvement factor, since it is directed at assuring desirable development by establishment of minimum standards. Hence, land that is, for

suffice for approval. The American Society of Planning Officials warns that these bond sections have not always served satisfactorily and that the provisions of these sections should be complete and specific to assure enforcement. See AMERICAN SOCIETY OF PLANNING OFFICIALS, PLANNING ADVISORY SERVICE INFORMATION REP. No. 38, INSTALLATION OF PHYSICAL IMPROVEMENTS AS REQUIRED IN SUBDIVISION REGULATIONS 15 (1952).

58. This, of course, assumes that the improvements and the standards therefor are sufficient to assure the health and safety of the community. See notes 123-137 *infra* and accompanying text.

59. The F.H.A. estimates that the cost of basic service utilities is usually greater than 20% of the total cost for the average small dwelling. See McMICHAEL, REAL ESTATE SUBDIVISIONS 135 (1949).

60. One community has, in fact, successfully used this method to control excessive subdividing since 1927. See SEGOE, LOCAL PLANNING ADMINISTRATION 521 (1st ed. 1941). See also AMERICAN SOCIETY OF PLANNING OFFICIALS, PLANNING ADVISORY SERVICE INFORMATION REP. No. 38, INSTALLATION OF PHYSICAL IMPROVEMENTS AS REQUIRED IN SUBDIVISION REGULATIONS 1 (1952).

61. N.J. REV. STAT. § 40:55-13 (Supp. 1950); N.Y. GEN. CITY LAW § 33.

62. “It is obvious that, if land was swamp or bog and was subdivided for residential purposes and a map of it offered for approval, the planning board would have power to reject such a plat. . . .” *In re Lake Secor Development Co.*, 141 Misc. 913, 916, 252 N.Y. Supp. 809, 812 (Sup. Ct. 1931). In 1938 the statute was amended to give specific authority to deal with such situations. N.Y. GEN. CITY LAW § 33.

example, exposed to periodic flooding or rock slides could be subdivided only after these faults were remedied, as could probably often be accomplished.⁶³

Finally, at least three states, apparently not satisfied with the results achieved indirectly through improvement requirements, have specifically authorized the denial of subdividing in the "public interest."⁶⁴ These statutes evidently are intended to make possible direct action against residential subdividing in excess and in inappropriate areas⁶⁵ and have discarded the zoning-subdivision dichotomy regarding use control. Notably, the harms associated with these two factors are dissimilar, in that the former results only in economic instability where the subdivider installs improvements, while the latter produces slum areas with resultant harm to health, safety, and general well being of the community.⁶⁶ While no litigation has arisen involving these statutes,⁶⁷ their enactment accentuates the present need for judicial understanding of the subdivision problem.

Concealing the difficulties that would be encountered in upholding this legislation are favorable decisions involving street patterns⁶⁸ and improvements.⁶⁹ An examination of the rationale of these decisions sometimes reflects a distinct lack of understanding with respect to the

63. The Presidents Conference on Home Building and Home Ownership was informed that while such land characteristics as swampy soil and steep hillsides were secondary causes to slum conditions, such characteristics could be satisfactorily handled through the utilization of modern engineering techniques where required by city planning. PRESIDENTS CONFERENCE ON HOME BUILDING AND HOME OWNERSHIP, SLUMS, LARGE-SCALE HOUSING AND DECENTRALIZATION 111, 42-44, quoted in FORD, SLUMS AND HOUSING 447 (1936).

64. PA. STAT. ANN. tit. 53, § 9170 (Cum. Supp. 1952); WASH. REV. CODE § 58.16.060 (1951); WIS. STAT. § 236.143 (1951). Several other states have statutes which might readily be construed to afford such broad power. See Appendix, p. 574, col. IV *infra*.

65. See MONCHOW, REAL ESTATE SUBDIVIDING 173 (1939); SEGOE, LOCAL PLANNING ADMINISTRATION 522 (1st ed. 1941); AMERICAN SOCIETY OF PLANNING OFFICIALS, PLANNING ADVISORY SERVICE INFORMATION REPORT No. 10, CONSIDERATIONS IN SUBDIVISION CONTROL 7 (1950).

66. See notes 6-14 *supra* and accompanying text.

67. The recognized incident where a commission refused to approve a subdivision on public interest grounds never reached the courts. See note 85 *infra*.

68. Town of Windsor v. Whitney, 95 Conn. 357, 111 Atl. 354 (1920); Lewis v. City Council of Minneapolis, 140 Minn. 433, 434, 168 N.W. 188, 189 (1910) (city charter involved).

69. Mefford v. City of Tulare, 102 Cal. App. 919, 228 P.2d 847 (1951) (due to the California court's decisions in this area, however, it is not clear whether the ordinance in question was based upon the California statute or was standing alone); Allen v. Stockwell, 210 Mich. 488, 178 N.W. 27 (1920); Brous v. Smith, 304 N.Y. 164, 167, 106 N.E. 503, 506 (1952) (case approved of requiring suitably improved streets).

Treated substantially the same by the courts are cases involving dedication of land for streets. Newton v. American Sec. Co., 201 Ark. 943, 148 S.W.2d 311 (1941); Ayres v. City Council of Los Angeles, 34 Cal.2d 31, 207 P.2d 1 (1949); Ridgefield Land Co. v. City of Detroit, 241 Mich. 468, 217 N.W. 58 (1928).

values being protected and, therefore, foreshadows possible judicial defeat for these more comprehensive subdivision statutes controlling land usage.

Although some statutes have been upheld on a doubtful plat-recording privilege concept,⁷⁰ where basis for the authority emerges from the recording system, the only justified foundation is reflected by that line of cases which rest upon the police power,⁷¹ and recognize that denial of plat-recording until it is approved is only a means to effectuate that power.⁷² Equally questionable are cases where restrictions imposed have been held not an exercise of eminent domain⁷³ because the subdivider "voluntarily subdivided."⁷⁴ The proper approach, however, should involve an *ad hoc* determination upon a balancing of the interests being served; if the subdivider is only insignificantly adversely effected while the community has its health and safety at stake the invasion is probably justified.⁷⁵ Hence only those cases which avowedly rest on the right to regulate conduct under the police power afford a solid foundation for prohibiting subdividing.⁷⁶

70. *Ridgefield Land Co. v. Detroit*, 241 Mich. 468, 472-473, 217 N.W. 58, 59-60 (1928); *Ross v. United States ex rel. Goodfellow*, 7 App. D.C. 1, 11 (1895).

71. Probably the basic police power case in this area is *Mansfield and Swett v. Town of West Orange*, 120 N.J.L. 145, 198 Atl. 225 (1938). See also *Brous v. Smith*, 304 N.Y. 164, 106 N.E.2d 503 (1952); *Town of Windsor v. Whitney*, 95 Conn. 357, 111 Atl. 354 (1920).

It is unlikely that subdivision control could be upheld merely because it results in more pleasing appearances. See *Mansfield & Swett v. Town of West Orange*, 120 N.J.L. 145, 160, 198 Atl. 225, 233 (1938). However, since unpleasing appearances evidently result in declining neighborhoods, which end in blighted or slum areas, the question appears to be open. See FORD, *SLUMS AND HOUSING* 498 (1936). For an article considering this same problem as it relates to zoning, see Sayre, *Aesthetics and Property Values*, 35 A.B.A.J. 471 (1949).

72. No express recognition of this point is evidenced, but the absence of any discussion of the plat-recording privilege concept leads to the inference that the courts have, for the most part, discarded it as a basis for upholding subdivision control.

73. *Newton v. American Sec. Co.*, 201 Ark. 943, 148 S.W.2d 311 (1941); *Ayres v. City Council of Los Angeles*, 34 Cal.2d 31, 207 P.2d 1 (1949); *Town of Windsor v. Whitney*, 95 Conn. 357, 111 Atl. 354 (1920); *Ridgefield Land Co. v. City of Detroit*, 241 Mich. 468, 217 N.W. 58 (1928); *Brous v. Smith*, 304 N.Y. 164, 106 N.E.2d 503 (1952).

74. This distinction, admittedly often a fine one, lies between regulating and taking for public use. Since the subdivider is engaging in an activity of his own free will, he is said to be subject to certain restrictions.

75. Reference to a typical case involving improvements readily illustrates this point. The harm to the subdivider is slight, since he will install the improvements and pass on the cost to the ultimate consumer. Meanwhile the community has safeguarded its health and safety. Hence, it is not surprising to find that the courts have consistently upheld action under these statutes as not being an exercise of eminent domain.

76. Obviously, prohibition of subdividing would rest very insecurely upon the plat-recording privilege concept because there would be, upon denial, no plat to be recorded.

However, even those cases which are based upon the police power, neglecting the excellent foundation laid in *Mansfield v. Swett*, 120 N.J.L. 145, 198 Atl. 225 (1938), which recognized that the restrictions and duties placed upon the subdivider were for

Since the prohibition statutes are directed towards abuses involving only residential subdividing,⁷⁷ regulation thereunder merely constitutes a denial of *residential* subdividing, and hence, residential use. Today, therefore, both zoning and subdivision control have similar dual purposes, with an aspect of each concerned with what use shall be made, and another with how such use is effectuated.⁷⁸ Accordingly, the similarity would seem to justify examination of the legal barriers to prohibition of residential subdividing by reference to that branch of the zoning law which incorporates decisions involving sparsely developed areas.

The limits of use control are circumscribed by those zoning cases holding that the city must show⁷⁹ that there will be a positive demand for the property as classified within a reasonable time.⁸⁰ However, demonstration by the owner that the property can be put to a more

the public benefit, sometimes reflect undue concern for the benefit to the particular subdivision and the immediate area. Certainly, all cases repeat the public welfare concept, but sometimes are not consistent throughout the opinion and give over-emphasis to the instant locality. The outstanding example of this tendency is *Ayres v. City Council of Los Angeles*, 34 Cal.2d 31, 207 P.2d 1 (1949). Here the best the court would say for the benefit to public welfare was that "it is no defense to the conditions imposed in a subdivision map proceeding that their fulfillment will incidentally also benefit the city as a whole." *Ayers v. City Council of City of Los Angeles*, *supra* at 41, 207 P.2d at 7. Indeed, it is not only no defense, it is a primary consideration upon which to *uphold* the conditions. Such a decision suggests that subdivision control, like zoning before it, is still progressing from a device primarily concerned with benefiting those in the particular area, to one that is ultimately concerned with the effects of the acts upon the public welfare as a whole. See note 21 *supra* and accompanying text. Assuredly, the local community and the individual buyer will usually be materially benefitted, but full realization of the role of subdivision control as a tool of city planning demands that the public interest generally be determinative. Clearly prohibition of subdividing could only be upheld on such public benefit basis, for there would not be existing buyers, or subdivision to benefit.

