Public Open Space in Subdivisions*

One of the most difficult and at the same time most important aspects of land subdivision is the provision of public open spaces. It has long been agreed that accessible parks, playgrounds, and schools are as necessary to a good living environment as are proper densities and compatible land uses. Yet, hundreds of square miles of residential subdivisions containing no more open space than the minimum amount required in private yards are being developed every year in the United States.

On the one hand cities are demolishing their old slums and replacing them with good buildings and well-planned, integrated neighborhoods. On the other hand, they are permitting the construction of new residential areas, which, though good or excellent in residential structure, are lacking in the environmental features which result in wholesome and enduring neighborhoods.

A number of factors contribute to the making of slums and blighted areas. Whether the condition of the dwelling structure or the condition of its physical surroundings is the most significant in slum-building is difficult to determine. Certainly, environmental conditions are near the top of the list. One characteristic of the slum in many cities is its inadequate park and playground space; and one lesson that the slum has taught us is that once subdivision and development have taken place, it is virtually impossible for the city to provide that open space without either demolishing buildings or completely redeveloping the area.

To correct the deficiency of park and school areas in densely built up cities, the planning commission may develop a master plan of parks, using some standard acreage of land per person, located within a reasonable distance from all residential areas. Over a period of years, an attempt is made by the city to ac-

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quire land where needed and to convert it to park, recreation or school use. Sim-
ilarly, public open space in areas to be developed in the future is designated on a
map. It is presumed that this determination of future open spaces is made only
after a thorough investigation of the need and a consideration of other parts of the
master plan.

Many cities and counties, in order not to repeat the mistakes of the past and in
the belief that new residential developments should contain an adequate amount of
public open space, have incorporated in their subdivision regulations a suggestion
or requirement concerning land for public purposes. Information on the practice
of communities with respect to public open space in new developments was first
compiled over ten years ago in Harold W. Lautner's Subdivision Regulations,
(Public Administration Service, Chicago, 1941). Numerous requests made to
PLANNING ADVISORY SERVICE in the last two years have indicated the need for
published information on the current status of such requirements. This Informa-
tion Report will analyze a number of ordinances adopted since 1940 which require
or recommend dedication or reservation of public open space and will discuss
some of the legal and administrative aspects of such requirements.

TRANSFERERENCE OF LAND FOR PUBLIC USE

Land for public purposes may be transferred to the municipality by gift or by
sale. If it is given to the municipality, the dedication may be voluntary or it may
be required by law. If the land is intended for sale to the municipality for a cer-
tain purpose, it may first be reserved for that purpose to allow time for the trans-
action to take place. According to McQuillin's Municipal Corporations, "a statu-
tory dedication is one pursuant to the terms of a statute, and is almost universally
created by the filing and recording of a plat... Statutory dedication generally
vests the legal title to the grounds set apart for public purposes in the municipal
corporation, while the common-law method leaves the legal title in the original
owner."

At common law, dedications were limited to highway purposes, but in this
country the doctrine of dedication has been given a wider application, and land may
now be dedicated to the city for almost any purpose for the use and enjoyment of
the public. Because dedication of land in subdivisions is a statutory dedication,
the statute or provisions which govern the particular jurisdiction must be followed
in order for the act of dedication to be legally valid. The Ohio General Code, for
example, says that the city "may not require dedication to the general public of
open grounds and spaces other than streets and ways." (Emphasis furnished)

Generally speaking, land dedicated for school, park, or recreation purposes
cannot be conveyed by the municipality. In some cases, if the land is not used for
the purpose dedicated, it reverts to the dedicator. And, if property is dedicated
for a particular purpose, it cannot be used for another purpose by the state or mun-
icipality except under the power of eminent domain.
When land is reserved for a particular purpose, its title is not conveyed but remains with the private developer. Reserved land is land held for, but not yet delivered, to the municipality. Before delivery it may not be sold for residential purposes or for any other purpose than that for which it is designated on the plat. Often a time limit is placed on the city before which official action must be taken regarding the reserved land.

HOW MUCH LAND?

In the subdivision with a gridiron street pattern, from 20 to 25 per cent of the land area may be expected to go into streets. Normally, land for streets is dedicated, and although the cost of the streets may be absorbed by the individual lots, the larger the percentage of land in streets, the smaller the percentage of land which may be sold at a profit. If to this 20 to 25 per cent (which can be reduced by better site planning) is added another 10 to 12 per cent of the gross acreage for public open space, the amount of land intended for public use becomes a sizeable percentage.

As will be observed from examination of the ordinance excerpts given in this section and those following, different kinds of bases for determining the proper amount of land to be provided for public open space have evolved. In many of them, an attempt has been made to temper the requirements in such a way that public needs and private financial ability are fairly balanced. Sometimes this is done by saying that only subdivisions of a certain large size shall be required to allocate or reserve land for parks, playgrounds, and schools. Sometimes a provision is made for combining public open space in adjoining tracts. Sometimes the amount is influenced by comprehensive planning requirements. And often these and other means are combined with procedures intended to ensure that the demands made by the city upon the private developer are reasonable.

Some ordinances specify that the public open space shall be in addition to public space dedicated for streets. Others describe the open space as space for parks, schools, or recreation areas. In a few cases neither of these qualifications is made, but it is assumed from the context that the intent is for public open space for parks, schools, and playgrounds.

Public recreation and school site requirements are normally spelled out in a general plan for the development of the community. In turn, the master plan which embodies a plan for public open spaces is partially based upon standards for different types of recreational facilities and their desirable service distances. The community which has not yet prepared such a master plan is nonetheless able to estimate the extent of public requirements by reference to these standards.

The most widely used standards are those prepared under the direction of the National Recreation Association, 315 Fourth Avenue, New York 10, New York. Two pamphlets setting forth these standards may be secured for nominal sums upon writing to the Association.
Facilities (15¢) deals with playgrounds, playfields, and recreation buildings as well as smaller neighborhood facilities. Play Space in New Neighborhoods (25¢) emphasizes smaller areas for younger children.