77. Indeed, the entire subdivision control program has arisen out of abuses regarding residential subdividing. While some statutes make mention of subdividing for business and industrial purposes, no case has ever arisen involving anything but residential subdividing. And at the local level the regulations promulgated are normally orientated only to residential use. The American Society of Planning Officials, which has the opportunity to carefully examine local regulations stated: "Most subdivision regulations make no mention of industrial lots. Many of the ordinances are so worded that their provisions could apply to industrial and commercial subdivisions, but most often when specific requirements are set forth for lot area, street width, etc., these requirements are orientated to residential rather than industrial requirements." AMERICAN SOCIETY OF PLANNING OFFICIALS, PLANNING ADVISORY SERVICE INFORMATION REPORT No. 10, CONSIDERATIONS IN SUBDIVISION CONTROL 2 (1950).

78. See note 24 *supra* and accompanying text.

79. In *Forde v. City of Miami Beach*, 146 Fla. 676, 685, 1 So.2d 642, 646 (1940), the court stated that "the mere opinion or belief that a prospective demand will develop . . . in the not distant future, as weighed against the concrete fact that it is unfit as it now stands for the purpose for which it is restricted . . . is not sufficient. . . ."

80. A leading decision concluded: "An ordinance which permanently so restricts the use of property that it cannot be used for any reasonable purpose goes, it is plain, beyond regulation, and must be recognized as a taking of property. . . ." *Arverne Bay Construction Co. v. Thatcher*, 278 N.Y. 222, 232, 15 N.E.2d 587, 592 (1938).

profitable use will not suffice to invoke a change.⁸¹ These limits, applied to prohibition of residential subdividing, suggest that the city must show that the subdivider can utilize his land for other than residential subdivisions within a reasonable time with only a partial loss of profit. Ideally, then, within the above judicially defined limits, the local planning authority, under prohibition statutes, would often be possessed of two basically comparable instruments with which to mold land use consistent with the general welfare. Indeed, certain procedural diversities seemingly infuse additional significance into their co-existence. Zoning regulates by marking off appreciable areas, often so large as to invite excessive residential subdividing, while subdivision control could respond in selected areas, with approval or denial of relatively diminutive portions, thereby offering sufficient flexibility for precise reflection of community needs in the fringe areas.

Unfortunately, this very flexibility, combined with the present amateurishness of planning commissions, is one of the three factors which should preclude utilization of statutory authority to prevent subdividing of land for residential use. Such flexibility readily facilitates abuse of authority by incompetent local boards, whose past records evidence an undue tendency to compromise due to the pressures inevitably exerted.⁸²

Utilization of prohibition to prevent excessive subdividing encounters two other serious difficulties. First, assuming that members were impeccable, prohibition would necessitate an evaluation that the subdivision, once complete, would not be salable. Since each subdivision varies in size, lot dimensions, location, and in overall quality, existence of ample lots within the community would not necessarily preclude a present demand for the pending subdivision.⁸³ Furthermore, the present demand, even if accurately established, could conceivably fluctuate tremendously before completion of the subdivision due to considerations emanating from local, regional, and national affairs.⁸⁴ Second, if the actual distinction, in this area, between eminent domain and the police power is based on the relative benefit and harm to the public and individual respectively, then prevention of excessive residential subdividing rests insecurely on the police power. Where the alleged harm arises exclusively from excessive subdividing, once the utility requirement has been met the city can no

81. *Arverne Bay Construction Co. v. Thatcher*, *supra* note 80.

82. See notes 115-116 *infra* and accompanying text.

83. See *MONCHOW, REAL ESTATE SUBDIVIDING* 174 (1939); *SEGOE, LOCAL PLANNING ADMINISTRATION* 523-524 (1st ed. 1941).

84. This difficulty is discussed in some detail in relation to city planning generally in *SEGOE, Id.* at 67 *et seq.* (2d ed. 1948).

longer be burdened with sizable installation expenses; therefore the harm to the community arises exclusively from the economic instability associated with blighted areas.⁸⁵ Meanwhile, the individual harm will be substantial, since the subdivider is not often in a position to put the land to other uses.⁸⁶ Indeed, if the city has already zoned the area for residential use, the individual harm would certainly be sufficient to preclude denial under the police power.⁸⁷

Power to prevent residential subdividing in inappropriate regions, near railroads or in industrial areas, presents a nicer question. While the first consideration, possibility of corruption, remains, the decision that the subdivision is unsuitably situated does not require as difficult or subjective a judgment as the determination of "excessive" necessities. Furthermore, such prohibition could more readily be upheld as an exercise of the police power since the community would benefit from protection against dangers to health and safety, and other slum conditions, while the subdivider might more readily be able to put the area to industrial use.

Presently, then, with the possible exception of authority to prevent residential subdividing of inappropriate areas, the statutes requiring improvements, which also explicitly or implicitly authorize requiring land which is itself suitable for building purposes, constitute the best method for combatting the harm-inducing factors associated with uncontrolled subdividing. However, only thirty-two states have adopted such improvement statutes⁸⁸ and their effective utilization is often thwarted by deficiencies stemming from various aspects of the legislation and from inept implementation by the local planning authority.

The most prevalent legislative loop-hole is the ineffective penalty section, which actually abrogates control. Approval of the planning

85. The only reported instance of a "public interest" statute being employed to prohibit subdividing occurred in King County Washington. The board refused to approve because the land was of such low value that the tax receipts would not cover the cost of public services, and the county could not afford to improve the streets. These reasons reflect both the economic instability idea and the more direct drain on the public treasury from the expenditure of funds to improve the streets. Requiring the subdivider to install improvements, which would include improving the streets, would clearly eliminate the latter reason. In addition, this requirement might have avoided the possible economic instability by inducing the subdivider not to subdivide. American Society of Planning Officials News Letter, Aug. 1938, p. 67, col. 1.

86. Since excessive subdividing has largely taken place in the outskirts of cities, the land will probably only be useable for agricultural purposes. It is not likely that the subdivider will be able to readily resell the land for such use at a profit or to go into the farming business himself.

87. This land may or may not be zoned, since often the area will be beyond the city limits, and zoning, like subdividing control, has often rested at the city limits. If zoned, however, it is most likely that it will be in a residential district.

88. See Appendix, p. 574, col. III, *infra*.

authority is, in all statutes, made a condition precedent to recording of a plat. While the advantages to the seller of being able to transfer property by reference to a recorded plat are considerable,⁸⁹ the imposition of burdens such as utility installation and other improvements often motivate the subdivider to forego the plat device. Accordingly, many states have imposed additional penalties for failure to comply with local regulations, in the form of sizable fines, imprisonment, or both, with power in the city to enjoin the sale.⁹⁰

The most difficulty arises, however, not because of inadequate penalties, but rather due to shortcomings in sections which define acts necessary for a violation.⁹¹ The standard clause, still existing in twenty-three states, describes a violator as one who sells land by reference to an unapproved plat, with the further provision that sale by metes and bounds shall not avoid the penalty.⁹² The weakness of this widely adopted penalty section is twofold. First, the burden of producing positive proof that the subdivider displayed, or made some use of, a plat

89. Once the plat has been recorded, the seller can sell by simply referring to the lot as "number one in Redacre Subdivision." The possibility of error in description by utilization of this device is lessened and therefore the possibility of errors that might cloud the title is reduced.

90. See Appendix, p. 574, col. V, *infra*.

91. The earliest problem relating to such provisions concerned avoidance of the statute by merely transferring by metes and bounds. This problem has been eliminated in many states by the standard clause, which, of course, incorporated other weaknesses, or by the totally improved sections. See notes 92-98 *infra*, and accompanying text. Some states, however, still suffer from the metes and bounds problem. Indiana, whose penalty section is a variation from the usual categories, illustrates such avoidance. The Indiana statute, which could readily be construed to demand approval of every *plat* made, has evidently never been so enforced. See IND. ANN. STAT. § 49-3242 (Burns Cum. Supp. 1951). Hence, the subdivider makes a plat for demonstration purposes, does not have it approved, is not prosecuted for not having it approved, and avoids any possible prosecution by selling by metes and bounds. Typically, after discussing reasons for avoidance in Fort Wayne, Indiana, one writer concluded: "At least one subdivider encountering this situation has held parcels out on a metes and bounds description, without reference to a definite plat or subdivision." Communication to the Indiana Law Journal from Gordon Reeves, Associate General Counsel for the Lincoln National Life Insurance Company, Fort Wayne, Indiana. Similarly, in discussing the situation around a rapidly expanding smaller Indiana city, another writer stated: "Our second problem which is a legal problem of *all* of Indiana and that is subdivisions sold by metes and bounds in order to avoid providing streets, curbs, gutters, sewers. . . ." Communication to the INDIANA LAW JOURNAL from Stephen Baker, Executive Vice President of Columbus, Indiana, Chamber of Commerce. Even if the subdivider were prosecuted for not having a plat approved, once made, without regard to how the property was transferred, he could still avoid control by not making a plat of the subdivision to begin with. See discussion of the standard clause, note 92-94 *infra* and accompanying text.

92. More specifically, the clause usually reads: anyone, being the owner or agent of the owner, who negotiates to sell, agrees to sell, or sells any land by reference to, exhibition of, or by any other use of an unrecorded plat shall be guilty of a violation. Transfer by metes and bounds shall not avoid the penalty.

is cumbersome.⁹³ Second, the provision cannot readily be construed to apply in a situation where the subdivider takes the buyer on a first-hand tour of the subdivision without ever making a plat or map of any type.⁹⁴

Significantly, in recent years, the exigency for an improved section has been relieved in fifteen states⁹⁵ by various clauses which, in addition to eliminating "reference to a plat," either command the subdivider to make a plat and have it approved,⁹⁶ or demand approval of the subdivision itself.⁹⁷ While the standard clause, with its obvious faults, still predominates, the newer provisions should provide satisfactory service where adopted.⁹⁸

Another serious defect within the statutes which also serves to annul control, evolves from attempts to define subdivision.⁹⁹ While many statutes do not explain the term, thereby necessitating definition by the local authority,¹⁰⁰ those that do often invite evasion by making the

93. See SEGOE, LOCAL PLANNING ADMINISTRATION 525 (1st ed. 1941).

94. This could often easily be accomplished by the subdivider with satisfactory results, especially if the subdivider has put through streets of some sort and added a few fancy street signs.