There are several approaches to the problem of deciding how much land in an individual subdivision should be contributed to public open space. In earlier subdivision regulations it was customary to stipulate that a certain percentage of the total area be dedicated, reserved, or otherwise allocated for public open space. Lautner, in his study of subdivision regulations published in 1941, analyzed 284 subdivision regulations. Of these 284 regulations, 103 contained some form of general regulation of public open spaces. And of the latter group, only twenty-five cases mentioned the master plan under open-space requirements. The balance, or seventy-eight cases, specified "suitable" sites, "adequate" sites, or a percentage ranging from 2.4 per cent to 12.4 per cent of the total subdivided area.

In subdivision regulations adopted since 1940 the trend appears to be in the direction of relating the open space in new subdivisions to the master plan for the community, or at least to the master recreation or park plan. The wording of these requirements, as is to be expected, varies considerably. Underlying all of them, however, is the general principle that where a master plan exists, and where land within the new subdivision falls within this master plan as mapped, then the master plan shall, at the minimum, be "taken into consideration" in the designing and the actual layout of the subdivision.

The following cities and counties are among those that require or suggest that new subdivisions take into account the recommendations for open space as set forth in a general plan.

Ames, Iowa
Baltimore, Maryland
Barrington, Rhode Island
Bismarck, North Dakota
Chattanooga, Tennessee
Clinton, Tennessee
Colorado Springs, Colorado
Dover, New Hampshire
Dubuque, Iowa
Flint, Michigan
Grand Junction, Colorado
Greenville, South Carolina
Hamilton County, Ohio
Indian Hill, Ohio
Jefferson County, Kentucky
Johnson City, Tennessee
Lewisburg, Tennessee
Lincoln, Nebraska
Livonia, Michigan
Midland, Michigan
Montgomery County, Ohio
Oklahoma City, Oklahoma
Owensboro, Kentucky
Racine, Wisconsin
St. Louis County, Missouri
Salt Lake City, Utah
Sullivan County, Tennessee
Tacoma, Washington
Tulsa County, Oklahoma
Tuscaloosa, Alabama
Waterloo, Iowa
Subdivision regulations which refer to the master plan may be placed in two major categories: (1) those which contain a general reference to the master plan; and (2) those which give more definite instructions in cases where land in the platted subdivision and land in the adopted may overlap.

1. Conformance or Accordance. Many regulations, in relating open space requirements to the general plan for the community, state that the subdivision shall conform to or be in accordance with the master plan. This type of statement is usually general in nature and may be interpreted as a principle to be followed rather than an explicit instruction. A master plan generally indicates approximate size and location of future recreational and school areas. "To conform" as used in this sense means to bring into harmony with a pattern.

Typical of the regulations that suggest conformance with the master plan is the ordinance for Livonia, Michigan, which states that the location of sites for future schools, parks and playgrounds should "conform as nearly as possible to the master plan of the city." Similar statements are found in the regulations for Lincoln, Nebraska; and Owensboro, Kentucky. The regulations for Ames, Iowa, are slightly more specific in that such areas in this city should conform to the requirements of the official city plan.*

Often this type of recommendation in subdivision regulations includes a reference to the recommendations of the planning commission. Thus, in the regulations for St. Louis County, Missouri, we find that due consideration shall be given to the various common areas for public use "so as to conform to the recommendations of the commission in its adopted master plan or portion thereof of the county." Similar wording is found in the ordinances for Oklahoma City, Oklahoma; and Dubuque, Iowa.

2. When land shown in a general plan is located in whole or in part in proposed subdivision.

Of increasing prominence are the regulations that suggest or require dedication or reservation where a proposed park or other recreational area, school site

*Regarding this problem, the Housing and Home Finance Agency in its publication, Suggested Land Subdivision Regulations (Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C., February 1952. 45¢) advises that the "fair and intelligent method would seem to be that the Planning Commission make neighborhood or community plans, designating in a general way the nature and extent of the open spaces, and then, as any portion of the area comes to be submitted for subdivision approval, take such steps as will cause the dedication of the recreational spaces at or about the places designated in the neighborhood plan, with money adjustment to compensate the owner of any subdivided tract for the excess contributed by him above his fair share."

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or other public ground shown on an official map or on a plan adopted by the planning commission "is located in whole or in part within the proposed subdivision." Ordinances for cities or counties in the following list contain provisions which require some type of specified action in cases where land in the subdivision and land in an official open space, recreation, or school plan coincide.

Bismarck, North Dakota
Charleston County, South Carolina*
Chattanooga, Tennessee
Clinton, Tennessee*
Colorado Springs, Colorado
Dover, New Hampshire
Hamilton County, Ohio
Hamilton County, Tennessee*
Indian Hill, Ohio
Johnson City, Tennessee*
Louisburg, Tennessee*
Midland, Michigan
Montgomery County, Ohio
Racine, Wisconsin
Sullivan County, Tennessee*
Tuscaloosa, Alabama
Waterloo, Iowa

*The planning commission may require dedication or reservation of land up to 10 per cent of the gross area of the subdivision.

The effectiveness of such requirements depends, of course, upon the type of action specified. However, it is apparent that new residential areas stand a better chance of being provided with adequate open space when the instructions denote land designated on a map than when a master plan is referred to in general terms.

**Percentage Requirements**

Some communities retain the percentage requirement for public open spaces, making various qualifications as to size of subdivision and administrative discretion.

**Twelve Per Cent**

Loudoun County, Virginia. Any subdivision including more than 60 acres, or any subdivision laid out or extended within one mile of any border of an existing subdivision, the number of building sites in which shall succeed 60, shall dedicate at least 12 per cent of its total area for public use.

**Ten Per Cent**

Parsippany-Troy Hills, New Jersey. No arbitrary percentage required, but in general developers should set aside not less than 10 per cent of the whole area.
Dedication may be required when park facilities are needed, in the opinion of the Planning Board.

Kingston, New York. No arbitrary percentage required, but in general subdividers shall set aside not less than 10 per cent of the area.

Five to Ten Per Cent

Charleston County, South Carolina. Where deemed reasonable, the planning board may require to be dedicated or reserved for park, playground or other recreation purposes, an area not to exceed 10 per cent of the subdivision area.