95. See Appendix, p. 574, col. V, *infra*.

96. These statutes are of two types. The first type provides that anyone who subdivides shall first make a plat and have it approved. The other variation says that before anyone can sell or offer to sell from a subdivision he must make a plat of the subdivision and have it approved. The only appreciable difference stems from the time when the violation begins, since there is no violation in the latter clause until he offers to sell. See Appendix, p. 574, Footnotes L, D, *infra*.

97. Once again there are two variations within this type of section. The first type commands the subdivider to obtain approval for the subdivision from the planning authority before subdividing. The second type requires the subdivider to gain approval for the subdivision before selling any lot from such subdivision. Hence, the difference again stems from the time element. See Appendix, p. 574, Footnotes F, O, *infra*.

98. No loop-holes are patent within these provisions. The metes and bounds problem is averted because the method of transfer is irrelevant. Significantly, the statutes that provide that the subdivider must, before subdividing, gain approval for the subdivision itself or make a plat and have it approved offer the better solution, since prosecution can be commenced before any innocent third party buyer enters the picture. See notes 96-97 *supra*.

An additional penalty section could, in one form, serve satisfactorily to assure control over almost all subdividing. This type section provides that any new structure built facing on a street that is not part of an approved subdivision is subject to legal action by the municipality. Hence, even a subdivider who subdivided in a state having the standard penalty section and who had therefore avoided the fine provision by not making a plat, could still be reached under this section. Militating against employment of this section, in all but one state where adopted, is the penalty itself. Most statutes afford authority to have the building condemned and removed if erected in violation of this section. This provision is quite drastic and probably should not be utilized even if local boards were willing. One statute, however, gives power to *enjoin* the erection of the building. CONN. GEN. STAT. § 860 (1947). Such power could be most satisfactorily employed and would also often preclude entry of innocent buyers into the situation. See Appendix, p. 574, col. VI, *infra*.

99. See Appendix, p. 574, col. II, *infra*.

100. Twenty-three states do not define "subdivision" in their statutes. See Appendix, p. 574, col. II, *infra*. The local planning authority must, therefore, define the term

number of parcels into which a piece of land is divided determinative of the existence of a subdivision. Hence, if the number exceeds two, as it does in 40% of the statutes, which define the term,¹⁰¹ avoidance of regulation is accomplished by division into one less than the specified number.¹⁰²

While not facilitating complete avoidance, an additional statutory imperfection, stemming from the limits of municipal jurisdiction and regarding the inter-relation of the municipal and county authority, where both exist, severely hampers realistic regulation. Obviously, limiting the municipality's jurisdiction to the confines of the incorporated area, as is done in fifteen statutes,¹⁰³ precludes any opportunity for a coordinated attack on illegal subdivision practices in the absence of an active county planning authority. Accordingly, most statutes give the city planning commission jurisdiction over outlying areas, varying from one to six miles and usually limited to three.¹⁰⁴ The increased trend away from the city, coupled with varying development of cities within the state due to topography, rate of growth, and numerous other factors,¹⁰⁵ militates against any rigid limitation.¹⁰⁶ Appropriately, several of the most recent enactments have afforded city planning commissions juris-

within their regulations. For able advice to local authorities on this problem see: FEDERAL HOUSING AND HOME FINANCE AGENCY, SUGGESTED LAND SUBDIVISION REGULATIONS 9 (1952).

101. See Appendix, p. 574, col. II, *infra*.

102. Two state attorney general opinions add little clarification to this problem. The New York Attorney General concluded that those who file maps with less than the specified number on several occasions would be covered by the act if the land involved was contiguous. 1950 OPS. ATTY. GEN. 161 (N.Y.). In Wisconsin, however, where the statute specified five, the Attorney General concluded one could sell four a year with impunity. 36 OPS. ATTY. GEN. 185 (Wisc. 1947). This has become one of the major weaknesses of the Wisconsin statute. See MELLI, SUBDIVISION CONTROL IN WISCONSIN 25 *et seq.* (1953).

103. See Appendix, p. 574, col. I, *infra*. The extent to which cities are confined to the city limits is clearly defined by a 1950 survey which revealed that of 84 cities with a population of over 50,000, only 40 had subdivision jurisdiction beyond the city limits. URBAN LAND INSTITUTE, TECHNICAL BULLETIN No. 13, WHO PAYS FOR UTILITY INSTALLATIONS IN NEW RESIDENTIAL AREAS 3 (1950).

104. See Appendix, p. 574, col. I, *infra*.

105. One metropolitan area, Louisville, Kentucky, which is experiencing a surge of subdivision development, typifies such growth beyond any two or three mile limit. "[A]ll of 25 miles by road from the Court House is a new development, a string of tiny, new frame houses strung along the road. . . . Here is a subdivision of the simplest sort. . . . Perhaps 1953 will be remembered as the year in which new subdivisions were created in larger numbers, farther from the center of town, than in any year in our history." Courier-Journal, Louisville, March 15, 1953, p. 17, col. 6.

106. Realization of the obvious danger of restricting jurisdiction to a few miles beyond the city limits is reflected by the present situation in a rapidly growing Indiana city. "We have no control over the area beyond the two mile limit, therefore shack towns. Fast operators can buy farm land, cut it up in small lots, sell it and keep going." Communication to the INDIANA LAW JOURNAL from Stephen Baker, Executive Vice President of the Columbus, Indiana, Chamber of Commerce.

diction over all the outlying areas which bear a reasonable relation to development of the cities.¹⁰⁷

Adoption in fourteen states of county planning commissions with jurisdiction over unincorporated areas¹⁰⁸ infuses additional difficulty into the outlying area problem. Significantly, almost all statutes reflect an appreciation for the necessity of providing "working agreements" between the city and county authorities.¹⁰⁹ However, even if it were reasonable to assume the abilities and planning knowledge of the two groups to be equal, division of what is essentially one problem between two bodies would still invite unwarranted difficulty.¹¹⁰

While the more frequently appearing statutory faults have been considered, avoidance of regulatory measures due to other statutory defects, peculiar to individual statutes, continues.¹¹¹ Such avoidance demonstrates the desires of numerous subdividers to circumvent control if at all possible, and, accordingly, illustrates the ever-pressing need to take cognizance of these statutory mistakes and correct them.

107. See Appendix, p. 574, col. I, *infra*.

108. See Appendix, p. 574, col. I, *infra*.

109. Typically, where the city has jurisdiction over a specified area beyond the city limits and the county authority, upon creation, has jurisdiction to the city limits, some provision must be made for which board's authority shall prevail. Most statutes afford preference to the county's commission. See IND. ANN. STAT. § 53-735 (Burns 1951); KAN. GEN. STAT. § 19-2927 (Supp. 1951); OKLA. STAT. tit. 11, § 1462 (1951). Hence, where the county has acted under the state statute and created a planning authority, the county will, in almost all cases, exercise jurisdiction to the city limits.

110. Establishment of a commission having subdivision jurisdiction around each metropolitan area, whose membership represents both the county and the city, appears to be the best solution. The duplication of time and effort necessitated by two boards, even where their activities are ideally integrated is inexcusable. Kentucky has established, by statute, probably the most satisfactory integration of both county and city interests, by allowing any first class city and the county in which it is situated to create, by agreement, a city-county commission. The members are equally drawn from among the city and county. KY. REV. STAT. §§ 100.031 to 100.036 (1946).

However, the stigma of county-city division remains to muddle the subdivision control program. Two different bodies have veto power over the rulings of the planning commission depending on whether the ruling involves land inside or outside of the city limits. "Because of the arbitrary city limits separating city and county property, the rulings of the Fiscal Court and the alderman may cause a serious conflict over the development of a single unit of property, and make the orderly development of an area impossible." Louisville Courier-Journal, March 16, 1953, p. 4, col. 2.

111. Exemplifying such a situation is Louisville, Kentucky, where much wildcat subdividing has taken place in the past few years. See Louisville Courier-Journal March 15, 1953, p. 17, col. 2. One lawyer, who has testified before the Planning and Zoning Commission regarding such avoidance, outlined the statutory loop-hole which facilitated such action. "But in 1948 someone read the Enabling Act closely and found that pursuant to the statute . . . the zoning Enforcement Officer could issue building permits for residences fronting on 'Easements of Record.' . . . Builders . . . immediately seized this opening . . . dedicated a private road or easement, improved it and sold lots. . . ." Communication to the INDIANA LAW JOURNAL from Stephen Smith, Jr., Attorney at Law.

Certainly, no state can be assured of satisfactory control without an adequately devised statute; yet, a program established under a perfect statute cannot succeed without a realistic planning authority imbued with the will and necessary knowledge to attain the desired result. However, with practically every state having a statute in force, a 1950 survey reveals that only fifty per-cent of the cities over 10,000 have availed themselves of the right to create a planning commission.¹¹² Therefore, the evident and basic need in one-half of the United States is to establish the necessary local authority.

Even in those communities which have availed themselves of the statutory authority by creating planning commissions, the control program is often inefficacious. This futility stems from three factors: (1) failure to fully employ the statutory powers by not promulgating regulations requiring the authorized improvements;¹¹³ (2) loop-holes

112. This survey, which included 1,228 cities of over 10,000 population, found that 646 had created an official planning agency. See INTERNATIONAL CITY MANAGERS ASSOCIATION, 1951 MUNICIPAL YEAR BOOK 264 *et seq.* Westchester County of New York probably represents the most highly controlled area in the United States. Hugh Pomeroy of the Westchester County Planning Authority testified before the Congressional Joint Committee on Housing, which had cited Westchester as having one of the most advanced suburban development plans in the nation. He reported that the Planning Board powers generally embraced 79% of the area and 95% of the population, with 72% of the area and 87% of the population subject to subdivision control. N.Y. Times, Feb. 8, 1948, p. 60, col. 1.

113. Several studies have been made involving the requirements of communities under improvement statutes. In 1940 an extensive study of local regulations resulted in a book dealing in part with this question. See LAUTNER, SUBDIVISION REGULATIONS (1941). This survey, which involved some 215 cities which required *some* improvements, produced these results: 57% required grading, 24% surfacing and paving, 10% curbs, 7% gutters, 19% sidewalks, 43% storm drainage, 25% sanitary sewer, 31% water supply, 3% street signs. The American Society of Planning Officials conducted a similar survey in 1952 of cities over 10,000 population, all of which had adopted such requirements since 1940. This report produced the following results: 85% required grading, 42% surfacing, 36% paving, 41% curbs, 30% gutters, 53% sidewalks, 55% storm sewers, 60% sanitary sewers, 55% water supply, 11% street signs, 10% gas mains, 8% electricity, 10% fire hydrants, 12% street lighting fixtures and 25% street trees. AMERICAN SOCIETY OF PLANNING OFFICIALS, PLANNING ADVISORY SERVICE INFORMATION REPORT No. 38, INSTALLMENT OF PHYSICAL IMPROVEMENTS AS REQUIRED IN SUBDIVISION REGULATIONS (1952). Finally, the Urban Land Institute conducted a very extensive survey, in 1950, which sought the requirements of 178 cities of over 50,000 population. This survey received answers from 98 cities and the results were as follows: 85% required grading, 75% paving, 87% curb and gutter, 90% sidewalks, 60% water mains, 75% sanitary sewers, 74% storm sewers. URBAN LAND INSTITUTE, TECHNICAL BULLETIN No. 13, WHO PAYS FOR STREET AND UTILITY INSTALLATIONS IN NEW RESIDENTIAL AREAS 3 (1950).

Several conclusions are evident from these extensive surveys. First, there has been a sizable increase of requirements since 1940. This is undoubtedly due to the increase of legislation allowing improvement requirements, coupled with more action by the local planning authorities. Second, many local communities which have authority to require improvements simply are not writing such requirements into their local regulations with sufficient consistency. One-third to one-fourth do not even require water supply and sanitary sewers. Third, by comparing the last two surveys it is apparent

within the regulations, as within the statutes;¹¹⁴ (3) even with ideal regulations, the commissions often tend to compromise¹¹⁵ and fail to enforce the program by refusing to invoke the sanctions afforded.¹¹⁶ Such weaknesses evidently result from two primary considerations: lack of understanding and belief in the subdivision program,¹¹⁷ and the paucity of funds expended to aid the planning authority through the creation of an adequate planning staff.¹¹⁸

that the larger cities, 50,000 and over, are much more active in demanding these improvements.

114. *E.g.*, "[t]he Subdivision Control Regulations are loosely drawn. The final opening of the door to Wildcat Subdividing is found in the opening paragraph, wherein it is said: 'The following regulations shall apply . . . to the dedication to *public* use of any street, road. . . . However, these regulations shall not apply . . . where . . . no dedication to public use . . . is involved.'" Communication to the *INDIANA LAW JOURNAL* from Stephen Smith, Attorney at Law. The above regulations were part of the regulations for Jefferson County, Kentucky, of which Louisville is a part.

115. The American Planning Institute stated: "In some localities there are existing laws which, if administered thoroughly and with vigor, would prevent some of the evils indicated herein, and would improve some of the undesirable conditions. . . . But it may be admitted that planning boards frequently, and their advisors too often, show an undue tendency to compromise. The result is that it has become increasingly difficult to devise a co-ordinated comprehensive plan, and to pursue consistently the development of its details or the effective execution of its parts." Statement issued by AMERICAN PLANNING INSTITUTE, quoted in McMICHAEL, *REAL ESTATE SUBDIVISIONS* 25 (1949). This tendency to compromise is vigorously corroborated by one authority in the field, who, basing his conclusions on numerous interviews and an analysis of planning commissions, determined that this tendency to compromise resulted partly from the conservative character of the planning commissions' members. Businessmen, realtors, lawyers, and architects comprised almost 80% of the membership. See WALKER, *THE PLANNING FUNCTION IN URBAN GOVERNMENT* c. 5 (1st ed. 1941). Notably, however, the real estate industry is making every effort to place more representatives on the commissions. See *N.Y. Times*, Nov. 23, 1949, p. 41, col. 1.

116. One writer, after a very recent and extensive survey of conditions in Wisconsin, concluded: "A second reason for the widespread violation of the platting law is the lack of enforcement of it. In most cases no attempt is made . . . to do anything about known violations of the law." MELLI, *SUBDIVISION CONTROL IN WISCONSIN* 29 (1953). Similarly, one writer stated in relation to the Indiana situation: "Some resistance is apparent. This may be due to a lesser degree of understanding of the subject or to weaker enforcement provisions." There exists "deliberate violation of the regulations, with the hope that such violation will not be disclosed or that no action will be taken." Communication to the *INDIANA LAW JOURNAL* from Frank Dunn, Vice-President of American United Life Insurance Co., Indianapolis, Indiana.

117. After an extensive study of planning commissions one writer stated: "The commission member who does appreciate the broader aspects of planning, particularly its social and economic implications, is an exception, although there are a number who see well beyond its present confines." WALKER, *THE PLANNING FUNCTION IN URBAN GOVERNMENT* 157-158 (1st ed. 1941).

118. It is generally accepted that the constructive work of a planning commission depends on the efforts of the planning staff. This staff consists of city planning engineers and the necessary clerical assistants. One of the most authoritative books in the field suggests the following budgets for cities of various sizes: 250,000-1,000,000 pop.—\$25,000-30,000; 50,000-100,000 pop.—\$7,000-10,000; 10,000-50,000 pop.—\$4,000-5,000. SEGOE, *LOCAL PLANNING ADMINISTRATION* 45 (2d ed. 1948). The most recent statistics available on actual expenditures for staff assistance reveal a sorry tale. In a 1950

Assuredly, the weaknesses of subdivision control exhibit themselves throughout the program. Such inadequacies are patently evident only because of the number of subdividers who successfully avoid control and thus subdivide in an economically and socially undesirable fashion. Two divergent pressures motivate such avoidance, one completely selfish and the other ostensibly most commendable.

Certainly, the profit motive, which ran rampant during the twenties' boom,¹¹⁹ continues to induce the irresponsible subdivider to evade regulation.¹²⁰ Realistically, such individuals will always do so if more profit results thereby; however, certain trends within the industry,¹²¹ coupled with enactment in some states of statutes providing against fraudulent practices,¹²² have substantially reduced the number of completely irre-

survey of 646 cities over 10,000 population, with planning commissions, only 248 reported expenditures of \$1,000 or more. In fact 41 cities with populations over 25,000 reported no expenditures at all. INTERNATIONAL CITY MANAGERS ASSOCIATION, MUNICIPAL YEAR BOOK 265 *et seq.* (1951).

These figures, when compared with the suggested minimum expenditures, reflect little appreciation for the affirmative aspects of planning. See also WALKER, THE PLANNING FUNCTION IN URBAN GOVERNMENT 158 (1st ed. 1941). Indeed, one planning official described the current situation in New York City as follows: "All I can tell you is that such regulation simply does not exist here. For a while, the Planning Commission was engaged in making a start on subdivision control, and a very good set of regulations were drawn up for that purpose. However, my understanding is that not one application has ever been processed under these regulations; and changes in the official map of streets are really made in the various Borough Presidents' offices and in effect merely recorded by the Planning Commission. I have never found exactly what the reason for this is, but it is easy to guess—shortage of staff in the Planning Commission. . . ." Communication to the INDIANA LAW JOURNAL from Norman Williams, Jr., Director Division of Planning, Department of City Planning, New York City, New York.

119. See note 34 *supra*.

120. The industry recognizes that such irresponsible operators continue to do business. See note 37 *supra*.

121. The subdivision business has become more than a matter of selling vacant lots. In recent years the very significant trend of selling a complete home has forced the subdivider to have more capital available and continue the subdividing of a tract of land over a more appreciable time period. This requires a more reliable operator, and minimizes fly-by-night activities. See MCMICHAEL, REAL ESTATE SUBDIVISIONS 1 (1949).

122. *E.g.*, ARIZ. CODE ANN. § 67-1701 to § 67-1740 (1939); CAL. BUS.-PROF. CODE ANN. § 11010 to § 11021. These statutes provide generally that lands to be subdivided shall be registered with a state agency before being offered for sale. Included in the data must be the name of owner, specifications of the subdivision, evidence of title the subdivider holds, and terms and conditions of the sales the subdivider is going to make. The state authority can then investigate this data. The investigation must show that the subdivider is able to give good title. If the finding is negative the state agency can prohibit the sales and fine the subdivider. Certainly these statutes should serve to reduce fraudulent practices within the industry and raise the standards of the subdivision business. The California statute was upheld as constitutional in *In re Sidebotham*, 12 Cal.2d 434, 85 P.2d 453 (1938). See also *Murphy v. San Gabriel Mfg.*, 99 Cal. App.2d 365, 222 P.2d 85 (1949). The impact of this California act was severely lessened, however, by a case which construed the loosely drawn statutory definition of

sponsible subdividers. Generally, the industry has realized that the "jerry-builder" casts ill-repute upon the entire business, in addition to severely reducing the number of its prospective buyers by under-selling the ethical subdivider. But avoidance by reputable members, which continues in addition to evasion by "wildcat" subdividers, is often excused by the industry on the grounds that the number of improvements required or the quality standards established make it impossible to satisfy low cost housing needs and comply with regulations.¹²³

the term subdivision as encompassing only unimproved land. *People v. Embassy Realty Ass'n*, 73 Cal. App.2d 901, 167 P.2d 797 (1946).

These statutes, which are clearly aimed at assuring valid title, should not be confused with the usual subdivision control enabling statute. See Note, 65 HARV. L. REV. 1226, 1236 (1952), where the writer cites the *Sidebotham* case to illustrate a penalty exacted under the usual type of subdivision control statute.

123. This conflict is evidenced by those speaking for the organized industry. "Their [progressive subdividers'] chief quarrel with these regulations has been directed against those cities which have adopted excessive provisions or unreasonable requirements." Communication to the INDIANA LAW JOURNAL from Max Wehrly, Executive Director of the Urban Land Institute. Similarly, A National Real Estate Board Panel Discussion concluded: "Impractical, inelastic and idealistic city planning in many parts of the country have tended to retard normal growth." N.Y. Times, Nov. 23, 1949, p. 41, col. 1. Finally, one of the best books written from the subdividers' view-point concluded: "If cheaper dwellings are to be provided something must be done in most cities to provide less expensive types of improvements so that lots may be retailed to workingmen at a price they can afford to pay." McMICHAEL, REAL ESTATE SUBDIVISIONS, 136 (1949).

More particular instances are continually evidencing themselves. One writer, commenting on the situation in Indiana, stated: "The attitude of subdividers toward regulatory restrictions, limitations, etc., seems at all times to be flavored with the cost of their enterprise and the estimated effect of such regulations on the salability of their product." Communication to the INDIANA LAW JOURNAL from Frank Dunn, Vice-President of American United Life Insurance Co., Indianapolis, Indiana. Another writer, after extensive research, concluded that compliance with regulations in Wisconsin is considered a severe economic burden. MELLI, SUBDIVISION CONTROL IN WISCONSIN 29 (1953).