Lane County, Oregon. From five to 10 per cent of the land area, exclusive of streets should be dedicated for recreational and public use, or reserved for a period of two years.

Hamilton County, Ohio. "Normally, the Planning Commission shall urge that from five to 10 per cent of the area of a subdivision, exclusive of streets, be allocated for recreational areas. In determining such areas for dedication or reservation, however, the Commission shall take into consideration the prospective character of the development -- whether dense residential, open residential, business, or industrial.

"The Commission may reduce or waive the requirements for open spaces and sites in special situations where they would cause undue hardship or where there exists adequate open space to serve the population in the area to be platted. Where a subdivided area is too small to provide an open space of suitable size and character, the Commission may require provision of such a tract as may be combined with open spaces provided or to be provided in adjoining areas, so as to produce a total area of adequate size."

Five Per Cent or Less

Owensboro, Kentucky. In tracts less than 40 acres and more than 20 acres, not less than 5 per cent of the gross area of the subdivision should be reserved for open spaces.

High Point, North Carolina. In every subdivision, exclusive of streets, at least five per cent of suitable recreational area shall be set aside in the interest of the public welfare. A tract containing less than 40 acres may combine its reservations with similar reservations in adjoining tracts.

Tiffin, Ohio. The planning commission shall specify the amount required for parks and other public open spaces. However, a minimum of three per cent of the subdivision shall be required for this purpose.
Colorado Springs, Colorado. At least five per cent of the area of the subdivision, exclusive of streets, shall be conveyed for parks, playgrounds, schools, etc., or in lieu of such conveyance, the owner shall pay to the city in cash an amount equal to five per cent of the value of the land.

Other bases for determining amount of land for public open space.

In at least three jurisdictions the amount of land to be provided for parks and other public areas is determined on the basis of density. The regulations for King County, Washington, simply state that public spaces are to be provided "to the extent determined as required on the basis of density of population." In Radnor Township, Pennsylvania, the subdivider is expected in general to dedicate about two acres of recreational area for every 1,000 of future population. And in Raleigh, North Carolina, the regulations advise that in the interest of public welfare, one acre per hundred families, exclusive of streets, should be set aside for recreational or park areas.

A very common provision in older subdivision regulations is that the subdivider should provide "suitable" or "adequate" sites for parks, playgrounds, schools, and other public areas. Although this type of provision is frequently employed in current regulations, more often than not it appears in conjunction with a phrase referring to the master plan or to a minimum percentage of the total area of the subdivision.

ESTABLISHING PUBLIC OPEN SPACE: MANDATE OR PERSUASION?

Few if any regulations require that a stipulated amount of public open space shall be dedicated to the city without offering to the subdivider an alternative course of action. A provision most closely resembling an unconditional mandate is that for Loudoun County, Virginia:

"Any subdivision as hereafter laid out or extended to include more than sixty (60) acres; or any subdivision laid out or extended within one mile of any border of an existing subdivision, the number of building sites in which shall exceed 60, shall dedicate at least twelve per cent (12%) of its total area for public use; provided, however, that if within three years after sixty per cent of the sites have been sold and built upon no use has been made of the dedicated public area, it shall revert to the subdivider."*

Another ordinance, also unusually explicit in its instructions regarding the subdivider's responsibility to provide open space, is that for Salt Lake City, Utah, wherein are combined the methods of dedication and reservation. The portions

*In this and subsequent quotations, the emphasis is furnished, unless otherwise indicated.
dealing with this aspect of the platting process are quoted in their entirety because, although high in the scale of forcefulness, they also contain several checks against arbitrary action in carrying out the instructions of the ordinance.

"Dedication of all other open space within the subdivision will be required in accordance with the master plan of Salt Lake City. Where this plan calls for a larger amount of public open space than the subdivider can be reasonably expected to dedicate, the land needed beyond the subdivider's fair contribution is to be reserved for acquisition by the city provided such acquisition is made within 5 years from date of approval.

"... When tracts to be subdivided are less than 40 acres, public space dedicated may be combined with dedications from adjoining tracts in order to receive usable recreational areas without resulting hardships on the subdivider of a small tract.

"... The action of the Planning Commission in exercising this power to compel dedication of public open space shall take place only after a public hearing has been held on the matter. Any person aggrieved by the decision of the Planning Commission may have the decision reviewed by a court of competent jurisdiction."

This section on dedications is followed by one similar to that found in many zoning ordinances giving to the planning commission the authority to grant exceptions when the tract is of such unusual shape or size, or is surrounded by such development or unusual conditions that the strict application of the requirements would result in real difficulties and substantial hardships. In granting exceptions, however, the public welfare and the interests of the city and surrounding area are to be protected and the intent and spirit of the ordinance are to be preserved.

The most common alternative to dedication is reservation. At least two regulations require either dedication or reservation when the land shown on an official open-space place falls within the subdivision: In Indian Hill, Ohio,

"where a proposed or other recreational area, school site or other public ground shown on any Official Plan of Public Grounds in effect at the time of submission of the plat is located in whole or in part within the proposed subdivision, such proposed public ground or park shall be dedicated to the Village or reserved for acquisition by the Village within a period of three (3) years by purchase or other compensatory means, according to law."

For Racine, Wisconsin, the period of reservation in lieu of dedication is five years.

The subdivision ordinance for Colorado Springs, Colorado, recognizes two possible situations in which new subdivisions may be affected by open space requirements: (1) all developments which, in general, need a certain amount of public
open space; and (2) developments which coincide with a recreational area designated on the general plan for the city. This classification is encountered in other regulations and hence is presented here in full for illustrative purposes. In this example, a cash payment may be made in lieu of conveyance or reservation.

"PUBLIC SPACES.

(1) Allocation of land for public spaces. The owner of the land in each subdivision shall allocate and convey five per cent of the area of the land in his subdivision, exclusive of streets and alleys, for park, playgrounds, school, recreational or similar public purposes, at such location as designated by the City or at the option of the City. Said owner shall, in lieu of such conveyance of land in kind, pay to the City in cash an amount equal to five per cent of the value of the land. If the City and the owner fail to agree on the value of said land, such value shall be fixed and established by the Real Estate Appraisal Committee of the Colorado Springs Board of Realtors. The proceeds of said payments shall be deposited in a separate City account and shall be used only for the acquisition of land for parks, playgrounds, schools, recreational or similar public purposes.

(2) Reservation of Public Land. In the event a park, recreational area, playground, school site or other public space, as included in and adopted under the Development Plan of Colorado Springs, is located in whole or in part within a subdivision, and if the owner of the land in the subdivision does not convey land for such public use, the City may at its option acquire the land for said purposes, or any of them. If the owner and the City shall not agree upon the value of said land, the value thereof shall be fixed by the Real Estate Appraisal Committee of the Colorado Springs Board of Realtors."

In the case of Monterey Park, California, dedication is acceptable as an alternative to cash payment. Prior to final plat approval, the subdivider shall remit to the city the sum of $25.00 for each lot in the subdivision. This fee shall be placed in a fund with the city treasurer to be known and designated as the "Park and Recreational Facilities Fund." The ordinance states that "funds derived from said fees and deposited in said fund shall thereafter be used and expended solely for the purpose of acquiring and improving park and recreation land and facilities." The fee shall be waived by the city council "in all cases where the subdivider has, at the time of, or prior to, the filing of the final map, dedicated to the City, and the City has accepted, sufficient land for park or recreational facilities to provide adequate recreational facilities for the persons to live in the proposed subdivision."

Provisions in the Tulsa County, Oklahoma, regulations are similar in intent, i.e., that either dedication or reservation is required, except that cash payment is not suggested as an alternative. Here, a limit of forty-five days from the date of submittal of preliminary plat is established for reservation. During that time
the planning commission should be notified as to the acquisition of such areas by
the county or other public agency involved. If notification is affirmative, the
planning commission shall then set the period of time for such acquisition. Also
in this group are the regulations for Midland, Michigan, and Racine, Wisconsin,
which, however, specify a five-year reservation period.

Quite a number of ordinances grant to the planning commission or other gov-
ernmental body the discretionary authority to require dedication or reservation
of public open areas. There are two different situations in which this discretion-
ary authority may be exercised: (a) when the proposed subdivision is located on
land designated as park or recreation space by an official plan; and (b) when, in
the opinion of the planning commission, such dedication is required in the interests
of public welfare.

In the category of (a) are the regulations for Flint, Michigan, and Dover, New
Hampshire, which state simply that where a small park or other neighborhood
recreational open space shown on an official map or plan adopted by the commis-
ion, the commission "...may require the dedication or reservation for park,
playground or other recreational purposes in those areas in which the commission
deems such requirements to be reasonable." Charleston County, South Carolina,
regulations are more imperative in that the county board of commissioners shall
require dedication or reservation under such circumstances. To parks and play-
grounds are added schools or other sites for public use in the regulations for
Bismarck, North Dakota. In instances where these areas shown on the master
plan are located in whole or in part in the applicant's subdivision, the planning
commission may request their dedication or reservation.

In the category of (b) – where the public interest indicates the need for public
open space -- we find a variety of provisions. Since none is typical, certain ones
have been selected to illustrate the several degrees of forcefulness found in this
group. The wording in the regulations for the Township of Parsippany-Troy Hills,
New Jersey, is perhaps the most positive:

"Whatever of these facilities, in the opinion of the Planning Board
or of the Township's Recreation Commission, should be dedicated
to public use, shall be so dedicated, except when deeded to a prop-
erty owners' association membership running with all of the land
that is in the complete subdivision."

Also emphatically worded are the King County, Washington, regulations which
state that "if required by the County Planning Commission, all plats must provide
by dedication, areas for parks, playgrounds or open public spaces..."

In Quincy, Massachusetts, the board "may require the dedication of parks,
playgrounds or other public open spaces when it appears that the needs of the pub-
lic warrant such dedication." And in Saginaw, Michigan, the commission may ac-
cept such dedication when it appears that the city will benefit from such dedication.
Also under (b) is the unusual provision contained in the Bismarck, North Dakota, regulations for public open space in planned residential developments:

"Where deemed essential by the Planning Commission upon consideration of the type of development proposed in the subdivision, and especially in large-scale neighborhood unit developments not anticipated in the Master Plan, the Planning Commission may request the dedication or reservation of such other areas or sites of a character, extent or location suitable to the needs created by such development for schools, parks, and other neighborhood purposes."

Still other regulations do not specify dedication or reservation but use another word which has less legal precision but which may be construed to mean substantially the same thing. Tiffin, Ohio; Brookhaven, New York; and Toledo-Lucas County, Ohio, all contain a provision almost identical with the following which is taken from the South Charleston, West Virginia, regulations: "The Planning Commission shall specify to the extent required the allocation of playfields, parks and other open public spaces that may be essential to a proper development of the areas of a neighborhood."

We come now to the large group of regulations which employs the familiar injunction that "due consideration" shall be given to the provision of suitable open spaces for parks, playgrounds, and recreational areas for public use. Although a few regulations stand on the single command that due consideration shall be given, most of the regulations employing this phrase follow it up with more explicit instructions.

1. ...in conformance with master plan. Regulations in this group generally commence with a statement similar to the following which was taken from the ordinance for Lincoln, Nebraska:

"In subdividing property, consideration shall be given to suitable sites for schools, parks, playgrounds and other common areas for public use so as to conform to any recommendations of the city plan."

In turn, this introductory portion is followed with specific advice on what should be done to ensure conformance with the master plan. In the case of Lincoln, Nebraska, and St. Louis County, Missouri,

"any provision for schools, parks, and playgrounds shall [for Lincoln; 'should' for St. Louis County] be indicated on the preliminary plan in order that it may be determined when, and in what manner, such areas will be provided or acquired [or dedicated to] in St. Louis County by the appropriate taxing agency."
And in Ames, Iowa,

"The subdivider shall consult with the City Plan Commission and secure their recommendations as to the location of such sites before preparing the preliminary plat. The preliminary plat shall show the location and dimensions of all areas to be reserved for future use as school sites, parks, playgrounds or similar features and which are to be dedicated to the public for such use."