This conflict is more vividly evidenced in the local communities where overly exacting requirements are said to exist. An attorney from Louisville, Kentucky, who had testified before the local planning commission on this problem, wrote: "These builders and developers are not altogether to blame for taking advantage of these laxities of the governing regulations. Complying with all of the requisites of the Subdivision Regulations makes it virtually impossible to develop an approved subdivision wherein homes could be built to sell in the lower income brackets." Communication to the INDIANA LAW JOURNAL from Stephen Smith, Attorney-at-Law. Another attorney, in discussing the Fort Wayne, Indiana, situation wrote: "One subdivider estimated the costs of improvements . . . to run approximately ten times the cost of the land." Communication to the INDIANA LAW JOURNAL from Gordon Reeves, Associate General Counsel for the Lincoln National Life Insurance Co., Fort Wayne, Indiana. Similarly Kokomo, Indiana, recently passed a new ordinance, in response to complaints by subdividers, making sidewalk construction mandatory unless such construction was an "undue hardship." See Indianapolis News, April 8, 1953, p. 17, col. 8.

Certainly, this problem is current and very much alive in many communities throughout the United States today.

Undoubtedly, in some instances, planning commissions have established requirements¹²⁴ and quality standards over and above those necessary,¹²⁵ thereby precluding purchase by those of the lower income brackets, who comprise two-thirds to three-fourths of today's buyers.¹²⁶ Yet subdivider's complaints, one being that sidewalks were "very nice but not necessary,"¹²⁷ often reflect little apparent appreciation for sound development policies. Obviously, sidewalks are necessary to provide safe play facilities for children,¹²⁸ but are sidewalks on only one side sufficient, and if so, how wide must they be and of what materials should they be constructed?

Intelligent examination of the supposed conflict between low cost housing and improvement requirements must be resolved by weighing the social desirability of the ends of subdividing against the admitted benefits of low cost housing. Improvement requirements indirectly limit residential subdividing in excess and in inappropriate areas if they constitute a sizable portion of the total home cost. Since compliance with even the most minimal requirements, upon which all would agree,—street grading, water mains and sanitary sewers—often comprises as much as twenty per-cent of the total home cost,¹²⁹ the indirect influence exerted by more costly improvements and high standards upon excessive and inappropriate residential subdividing quickly reaches the point of rapidly diminishing returns and will therefore be negligible.

124. The list of requirements, each of which requires standards, that is incorporated into a city's regulations may be a sizable one, including grading and surfacing of streets, curbs, gutters, sidewalks, sanitary sewers, storm sewers, water mains, gas mains, electric lines, street signs, street lighting fixtures, street trees, and fire hydrants.

125. A survey made by the Regional Planning Association of New York, in which 94 municipalities in 17 counties surrounding New York City were contacted, found that 40.8% of the municipalities require the developer to plant street trees. American City, March, 1952, p. 7, col. 2. Undoubtedly typical of this type of requirement is the ordinance for White Plains, New York, which states that "'street trees shall be of approved species and their location approved by the Dept. of Public Works.'" Quoted in AMERICAN SOCIETY OF PLANNING OFFICIALS, PLANNING ADVISORY SERVICE INFORMATION REPORT No. 38, INSTALLATION OF PHYSICAL IMPROVEMENTS AS REQUIRED IN SUBDIVISION REGULATIONS 15 (1952). While these trees undoubtedly add to the pleasing atmosphere of the development, it is certainly questionable whether they are prerequisites to safe and healthful living. Notably, the nation-wide surveys reveal only a very small percentage of planning commissions requiring trees. See note 113 *supra*.

126. Buyers able to pay 6,000 to 10,000 dollars for completed homes embrace $\frac{3}{8}$ to $\frac{3}{4}$ of the market. McMICHAEL, REAL ESTATE SUBDIVISION 109 (1949).

127. See Indianapolis News, April 8, 1953, p. 17, col. 8.

128. One former planning official, in fact, assumes that sidewalks are absolutely necessary, and argues against the narrowing of widths. He believes that narrowing widths would overdo economy by sacrificing the safety of the children who will soon be playing there. See Blucher, News Letter of American Society of Planning Officials, quoted in American City, July, 1951, p. 111, col. 1.

129. See McMICHAEL, REAL ESTATE SUBDIVISION 135 (1949).

Hence the problem revolves around the improvements themselves as they relate to socially desirable growth. Included among the interests being assured through the installation of improvements are health, safety, and aesthetic¹³⁰ considerations. In the effort to furnish low cost housing, those requirements primarily directed towards aesthetic values may be eliminated. A compromise on the necessity for the other improvements would be pseudo-economy and would severely threaten the health and safety of the inhabitants thereby issuing an invitation to slums.¹³¹

After the specific improvements have been determined, the more difficult task of establishing quality standards remains. Basically a major step toward solution of standard problems could be achieved by relating the quality of improvements to the actual needs of the subdivision through the adoption of a grading system, as suggested recently by the F.H.H.F.A.¹³² Such gradings reflect the density of population in the subdivision, and, accordingly, the necessary specifications. While such flexibility has been achieved regarding street widths and surfacing requirements, in some areas,¹³³ adoption of this essential procedure in relation to other improvements is lacking.¹³⁴

Once such a grading system was established, the planning authority would encounter the problem of determining standards within each classification. Notably, the additional cost necessitated by higher standards sometimes only represents a slight fractional increase in total home cost.¹³⁵ This slight saving when balanced against increased maintenance

130. See note 71 *supra*.

131. The subdivision industry evidently realizes that installation of the basic improvements cannot be questioned. Hence, the Executive Director of the Urban Land Institute, in listing some of the complaints of subdividers against local regulations, did not mention one that was directed at an improvement itself. Rather the complaints dealt exclusively with the specifications or standards for the improvements. Communication to the INDIANA LAW JOURNAL from Max Wehrly, Executive Director of the Urban Land Institute. See note 32 *supra*. Similarly, McMichael directs criticism at the standards, rather than at the improvements. See McMICHAEL, REAL ESTATE SUBDIVISIONS 136 (1949).

132. Four grades are suggested: (1) apartment, row house, and similar multi-family residential types; (2) one-family detached dwellings with typical lot widths of . . . ft.; (3) country homes with typical lot widths greater than (2) above; (4) commercial industrial and other types. Each of the four grades are given a different set of specifications by the local planning authority. FEDERAL HOUSING AND HOME FINANCE AGENCY, SUGGESTED LAND SUBDIVISION REGULATIONS 27-29 (1952).

133. This has resulted from recognition of the obvious fact that all streets will not be required to carry the same traffic load. See AMERICAN SOCIETY OF PLANNING OFFICIALS, PLANNING ADVISORY SERVICE INFORMATION REPORT No. 38, INSTALLATION OF PHYSICAL IMPROVEMENTS AS REQUIRED IN SUBDIVISION REGULATIONS 7 (1952).

134. A very few communities have accomplished such flexibility in relation to various requirements. The Stanford, Conn., regulation concerning sidewalks states: "Sidewalks of concrete shall be provided in developments designed to provide for a density in excess of five families per acre." Quoted in *Id.* at 13.

135. The Home Builders Institute in Los Angeles sought certain adjustments

cost and more rapid decline of the buyer's property value¹³⁶ invites caution and thorough examination before acceding to demands for lower standards.¹³⁷

Amelioration of the presently confused control process can only be accomplished by the combined efforts of the legislature, local planning authority, subdivision industry, immediate buyer and interested citizens. The reappearing theme of ignorance among all groups regarding the necessity of planning to prevent materialization of problems now facing many cities, suggests that a thorough job of education is needed regarding the preventive role of subdivision control to gain essential interest and support.¹³⁸ Actually, a surprisingly good start has been achieved through

in standards which included: (1) eliminate cement sidewalks and gutters and install macadam rolled gutters; (2) 40 ft. instead of 50-60 ft. plots; (3) reduce street widths from 34 to 26 ft.; (4) reduce paving requirements; (5) eliminate soil tests and grading plans for drainage. The Home Builders stated that such reductions would cut the costs \$1289 per acre. The Los Angeles Daily News noted, however, that this would amount to a "saving" of only \$148 per lot. Daily News, Los Angeles, Cal., 1948, p. 6, quoted in GALLION, *THE URBAN PATTERN*, 260-261 (1950).

136. A Congressional Committee on Housing in a 1948 report, stated: "But sometimes developers and municipal authorities are not quick to recognize the long term cost and depreciation savings which result from careful development practices. If maintenance costs are to be reduced, construction standards on improvements will have to be *raised*. . . . There is no question that the value of good street improvements accruing to a home property is much greater than the actual expense of installations. The lending institutions have proved this to their satisfaction." H.R. Doc. No. 647, 80th Cong., 1st Sess. 59 (1948). See also Hughes, *What's Required for Maintenance-Free Streets*, American City, Dec. 1950, p. 102, col. 1.

137. Contrarily, complaints which stem from the imposition of standards which are based on the need to supply areas beyond the subdivision, with water for example, are legitimate. Here the city, which charges a flat rate for water service, is requiring the developer and ultimately the consumer to install a capital improvement upon which the city often receives profits. Apparently only about 40% of cities requiring improvements have realized this, and have paid part of the cost of water main installation. See URBAN LAND INSTITUTE, *TECHNICAL BULLETIN* No. 13, *WHO PAYS FOR STREET AND UTILITY INSTALLATION IN NEW RESIDENTIAL AREAS* 5 (1950).

Even as to specifications necessitated by the demands of outlying areas, but from which the city receives no direct revenue, the city should furnish the additional expenditures required. The social interest in facilitating the erection of low cost housing, coupled with the direct benefit other areas will receive from the imposition of these standards, is sufficient to require the community's contribution to the cost involved. See note 32 *supra*.