2. Due consideration shall be given to the dedication... Subdivision regulations for Radnor Township, Pennsylvania; Montgomery County, Ohio; High Point, North Carolina; and Pittsfield, Massachusetts, each contain a provision similar to the following taken from Baltimore County, Maryland.

"Due consideration shall be given to the allocation of areas suitably located and of adequate size for playgrounds, playfields and parks for local or neighborhood use, to be offered for conveyance to the Board of County Commissioners, or reserved for common use of all property owners within the proposed subdivision by deed covenant, or reserved for acquisition at the option of the county commissioners within a period of five years by purchase or other means."

3. Due consideration and indication on the preliminary plat... This group of selections contains the first hints of persuasion: Columbus, Ohio; Manhattan, Kansas; and Houston, Texas, regulations all follow up the due consideration clause with the statement that parks, schools, etc., should be indicated on the preliminary plat so that it may be determined when and in what manner such areas shall be acquired by the city or its appropriate agency. In the cases of Manhattan and Houston, "attention is called to the advantages on a large tract of dedicating a reasonable per cent of the property for such use."

Finally we come to examples of subdivision regulations containing public open space provisions which are primarily persuasive in character. Although lacking the force of most of the regulations cited above, this type of provision is not without value -- enhanced by the likely fact that in the past, as many dedications have been secured by talking it over with the developer and pointing out to him the financial advantages of providing a reasonable amount of park land as by strict and literal interpretation of the law.

"Tuscaloosa, Alabama. Public Uses and Service Areas. Where a park, neighborhood recreational open space, school site or other area for public use shown on an official map or on a plan adopted by the planning commission, is located in whole or in part in the proposed subdivision, the Planning Commission shall seek to secure the reservation of the necessary land for such use."

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"Lane County, Oregon.
The planning commission shall suggest to the subdivider of a large subdivision the advisability of dedicating suitable areas for parks, playgrounds, schools and other public building sites that will be required for the use of the population which is expected to occupy the subdivision. Normally, from five to ten per cent of the land area, exclusive of streets, should be dedicated for recreational and public use, or at least reserved by the subdivider for a period of two years for acquisition by a public agency..."

**TYPES OF USE IN PUBLIC OPEN SPACES**

Recreational purposes constitute the most common type of use for which open space is dedicated, reserved, or designated in subdivisions. Usually these are enumerated, and they may include parks, playgrounds, playlots, and playfields. Often, a general phrase such as "other recreational areas" concludes the enumeration. In a number of cases, however, schools are among the uses for which public open spaces may be provided. Because of the current shortage of schools and because of the widespread problem of selecting school sites in our rapidly expanding cities, those regulations which specifically name schools as one of the types of public open space to be provided are given below. It should be noted that many regulations, while not specifying schools, do add to the usual list a phrase such as "and other common areas for public use," or "and other public open spaces," which might well be interpreted as including schools.

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Preservation of scenic resources and historical sites is another purpose of public open space in addition to the usual recreational resources. A large number of regulations contain such provisions, and there is considerable agreement among them. The examples of Quincy, Massachusetts, (and Medford, Massachusetts) are perhaps the most comprehensive in this regard.
Protection of Natural Features.
"The board reserves the right to decline approval of a subdivision if due regard is not shown for the preservation of all natural features such as large trees, water courses, scenic points, historical spots and similar community assets, which if preserved, will add attractiveness, stability and value to the property."

DESIGN FEATURES AND SITE LOCATION

Most of the subjects generally included in the public open space portions of subdivision regulations have been covered in the previous sections. However, a few regulations contain, in addition, certain instructions concerning the design and location of these public open spaces. Where a part of an official open space plan falls within the subdivision, such plan would influence the location of the neighborhood open space. In the instances cited below, a particular attempt has been made to insure the placement of the parks and schools so that they will most effectively serve the residential areas involved.

In Tacoma, Washington, for example, it is required that the recreation areas in subdivisions shall be so placed as to be within easy walking distance of all dwelling units. And in Barrington, Rhode Island, there is a concern for the relationship of new residential areas to existing facilities: "A plat key map for residential development shall indicate distances from any point thereof to the nearest existing schools, parks, and playgrounds, and shall show in what way children may safely reach the same."

In order to avoid spotty, scattered parks inadequate in size to accommodate playground facilities, the regulations sometimes say that reservation for open space in one subdivision shall, whenever possible, be combined with similar reservations in adjoining tracts. Such a provision is found in regulations for High Point, North Carolina, for subdivisions less than 40 acres in size; in Tulsa, Oklahoma, in small subdivisions; in Owensboro, Kentucky, when the subdivided plot contains less than 40 acres; in Baltimore County, Maryland, in small subdivisions; in Port Huron, Michigan, in small subdivisions; in Hamilton County, Ohio, and Montgomery County, Ohio. The regulations for Parsippany-Troy Hills, New Jersey, recommend that where plots are excessively deep, the rear land can often profitably be pooled for a children's play area.

At least two regulations, though not possessing the usual public open space requirements, do make provision for the building of a neighborhood unit type of subdivision containing a public park area. In Azusa, California, a "Radburn plan" of subdivision may be developed if it has the following features:

"(a) A complete system of pedestrian walks in front of the lots separate from the street, completely serving all lots in the subdivision in such a direct manner, particularly in relation to schools serving the subdivision, that there will be little
inducement or necessity for pedestrians to walk in the streets.

(b) A system of continuous park of such size, shape and arrangement as to be useful in part for recreation, and at least equal to 0.033 acre per lot within each super block, adjacent to all lots or the walks immediately in front of such lots and not separated from the lots by any street for vehicular use."

If, in Wichita, Kansas, a subdivision is developed as a modern neighborhood unit, wherein adequate park or playground area is provided, through traffic is adequately cared for, and the majority of the minor streets are of the cul-de-sac type, the commission may vary the requirements" ... in order to allow the subdivider more freedom in the arrangement of the street and lots, but, at the same time, protect the convenience, health, welfare and safety of the probable future residents of the subdivision, as well as the character of the surrounding property and the general welfare of the urban area...."