138. Lee Cooper, real estate editor of the New York Times, speaking before the National Association of Real Estate Boards, vividly pointed out this lack of understanding: "One reason why American cities are paying such a high price for unsound and haphazard growth is that almost without exception, official planning agencies have failed to recognize the need for gaining in advance the support of their community and have failed to provide the machinery for education of the public of the value of planning projects. . . . Real estate men and developers themselves have not been properly impressed with the dollar and sense value of planning for permanence. . . . Under proper leadership the man in the street will come to demand and get something better than minimum shelter as the background for a stronger and happier people." Address by Lee Cooper, quoted in N.Y. Times, Nov. 23, 1949, p. 41, col. 1. See also Kenneth Vinsel, *City Planning*, AMERICAN PLANNING AND CIVIC ANNUAL 102-103 (1951);

the inclusion of city planning as a course in many high schools¹³⁹ and numerous colleges, together with citizen participation programs in various cities.¹⁴⁰ Additionally, the organized industry is making some effort to educate the subdivider.¹⁴¹

More immediately, however, legislatures in almost every state are confronted with an opportunity to eliminate one or more weaknesses of their statutory scheme, and in sixteen states can significantly better their program by enacting improvement statutes. While faults stemming from penalty sections, jurisdictional clauses, and definitional phrases invoke the most difficulty, presence of the ever-searching evader necessitates constant scrutiny by the legislatures of existing improvement statutes for technical loop-holes. Besides similar problems of ineffectively drawn regulations, the necessity for constantly enforcing the authority afforded by the statutes demands consideration by the local commissions. The dire need in one-half of the cities, which precludes effective control, evolves simply from the failure of the local community to avail itself of the statutory program.

A faultless improvement statute, which explicitly or implicitly includes power to correct land impairments, ideally effectuated, today presents the best means for combatting the factors—inherent land impairments, inappropriate surroundings, lack of improvements, excessive subdividing—which induce the social and economic harms associated with uncontrolled subdividing. At best, however, such statutes, while indirectly preventing residential subdividing in excess and in inappropriate areas cannot, especially in boom conditions, adequately cope with these factors since they operate only indirectly through financial pressure. Hence, the question arises, clearly suggested by the three “public interest” statutes, as to whether subdivision control can be utilized to directly attack these factors by use control.

Melville Branch, *Focus for Urban Planning*, 23 *LAND ECONOMICS* 228 (1947); N.Y. Times, Aug. 15, 1950, p. 31, col. 1.

139. A 1951 survey of 68 cities, with a population of over 100,000, disclosed that 31 had included city planning in the public school curriculum. James Short, *City Planning Education in Public Schools*, American City, July, 1951, p. 102, col. 1.

140. See SEGOE, *LOCAL PLANNING ADMINISTRATION* 57 (2d ed. 1948); Marwood Rupp, *Citizen Community Councils Help*, MINNESOTA MUNICIPALITIES 75-77 (1950); American City, Feb., 1951, p. 87, col. 1.

141. Education by the industry centers on presenting to the subdivider “standards which the leaders in the land development and building industry feel are desirable and reasonable in obtaining sound residential development.” Communication to the *INDIANA LAW JOURNAL* from Max Wehrly, Executive Director of the Urban Land Institute. Accordingly, the Urban Land Institute has prepared for the National Association of Home Builders two reference books for the subdivider, *THE COMMUNITY BUILDERS HANDBOOK* and *THE HOME BUILDERS MANUAL FOR LAND DEVELOPMENT*. For a further discussion on educating the subdivider see McMICHAEL, *REAL ESTATE SUBDIVISIONS* 19 *et seq.* (1949).

The subjective evaluation required by commissions, which are often susceptible to pressure, precludes satisfactory procedural operation for regulation of excessive subdividing. Indeed, it is doubtful whether, in the usual case, the balancing of the interests could result in action under the police power, rather than eminent domain. The procedural objections to denial because of incompatible surroundings are similar although, perhaps, a less subjective evaluation is required; this, coupled with the stronger public interest, health and safety as compared with economic stability in excessive subdividing, suggests that utilization of this device might afford satisfactory results. However, while these problems are often associated with subdividing, they probably result from the lack of zoning, especially in areas beyond the city limits, or from ineffectually drawn zoning regulations. Therefore, due to the more objective procedures involved, rectification of zoning weaknesses presents the better means of attack on residential subdividing in excess and, to a slightly lesser extent, in undesirable surroundings.

APPENDIX

This chart is intended to provide comprehensive reference to the more pertinent statutory provisions discussed above.

	I.	II.	III.	IV.	V.	VI.
	Jurisdiction over subdividing extends—	A subdivision is defined as division of land into a number of plots or parcels for purpose of sale or building development. Such number is—	1) May installation of improvements be required as a condition precedent to approval? 2) Can a bond be accepted instead?	Can the local authority forbid subdividing by reference to the public interest?	1) What constitutes a violation of subdivision control? 2) What is the penalty?	Is building upon property in an unapproved subdivision prohibited?
Alabama	5 m. out ALA. CODE tit. 37, § 795 (1940).	2 or more ALA. CODE tit. 37, § 786 (1940).	1) Yes 2) Yes ALA. CODE tit. 37, § 798 (1940).	—	1) (A) 2) \$100 fine ALA. CODE tit. 37, § 800 (1940).	Yes ALA. CODE tit. 37, § 802 (1940).
Arizona (B)	3 m. out ARIZ. CODE ANN. § 16-708 (1939).	—	—	—	1) (A) without M and B provision. 2) Misdemeanor ARIZ. CODE ANN. § 16-713 (1939).	—
Arkansas (C)	5 m. out ARK. STAT. ANN. § 19-2817 (1947).	—	1) Yes 2) No ARK. STAT. ANN. § 19-2816 (1947).	—	—	Yes ARK. STAT. ANN. § 19-2815 (1947).
Arkansas (Co.)	Beyond 5 m. ARK. STAT. ANN. § 17-1106 (1947).	—	—	—	—	—
California	3 m. out CAL. BUS.-PROF. CODE ANN. § 11528 (1951).	5 or more CAL. BUS.-PROF. CODE ANN. § 11535 (1951).	1) Yes 2) No CAL. BUS.-PROF. CODE ANN. § 11525 (1951).	—	1) (D) 2) Sale voidable, \$25- \$500 fine, or 6 mo., or both. CAL. BUS.-PROF. CODE ANN. §§ 11538-11541 (1951).	—

Colorado (C)	3 m. out COLO. STAT. ANN. 163, § 171 (1949).	2 or more COLO. STAT. ANN. 163, § 160 (1949).	—	—	—	1) (A) \$100 fine, enjoin sale COLO. STAT. ANN. 163, § 175 (1949).	Yes COLO. STAT. ANN. 163, § 177 (1949).
Connecticut (C)	—	3 or more CONN. GEN. STAT. § 853 (1947).	1) Yes 2) Yes CONN. GEN. STAT. § 858 (1947).	—	—	1) (D) \$20 fine CONN. GEN. STAT. § 858 (1947).	Yes, can enjoin CONN. GEN. STAT. § 860 (1947).
Delaware (Co.)	Unincorporated area DEL. LAWS C. 266 (1941).	2 or more DEL. LAWS C. 266 (1941).	1) Yes 2) Yes DEL. LAWS C. 266 (1941).	Limitedly (M) DEL. LAWS C. 266 (1941).	—	1) (D) 2) Misdemeanor DEL. LAWS C. 266 (1941).	—
Florida (E)	—	—	—	—	—	—	—
Georgia	—	—	1) Yes 2) No GA. CODE ANN. § 69-838 (Supp. 1951).	(Possibly) GA. CODE ANN. § 69-838 (Supp. 1951).	—	1) (F) 2) Misdemeanor GA. CODE ANN. §§ 69-838, 69-903 (Supp. 1951).	—
Idaho (G)	City limits IDAHO CODE ANN. § 50-2702 (1947).	—	—	—	—	—	—
Illinois	1/2 m. out ILL. ANN. STAT. c. 21, § 53-1 (1942).	—	—	—	—	—	—
Indiana (City)	2 m. out IND. ANN. STAT. § 53-734 (Burns 1951).	—	1) Yes 2) Yes IND. ANN. STAT. §§ 53-747, 53-751 (Burns 1951).	—	—	—	—

APPENDIX—(Continued)

	I. Jurisdiction over subdividing extends—	II. A subdivision is defined as division of land into a number of plots or parcels for purpose of sale or building development. Such number is—	III. 1) May installation of improvements be required as a condition precedent to approval? 2) Can a bond be accepted instead?	IV. Can the local authority forbid subdividing by reference to the public interest?	V. 1) What constitutes a violation of subdivision control? 2) What is the penalty?	VI. Is building upon property in an unapproved subdivision prohibited?
Indiana (Co.)	Beyond city limits IND. ANN. STAT. § 53-752 (Burns 1951).	—	1) Yes 2) Yes IND. ANN. STAT. §§ 53-747, 53-751 (Burns 1951).	—	1) See note 91 <i>supra</i> 2) \$10-\$300 fine IND. ANN. STAT. §§ 49-3242, 53-793 (Burns 1951)	—
Iowa (I) (C)	1 m. out IOWA CODE ANN. C. 409, § 409.14 (1949).	—	1) Yes (H) 2) No IOWA CODE ANN. C. 409, § 409.14 (1949).	—	1) (D) 2) \$50 fine IOWA CODE ANN. C. 409, § 409.45 (1949).	—
Kansas (I) (C) (City)	3 m. out KAN. GEN. STAT. § 12-705 (1949).	—	1) Yes 2) No KAN. GEN. STAT. § 12-705 (1949).	—	1) (D) 2) \$300 fine KAN. GEN. STAT. § 12-405 (1949).	—
Kansas (Co.) (C) (I)	Beyond city limits KAN. GEN. STAT. § 19-2927 (Supp. 1951).	—	1) Yes 2) Yes KAN. GEN. STAT. § 19-2918 (1949).	—	1) (D) 2) \$200 fine or one year, or both KAN. GEN. STAT. § 19-2925 (1949).	—
Kentucky	Combined city-county commission KY. REV. STAT. § 100.032 (1946).	2 or more KY. REV. STAT. § 100.010 (1946).	1) Yes 2) No KY. REV. STAT. § 100.087 (1946).	—	1) (A) 2) Sale void. Fine of \$10-\$100, or 20 days or both KY. REV. STAT. §§ 100.093, 100.990 (1946).	—