ADMINISTRATION AND ENFORCEMENT OF OPEN SPACE REQUIREMENTS

Although the law regarding the compulsory dedication of streets is well established, the legal status of compulsory dedication of other areas for public use is uncertain. Court cases on the dedication of open spaces by subdividers are few and far between, and as in the case of Felipe Segarra Serra and Eduardo G. Gonzalez v. Santiago Iglesias, et al., Supreme Court of Puerto Rico, 70 Puerto Rico Reports (2 ZONING DIGEST 157; 16 ASPO Newsletter 74), for the most part have had only an oblique bearing upon the problem.

Two recent Pennsylvania decisions, however, have been clearly unfavorable. The last question raised in an appeal from the enactment of an ordinance adopted June 12, 1950, by the Commissioners of Lower Moreland Township, Montgomery County, Pennsylvania, in the Court of Quarter Sessions, Montgomery County, Pennsylvania, June Term, 1950 (17 NL 103), had to do with the reservation of lands for open spaces. The subdivision regulations provide "whenever practicable, provision shall be made for suitable open spaces, for parks, playgrounds, and recreational areas." The court said, "Reasoning by analogy when a subdivider is required to designate on his plan a certain portion of his land for park purposes, it is to all intents and purposes a taking of the land without compensation."

In James N. and Rose M. Miller v. City of Beaver Falls, June 27, 1951, 368 Pa. 188* the Supreme Court reversed the ruling of the lower court. This case involved the subdivision of some property in the City of Beaver Falls and the passing of a city ordinance adopting a general plan for parks and playgrounds which covered approximately four and one-half acres of the proposed new sixteen-acre

Miller subdivision. The ordinance was enacted pursuant to the Act of June 23, 1931, P.L. 932, which authorized cities of the third class to officially map future streets and parks in sections not entirely built up and to acquire such lands within a three-year period without paying for any improvements placed thereon after the official mapping.

The lower court found that parks and playgrounds are not only desirable, but have become a modern necessity, and that the establishment of a park and playground on property here involved was desirable and necessary to the development, growth and expansion of the city.

The Supreme Court, in reversing the decision of the lower court, admitted that it was a well settled principle that the "mere plotting of a street upon a city plan without anything more does not constitute a taking of land in a constitutional sense." But it asked, "Shall this principle relating to streets, which are narrow, well defined and absolutely necessary, be extended to parks and playgrounds which may be very large and very desirable, but not necessary?... The action of the City of Beaver Falls in plotting this ground for a park or playground and freezing it for three years is, in reality, a taking of property by possibility, contingency, blockade and subterfuge, in violation of the clear mandate of our Constitution that property cannot be taken or injured or applied to public use without just compensation having been first made and secured. The law with respect to streets is too firmly established in Pennsylvania to be changed, but that is no reason or justification for extending it."

One of the outstanding decisions on the question of principle raised in the latter case is that of Ridgefield Land Company v. City of Detroit, 241 Mich. 468 (1928) 217 N.W. 58, which involved the right of the city of Detroit, in accordance with the Michigan statutes, to refuse to approve a plat whose streets did not conform to the width specified in the general plan. In upholding the action of the planning commission, the court observed that the city could not compel the plaintiff to subdivide his property. "It can, however, impose any reasonable condition which must be complied with before the subdivision is accepted for record. In theory, at least, the owner of a subdivision voluntarily dedicates sufficient land for streets in return for the advantage and privilege of having his plat recorded. Unless he does so, the law gives him no right to have it recorded."

The court also commented upon whether or not such a municipal requirement constituted a taking of property. "In the instant case, the defendants have imposed two conditions with which the plaintiff is required to comply for the privilege of having its plat recorded. They are reasonable and necessary for the public welfare. In the exercise of its power under the statute and its charter, the city had a right to impose them. They do not constitute the taking of private property for public use and are not an infringement on plaintiff's constitutional rights."

Following the Ridgefield Land Company case, the New York Supreme Court (a lower court in the state of New York) held in Matter of Lake Sucor Development
Co., Inc. v. Ruce, 252 N.Y.S. 809 (1931) that the provision authorizing the plan-
ning board in its discretion to require a plat to show a reasonable provision for
parks as a prerequisite to its approval for record under the town planning law was
valid.

One of the most firmly established legal points in zoning law is the recognition
of the need for a comprehensive plan as the basis for a zoning ordinance, and in
many cases, the decision has turned upon the fact that the zoning ordinance had
been made in accordance with a comprehensive plan. The regulation of subdi-
visions through the subdivision ordinance is, like the regulation of land use, den-
sity, etc., through the zoning ordinance, an exercise of police power. In the im-
portant case of Mansfield & Swett, Inc., et al. v. Town of West Orange, Supreme
Court of New Jersey (March 1938) 120 N.J.L. 145, 198 A. 225 (4 NL 39, 53), the
court discussed the question of the constitutionality of the enabling statute under
which the planning commission was exercising the regulation of subdivisions. The
statute provided for a master plan and official map and for subdivision regulation
in accordance therewith. In affirming the validity of the power of a planning com-
mission to pass on subdivision plats, Justice Heher said in part:

"...it is essential to adequate planning that there be provision for
future community needs reasonably to be anticipated. We are
surrounded with the problems of planless growth. The baneful
consequences of haphazard development are everywhere apparent.
There are evils affecting the health, safety and prosperity of our
citizens that are well-nigh insurmountable because of the prohibi-
tive corrective cost. To challenge the power to give proper di-
rection to community growth and development in the particulars
mentioned is to deny the vitality of a principle that has brought
men together in organized society for their mutual advantage. A
sound economy to advance the collective interest in local affairs
is the primary aim of municipal government."

As the matter stands now it cannot be said that there is any clear judicial
basis for determining whether or not provisions for public open space require-
ments are enforceable. In the future, much undoubtedly will depend upon the rea-
sonableness of the requirement, whether or not it is made in conformance with a
comprehensive plan, and upon the attitude of the courts in the state in which the
case arises. A further consideration may well be the central point upon which the
decision turned in the appeal of Miller v. City of Beaver Falls, namely, whether
or not parks, school sites, and playgrounds are considered to be a necessity in
the same way or to the same degree as streets.