Louisiana (C)	Apparently city limits LA. REV. STAT. ANN. § 33:106 (1950).	2 or more LA. REV. STAT. ANN. § 33:101 (1950).	1) Yes 2) Yes LA. REV. STAT. ANN. § 33:112 (1950).	—	1) (A) 2) \$100 fine LA. REV. STAT. ANN. § 33:114 (1950).	Yes LA. REV. STAT. ANN. § 33:116 (1950).
Maine	Apparently city limits ME. REV. STAT. C. 80, § 84 (1944).	5 or more ME. REV. STAT. C. 80, § 85 (1944).	1) Yes 2) No ME. REV. STAT. C. 80, § 84 (1944).	Possibly ME. REV. STAT. C. 80, § 84 (1944).	1) (A) 2) \$200 fine, enjoin sale ME. REV. STAT. C. 80, § 85 (1944).	—
Maryland	1 m. out MD. ANN. CODE GEN. LAWS art. 66B, § 24 (1951).	2 or more MD. ANN. CODE GEN. LAWS art. 66B, § 10 (1951).	1) Yes 2) Yes MD. ANN. CODE GEN. LAWS, art. 66B, § 26 (1951).	—	1) (A) 2) \$100 fine, enjoin sale MD. ANN. CODE GEN. LAWS art. 66B, § 28 (1951).	Yes MD. ANN. CODE GEN. LAWS art. 66B, § 33 (1951)
Massachusetts	Apparently city limits MASS. ANN. LAWS C. 41, § 81L (1952).	2 or more MASS. ANN. LAWS C. 41, § 81K (1952).	1) Yes 2) Yes MASS. ANN. LAWS C. 41, § 81M (1952).	—	1) (L) 2) — MASS. ANN. LAWS C. 41, § 81L (1952).	—
Michigan (K)	As far out as bears relation to the city MICH. COMP. LAWS § 125.36 (1948).	—	1) Yes 2) Yes MICH. COMP. LAWS § 125.44 (1948).	—	—	—
Minnesota	3 m. out MINN. STAT. ANN. § 462.26 (West 1947).	3 or more MINN. STAT. ANN. § 462.25 (West 1947).	1) Yes 2) Yes MINN. STAT. ANN. § 462.25 (West 1947).	—	1) (A) 2) \$100 fine, enjoin MINN. STAT. ANN. § 462.30 (West 1947).	Yes MINN. STAT. ANN. § 462.33 (West 1947).

APPENDIX—(Continued)

	I. Jurisdiction over subdividing extends—	II. A subdivision is defined as division of land into a number of plots or parcels for purpose of sale or building development. Such number is—	III. 1) May installation of improvements be required as a condition precedent to approval? 2) Can a bond be accepted instead?	IV. Can the local authority forbid subdividing by reference to the public interest?	V. 1) What constitutes a violation of subdivision control? 2) What is the penalty?	VI. Is building upon property in an unapproved subdivision prohibited?
Mississippi (E)	City limits MISS. CODE ANN. § 3374-122 (Cum. Supp. 1952).	—	—	—	—	—
Missouri (City) (B)	City limits MO. ANN. STAT. § 445-030 (Vernon 1949).	—	—	—	1) (D) 2) \$300 fine MO. ANN. STAT. § 445-070 (Vernon 1949).	—
Missouri (Co. Class one)	Unincorporated area MO. ANN. STAT. § 64-070 (Vernon (1949).	—	1) Yes 2) Yes MO. ANN. STAT. § 64-060 (Vernon 1949).	—	—	—
Missouri (Co. Class two and three)	Unincorporated areas MO. ANN. STAT. § 64-580 (Vernon Supp. 1952).	—	1) Yes 2) Yes MO. ANN. STAT. § 64-580 (Vernon Supp. 1952).	—	1) (D) 2) Misdemeanor MO. ANN. STAT. § 64-690 (Vernon Supp. 1952).	—
Montana (B)	City limits MONT. REV. CODES ANN. § 11-608 (1947).	—	—	—	1) (D) 2) \$10-\$100 fine MONT. REV. CODES ANN. §§ 11-601, 11-610 (1947).	—

Nebraska Metropolitan Class City (B)	3 m. out NEB. REV. STAT. § 14-116 (1943).	—	1) Grading only 2) No NEB. REV. STAT. § 14-115 (1943).	—	1) (F) 2) — NEB. REV. STAT. § 14-116 (1943).	—
Nebraska Primary Class City (B)	City limits or contiguous thereto NEB. REV. STAT. § 15-106 (1943).	—	—	—	—	—
Nebraska First Class City (B)	City limits NEB. REV. STAT. § 16-114 (1943).	—	—	—	1) (F) 2) — § 16-114 (1943). NEB. REV. STAT.	—
Nevada	3 m. out NEV. COMP. LAWS § 5063.18 (Supp. 1941).	5 or more NEV. COMP. LAWS § 5063 (Supp. 1941).	1) Yes 2) No NEV. COMP. LAWS § 5063.22 (Supp. 1941).	—	1) (D) 2) \$25-\$100 fine, or 6 mo., or both NEV. COMP. LAWS § 5063.19 (Supp. 1941).	—
New Hampshire (C)	Areas outside bearing relation to city N.H. REV. LAWS C. 53, § 10 (1942).	2 or more N.H. REV. LAWS C. 53, § 1 (1942).	1) Yes 2) Yes N.H. REV. LAWS C. 53, § 22 (1942).	Limitedly (M) N.H. REV. LAWS C. 53, § 21 (1942).	1) (A) 2) City may enjoin N.H. REV. LAWS C. 53, § 27 (1942).	Yes N.H. REV. LAWS C. 53, § 26 (1942).
New Jersey (K) (C) (N)	Areas outside bearing relation to city N.J. REV. STAT. § 40:55-1 (1937).	2 or more N.J. REV. STAT. § 40:55-1 (Supp. 1950).	1) Yes 2) Yes N.J. REV. STAT. § 40:55-14 (Supp. 1950).	—	1) (O) 2) enjoin sale N.J. REV. STAT. § 40:55-15 (Supp. 1952).	Yes N.J. REV. STAT. § 40:55-18 (1937).
New Mexico (City)	3-5 m. out N.M. STAT. ANN. § 14-223 (Cum. Supp. 1951).	3 or more N.M. STAT. ANN. § 14-214 (Cum. Supp. 1951).	1) Yes 2) Yes N.M. STAT. ANN. § 14-225 (Cum. Supp. 1951).	—	1) (A) 2) \$100 fine N.M. STAT. ANN. § 14-228 (Cum. Supp. 1951).	—

APPENDIX—(Continued)

	I. Jurisdiction over subdividing extends—	II. A subdivision is defined as division of land into a number of plots or parcels for purpose of sale or building development. Such number is—	III. 1) May installation of improvements be required as a condition precedent to approval? 2) Can a bond be accepted instead?	IV. Can the local authority forbid subdividing by reference to public interest?	V. 1) What constitutes a violation of subdivision control? 2) What is the penalty?	VI. Is building upon property in an unapproved subdivision prohibited?
New Mexico (Co.)	Unincorporated area, as limited by C.F.C. N.M. STAT. ANN. § 14-209 (Cum. Supp. 1951).	—	—	—	—	—
New York (K) (N)	City limits apparently N.Y. GEN. CITY LAW § 28-a.	—	1) Yes 2) Yes N.Y. GEN. CITY LAW § 33.	—	—	Yes N.Y. GEN. CITY LAW § 36
North Carolina (B)	1 m. out N.C. GEN. STAT. § 160-226 (1952).	—	—	—	1) (L) 2) (P) N.C. GEN. STAT. §§ 160-226, 160-227 (1952).	—
North Dakota (C)	6 m. out N.D. REV. CODE § 40-4801 (1943).	into lots N.D. REV. CODE § 40-4801 (1943).	1) Yes 2) No N.D. REV. CODE § 40-4820 (1943).	Possibly (Q) N.D. REV. CODE § 40-4822 (1943).	1) (A) 2) \$100 fine, can enter N.D. REV. CODE § 40-4823 (1943).	Yes N.D. REV. CODE § 40-2824 (1943).
Ohio (C)	3 m. out OHIO GEN. CODE ANN. § 3586-1 (1938).	—	1) Possibly 2) No OHIO GEN. CODE ANN. § 3586-1 (1938).	—	1) (A) 2) \$50 fine OHIO GEN. CODE ANN. § 3588-1 (1938).	—

Oklahoma (160,000 Pop. City)	3 m. out OKLA. STAT. tit. 11, § 1423 (1951).	2 or more OKLA. STAT. tit 11, § 1412 (1951).	1) Yes 2) Yes OKLA. STAT. tit. 11, § 1425 (1951).	—	—	Yes OKLA. STAT. tit. 11, § 1429 (1951).
Oklahoma (142,000— 204,000 Pop. City) (C)	5 m. out OKLA. STAT. tit. 11, § 1462 (1951). (R)	2 or more OKLA. STAT. tit. 11, § 1452 (1951).	1) Yes 2) Yes OKLA. STAT. tit. 11, § 1464 (1951).	—	1) (A) 2) Sale void, jail, fine, or both OKLA. STAT. tit. 11, § 1466 (1951).	Yes OKLA. STAT. tit. 11, § 1468 (1951).
Oklahoma (10,000-244,000 Pop. Co.) (C)	Unincorporated area OKLA. STAT. tit. 19, § 861.10 (1951).	—	1) Yes 2) Yes OKLA. STAT. tit. 19, § 861.10 (1951).	—	1) (A) and (S) 2) fine, jail, or both OKLA. STAT. tit. 19, § 861.10 (1951).	—
Oklahoma (240,000 Pop. Co.) (C)	Unincorporated area OKLA. STAT. tit. 19, § 865.8 (1951).	—	1) Yes 2) Yes OKLA. STAT. tit. 19, § 865.8 (1951).	—	—	—
Oregon (C)	6 m. out ORE. COMP. LAWS ANN. § 95-2308 (1940).	—	—	—	1) (A) with no M and B provision 2) \$50-\$100 fine, 25 days, or both ORE. COMP. LAWS ANN. §§ 95-2312, 95-2313 (1940).	—
Pennsylvania Borough (C)	Borough limits PA. STAT. ANN. tit. 53, § 13255 (Cum. Supp. 1952).	—	—	—	—	—
Pennsylvania (C) (T) 2 Class City	City limits PA. STAT. ANN. tit. 53, § 9169 (1938).	3 or more PA. STAT. ANN. tit. 53, § 9169 (1938).	1) Yes 2) Yes PA. STAT. ANN. tit. 53, § 9170 (Cum. Supp. 1952).	Probably (U) PA. STAT. ANN. tit. 53, § 9170 (Cum. Supp. 1952).	1) (A) 2) \$100 fine, enjoin PA. STAT. ANN. tit. 53, § 9172 (1938).	Yes PA. STAT. ANN. tit. 53, § 9175 (1938).