In conclusion, it should be observed that the problem of providing public open
space in subdivisions is not entirely one of administering the law. Many develop-
ers have made voluntary dedications for school purposes, for parks and for play-
grounds, and as a result there has been no question of litigation. Experienced de-
velopers have found that parks (and schools sites in larger developments) have
increased the sales value of the lots. Not infrequently, the cost of the land for public open spaces has been more than offset by the enhanced value which accrued to the development as a whole. An excellent discussion of the economic value of recreational facilities in subdivisions is given in the Home Builders Manual for Land Development published in 1950 by the National Association of Home Builders of the U.S., 1028 Connecticut Avenue, N.W., Washington 6, D. C. ($2.50)

Increased valuation of building sites due to proximity to park and recreational areas is recognized in the Federal Housing Administration's appraisals for loan purposes. Some of the most significant features which FHA considers is its location rating system are: protection from adverse influences, such as industry, airports, traffic thoroughfares, etc.; freedom from special hazards, such as high-speed traffic, low flying planes, and fire hazards; adequacy of civic, social, and commercial centers; adequacy of transportation, both private and public; and general appeal. A property which is given a low rating will probably be as difficult to sell as it is difficult to finance. Regarding public open space, the FHA procedure is to establish a ruling on how much of the land, depending on the size of the subdivision, should be devoted to park and recreation. The amount of land that should be dedicated is determined and certification required. The remaining land is then evaluated on the basis of the established FHA system.

CONCLUSION

The problem of ensuring the provision of public open spaces in the newly-developed residential portions of the urban area is not an easy one to solve. That such space is needed cannot be questioned in the light of past experience. The difficulties in this problem arise in the realm of method rather than goals. The simple answer -- though not the simple method -- is that municipalities should buy the land in advance of residential development. The obstacle to this solution is fiscal: real estate values and tax returns do not increase until after the development is completed. A factor which may further obligate the subdivider is the principle raised in Mansfield & Swett v. Town of West Orange, that the recording of plats is a privilege rather than a right.

On the other hand, demands made on the developer cannot be arbitrary or unfair. Although a portion of the cost of public open spaces can be absorbed in the cost of the lots, there is a certain maximum beyond which the subdivider should not be expected to contribute. Many of the subdivision regulations discussed in this report have been indicated a concern over this precise point. The provisions which are probably the most valid in this respect are those which stipulate that the open space to be acquired through contribution by the subdivider should be located by means of a comprehensive plan and which provide for community acquisition of the excess over his fair share.
SUPPLEMENT TO
Information Report No. 46
February 1953

PUBLIC OPEN SPACE IN SUBDIVISIONS

Since the publication of PLANNING ADVISORY SERVICE Information Report No. 46, and in response to the memorandum announcing future titles, several subscribers have sent us additional information about public open space provisions in their subdivision regulations. Consequently, we are publishing this supplement in order to make available what we consider to be some significant, up-to-date developments in public open space provisions.

As pointed out in the bulletin, a number of problems are encountered in the writing of open space provisions. Summarized briefly, they are as follows:

1. These provisions must adequately account for the need.

2. They must not overtax the financial ability of the developer.

3. They must be versatile enough to cover different kinds of situations and to offer alternative courses of action to the developer.

4. They must indicate whether or not the provision of public open space is a condition for recording the plat.

Monetary Payment

An increasing number of communities have attempted to reconcile these problems by providing for a money payment in lieu of land. The use of this alternative makes it easier to fit park and school land in new residential areas into the general scheme for community recreation areas. At the same time, it assists in the provision of capital funds for park and school lands. A further advantage of this method is that the amount of value to be furnished by the developer is at a constant rate.

The bulletin quoted at length from the Colorado Springs, Colorado, subdivision ordinance adopted in 1951 which allowed subdividers to pay to the city a cash sum
equal to 5 per cent of the value of the land in lieu of conveyance of 5 per cent of the tract, exclusive of streets. Also cited was the ordinance for Monterey Park, California, where a fee is charged for the approval of the final plat, and the fees so collected are placed in a special recreation fund. Similar to the Monterey Park regulations, but differing slightly in the matter of bases for fee collection and in reference to the master park plan, are the Modesto, California, provisions adopted by ordinance in 1952:

"Parks and Playgrounds:
At the time of approval of the final map of any subdivision of more than four parcels there shall be paid to the City of Modesto, as a fee for such approval, the sum of $100 per acre of subdivided land exclusive of public streets, alleys, or other rights of way shown on such subdivision map. Said fee shall be placed in a special fund to be known and designated as the 'Park and Recreation Facilities Fund.' Funds derived from said fees and paid into said fund shall thereafter be used and expended exclusively for the acquisition and development of park and recreational facilities for the City of Modesto. This fee, or a fair portion thereof, shall be waived by the City Council in all cases where the subdivider has at the time of, or prior to, the filing of the final map dedicated to the City, and the City Council has accepted such dedication, sufficient land to provide adequate recreational facilities for the persons for which the proposed subdivision is designed and provided that the location and size of such area conforms with the master plan for parks and recreation of the City or preliminary plans made in anticipation thereof."

The Planning Director in Modesto observes that these regulations apply only to new subdivisions within the city limits. However, an arrangement has been worked out with the subdividers of land outside the city limits and in line for annexation. In relation to the annexation program the city council has established as a matter of policy (not yet supported by ordinance) that the city will purchase and reserve for park development a suitable portion of land within any tract which successfully completes annexation proceedings, provided such a tract is available. The location of such reserved land must meet with the approval of the Director of Parks and the Planning Director.