APPENDIX—(Continued)

	I. Jurisdiction over subdividing extends—	II. A subdivision is defined as division of land into a number of plots or parcels for purpose of sale or building development. Such number is—	III. 1) May installation of improvements be required as a condition precedent to approval? 2) Can a bond be accepted instead?	IV. Can the local authority forbid subdividing by reference to the public interest?	V. 1) What constitutes a violation of subdivision control? 2) What is the penalty?	VI. Is building upon property in an unapproved subdivision prohibited?
Pennsylvania 2 Class A City (C)	City limits PA. STAT. ANN. tit. 53, § 10725 (1938).	—	—	—	—	—
Pennsylvania 3 Class City (C)	3 m. out PA. STAT. ANN. tit. 53, § 12198-4005 (Cum. Supp. 1952).	—	—	—	—	—
Pennsylvania Co.	Country limits PA. STAT. ANN. tit. 16, § 504 (Cum. Supp. 1952).	3 or more PA. STAT. ANN. tit. 16, § 504 (Cum. Supp. 1952).	—	—	1) (A) 2) \$50-\$100 fine or 30 days PA. STAT. ANN. tit. 16, § 504 (Cum. Supp. 1952).	—
Rhode Island (V)	—	—	—	—	—	—
South Carolina (C) (15,250-16,000 Pop. City)	3 m. out S.C. CODE § 47-1072 (1952).	—	1) Yes 2) Yes S.C. CODE §§ 47-1084, 47-1088 (1952).	—	1) (A) 2) \$100 fine, can en- join S.C. CODE § 40-1090 (1952).	—
South Carolina Over 34,000 Pop. City)	3 m. out S.C. CODE § 47-1038 (1952). (W)	—	1) Yes 2) Yes S.C. CODE § 47-1042 (1952).	—	1) (A) 2) \$100 fine, can en- join S.C. CODE § 47-1052 (1952).	—

South Carolina (Co.)	Unincorporated area S.C. CODE § 14-357.1 (1952).	—	—	—	1) (L) Must have subd. approved 2) Misdemeanor S.C. CODE §§ 14-366, 14-384 (1952).	—
South Dakota	3 m. out S.D. CODE § 45.3311 (Supp. 1952).	2 or more S.D. CODE § 45.3301 (Supp. 1952).	1) Yes 2) Yes S.D. CODE § 45.3312 (Supp. 1952).	—	1) (A) 2) \$100 fine, enjoin S.D. CODE § 45.3315 (Supp. 1952).	Yes S.D. CODE § 45.3317 (Supp. 1952).
Tennessee (X)	Unincorporated area TENN. CODE ANN. § 3493.10 (Williams 1934).	2 or more TENN. CODE ANN. § 3493.15 (Williams 1934).	1) Yes 2) Yes TENN. CODE ANN. § 3493.11 (Williams 1934).	—	1) (A) 2) Misdemeanor TENN. CODE ANN. § 3493-19 (Williams Cum. Supp. 1952).	Yes TENN. CODE ANN. § 3493.20 (Williams Cum. Supp. 1952).
Texas	5 m. out TEX. STAT., REV. CIV. art. 974a (Supp. 1950).	2 or more TEX. STAT., REV. CIV., art. 974a (Supp. 1950).	—	—	—	—
Utah (C)	Outside area which bears relation to city. UTAH CODE ANN. § 10-9-19 (1953).	2 or more UTAH CODE ANN. § 10-9-28 (1953).	—	—	1) (A) 2) \$100 fine, enjoin UTAH CODE ANN. § 10-9-26 (1953).	—
Vermont (Y)	—	—	—	—	—	—
Virginia (B)	2-5 m. out (Z) VA. CODE § 15-786 (1950).	2 or more VA. CODE § 15-899 (Supp. 1952).	1) Yes 2) Yes VA. CODE § 15-781 (Supp. 1952).	—	1) (L) 2) \$10-\$250 fine VA. CODE §§ 15-780, 15-794.1 (1950).	—
Virginia (Co.) (B)	Unincorporated area (A.A) VA. CODE § 15-787 (1950).	2 or more VA. CODE § 15-899 (Supp. 1952).	1) Yes 2) Yes VA. CODE § 15-781 (Supp. 1952).	—	1) (L) 2) \$10-\$250 fine VA. CODE §§ 15-780, 15-794.1 (1950).	—

APPENDIX—(Continued)

	I. Jurisdiction over subdividing extends—	II. A subdivision is defined as division of land into a number of plots or parcels for purpose of sale or building development. Such number is—	III. 1) May installation of improvements be required as a condition precedent to approval? 2) Can a bond be accepted instead?	IV. Can the local authority forbid subdividing by reference to the public interest?	V. 1) What constitutes a violation of subdivision control? 2) What is the penalty?	VI. Is building upon property in an unapproved subdivision prohibited?
Washington (C)	City limits WASH. REV. CODE § 58.16.040 (1951).	5 or more WASH. REV. CODE § 58.16.010 (1951).	—	Probably (BB) WASH. REV. CODE § 58.16.060 (1951).	1) (A) 2) \$100 fine, enjoin WASH. REV. CODE § 58.16.100 (1951).	—
Washington (Co.)	Unincorporated area WASH. REV. CODE § 58.16.040 (1951).	5 or more WASH. REV. CODE § 58.16.010 (1951).	—	Probably (BB) WASH. REV. CODE § 58.16.060 (1951).	1) (A) 2) \$100 fine, enjoin WASH. REV. CODE § 58.16.100 (1951).	—
West Virginia (B)	City limits and abutting land. W. VA. CODE ANN. § 3962 (1949).	—	—	Possibly (CC) W. VA. CODE ANN. § 3962 (1949).	1) (A) 2) \$200 fine W. VA. CODE ANN. §§ 3959, 3961 (1949).	—
Wisconsin (B)	(DD)	5 or more WIS. STAT. § 236.01 (1951).	1) Grading, paving only 2) Yes WIS. STAT. §§ 236.143, 236.09 (1951).	Probably (EE) WIS. STAT. § 236.143 (1951).	1) (A) and (D) 2) 6 mo., \$25-\$500 fine, or both WIS. STAT. § 236.16 (1951).	—
Wyoming (B)	City limits (FF) WYO. COMP. STAT. ANN. § 29-1102 (1945).	3 or more WYO. COMP. STAT. ANN. § 29-1101 (1945).	—	—	1) (D) 2) \$50 fine WYO. COMP. STAT. ANN. § 29-1114 (1945).	—

Wyoming (Co.) (B)	Unincorporated area (FF) WYO. COMP. STAT. ANN. § 29-1102 (1945).	3 or more WYO. COMP. STAT. ANN. § 29-1101 (1945).	—	—	1) (D) 2) \$50 fine WYO. COMP. STAT. ANN. § 29-1114 (1945).	—
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FOOTNOTES

- A. It is a violation for one to sell, or agree to sell, or negotiate to sell any land within a subdivision by reference to, or exhibition of, or by any other use of a plat before the plat is approved. Transfer by metes and bounds does not exempt.
- B. No planning commission exists, but approval must be obtained from the local governing body.
- C. The members of the planning commission cannot receive any compensation.
- D. It is a violation to sell or offer to sell before making a plat or map, which is compulsory, and having it approved.
- E. Approval of local government is required, but no requirements for approval stated.
- F. It is a violation to subdivide without having first obtained approval for such subdivision.
- G. Commission exercises only advisory powers to local government.
- H. Provision as to improvements applies only to land inside corporate limits.
- I. Planning commission acts in an advisory capacity to the local governing body.
- J. Where county planning commission is established, the jurisdiction of the city ends at the city limits.
- K. There is also a county planning commission, for unincorporated areas, to work with the city commission, but no subdivision control power is evident.
- L. It is a violation to subdivide before making a map and having it approved.
- M. Planning authority can provide against premature or scattered subdivision which would involve danger to health, safety or prosperity by reason of lack of water supply, transportation, or other public service, or would necessitate an excessive expenditure of funds to supply such services.
- N. Explicit power to require that the land be made safe for building purposes without danger to health or peril from flood, fire, or other menace. N.J. REV. STAT. § 40:55-13 (Supp. 1950); N.Y. GEN. CITY LAW § 33.
- O. It is a violation to sell or offer to sell before subdivision is approved.
- P. As a penalty the city is entitled to run its streets and sidewalks through the subdivision and compensate the owner only for the land and not for buildings destroyed.
- Q. Before approval, the commission is required to consider the prospective development of the area included in the plat and the surrounding territory.
- R. Where county has acted the city is subordinate in the five mile area.
- S. It is a violation to sell, or agree to sell, or negotiate to sell part of any tract, where such tract was not on record as separately owned at effective date of subdivision control, without approval of commission on document of transfer.

- T. First class cities may create planning commissions, but no subdivision control powers are evident. P.A. STAT. ANN. tit. 53, § 2929 (1931).
- U. The commission can consider the local conditions of the district affected by the subdivision, the improvements on adjacent land and the effect of the proposed subdivision on the public welfare, with particular reference to the district of which the proposed subdivision is a part, and shall disapprove any subdivision which would be detrimental to the public welfare.
- V. Planning commission authorized, but no subdivision control authority evident. See R.I. GEN. LAWS C. 329, §§ 10, 11 (1938).
- W. The above section is virtually nullified by the penalty section which provides that penalties may only be imposed against those within the corporate limits. S.C. CODE § 47-1052 (1952).
- X. The above provisions refer to a regional planning board; the city planning commissions have no evident subdivision control powers. See TENN. CODE ANN. §§ 3493.1-3493.9 (Williams 1934).
- Y. Planning commission is authorized, but no subdivision control powers are evident. See Vt. REV. STAT. §§ 3812-3815 (1947).
- Z. Cities over 100,000—5 miles; cities under 100,000—3 miles; incorporated towns—2 miles.
- AA. If county and city disagree as to regulations for the unincorporated 2-5 mile zone, the circuit court is authorized to settle the controversy.
- VA. CODE § 15-788 (1950).
- BB. The planning commission shall inquire into the public use and interest purposed to be served by the subdivision, and shall only approve if the public use and interest will be served by the subdivision.
- CC. The subdivider must furnish information to the governing authority showing that the proposed subdivision will not impede or prevent further development and extension of the municipality before the approval is granted.
- DD. See Wis. STAT. § 236.06 (1951).
- EE. Governing body may regulate, restrict and in specific areas prohibit the subdivision of land. Factors to be considered in exercising such powers include: the character of the municipality with a view of conserving the value of buildings placed upon the land, providing the best possible environment for human habitation, and the most appropriate use of land throughout the municipality.
- FF. Where the land is within one mile of an incorporated area, both the county and city authority must approve.