The subdivision ordinance for Claremont, California, adopted in 1952, contains a provision similar to that for Modesto, except that the amount to be paid into the special fund at the time of final plat approval shall be $30.00 for each lot. This provision applies to all subdivisions, regardless of the number of parcels in the subdivision. And in Whittier, California, the planning commission, city council, and subdividers have reached a mutual agreement that at the time of annexation or subdivision of land, approximately 5 per cent of the total area being subdivided, or tentatively the amount of $50.00 per acre shall be set aside for park or recreational use. This plan has been in practice since November, 1948.
Further evidence that an apportioned monetary payment by the subdivider may be a practical and just method of acquiring open space in new subdivisions comes from Corpus Christi, Texas. Since 1939, the city of Corpus Christi has required developers to dedicate 5 per cent of their gross subdivision area for park purposes. It is reported that in the beginning this system resulted in the dedication of a large number of small areas unsatisfactory from a recreational standpoint. Recently, however, the city has devised a scheme whereby the developer may make a monetary contribution to a special park land acquisition fund instead of dedicating the actual park area. This contribution is not mandatory, but it is offered as an alternative to the 5 per cent land dedication. It is reported that in this manner the city has obtained more satisfactory parks both as to location and size.

Kinds of Public Open Space Needed for Good Environment

The subdivision regulations adopted January 1, 1953, by the Delaware County Planning Commission, Media, Pennsylvania, are noteworthy in several respects. Although the state statute does not authorize local bodies to require dedication or reservation of land for parks, playgrounds and recreation areas, the importance of their inclusion in newly developed residential tracts is clearly emphasized. A number of public uses are listed, all of which contribute to a good living environment. Finally, a procedure for conference with the planning commission is indicated. Following are the Delaware County provisions for public open space:

Community Facilities:

(a) In reviewing subdivision lands, the Commission will consider the adequacy of existing or proposed community facilities to serve the additional dwellings proposed by the subdivision.

(b) Subdividers shall give earnest consideration to the desirability of providing or reserving areas for facilities normally required in residential sections, including churches, libraries, schools and other public buildings; parks, playgrounds and playfields; shopping and local business centers.

(c) Areas provided or reserved for such community facilities should be adequate to provide for building sites, landscaping and off-street parking as appropriate to the use proposed. Prior to preparation of final plans, subdividers of large tracts should review with the commission staff minimum standards for various community facilities applicable to the tract to be subdivided.

The emphasis given in the Delaware County regulations to an expanded list of public uses normally needed in a residential district is found also in the state of Tennessee. Although a few of the Tennessee regulations examined for the bulletin
indicate schools as one of the purposes for which land should be reserved or dedicated, most of them provide only for park or recreation space. Word has just been received that the recently completed model subdivision standards prepared by the Tennessee State Planning Commission now include schools and public access to water frontage as open spaces that may be required when shown on official plans.

The Comprehensive Plan and Public Open Space

The trend, observed in Information Report No. 46, toward the relating of open space requirements to a comprehensive plan for the community as a whole is further substantiated by reports from two of our members. One says that "when the park dedication policy was first undertaken there was no park plan. We now have a park plan and are trying to coordinate the park plan and the park dedication policy." The second example is a negative one, but is perhaps even more convincing. "In actual practice, we have little to show for more than a dozen years of subdividing because the official park and recreation plans have not kept pace with the adoption of subdivision regulations. However, some open land has been secured, even without following any official plan. Of course, some subdividers have reserved land for public purposes on their own initiative (often containing rock, outcroppings, sink holes or other undesirable home site features.) In other cases the planning commission, with permission, has been able to get small play sites in the process of subdivision review, even though they had no official plan."

An interesting example of the financial advantage of public land dedications in large subdivisions is seen in Murfreesboro, Tennessee. In Murfreesboro, a school plan has been prepared that assures at least a 12-acre school site when a new section is subdivided. In a new 550-acre tract currently being developed, the subdivider is willing to dedicate this amount because of its value as a selling point. The commission is now trying to secure a 20-acre site which would more nearly approximate the need in such a large acreage.

We close this supplement with two tales of woe. The first concerns a city and a county having a combined population of nearly 500,000. Neither the city nor the county has adopted requirements for public open space in new subdivisions, and the planning staff knows of no examples where even public play space has been dedicated. In the year just past they approved 2,400 acres of raw land divided into 4,000 lots and 45 miles of roads equal to a new city of 14,000 population without a single park or school. Our reporter says, "These things you will NOT want to publish!"

The second tale of woe contains grains of hope because in this particular jurisdiction there are subdivision regulations which require a small percentage dedication, a master park plan, and good working relationships between the planning commission and the local developers. This example illustrates the paradox of rapid urbanization where the need for, and the unparalleled opportunity to provide public open space is frustrated by the very fact of rapid growth and the consequent lack of funds to finance the open space. We quote our reporter's appraisal of this situation and his recommendations:
Frankly, the policy of requiring dedication of park land from sub-dividers is not satisfactory. The proper way to acquire land is to have sufficient bond money set up so that park land can be acquired according to the comprehensive park plan when appropriate and of a proper size. This has not been possible in our city because of the extremely rapid growth. All available bond funds are required to meet the more fundamental needs of sewer, water, drainage, etc. Therefore, we are stuck with a dedication policy in order to get park area while the land is being subdivided. After large areas are subdivided and built up, the cost of acquiring park land would be prohibitive—if not impossible. This policy, in spite of its shortcomings, is now operating satisfactorily and we are getting some good parks as a result of it. We hope that in due course we will be able to secure adequate funds from other sources to acquire park land by purchase.

The paradox of the inability of cities to acquire parks at a time and place when and where they should be acquired was discussed many years ago by the far-seeing Alfred Bettman in his paper on "How to Acquire Parks and Other Open Spaces."* In this essay Mr. Bettman pointed out that the difference in policy or constitutionality between mapped streets and mapped small parts or playgrounds is one of degree and not of kind. He said, "Streets are mainly for public convenience and, to a lesser degree, for safety and health. They are open spaces. The small park is primarily for public health, though also a factor in convenience and safety. They are open spaces." (p. 81)

When larger parks or sites for schools or other public facilities enter into the area of the new subdivision, Bettman points out that the developer should not have to contribute or pay for more than his just share. To handle both of these types of public open space — the small and the large — he proposes a tentative outline of procedure that might be embodied in state enabling legislation.

1. A master plan should be prepared which includes a plan locating approximately the public open spaces that will be needed when that portion of the city is developed.

2. The promulgation by the appropriate branch of the city government of regulations stipulating the maximum amount of land which each subdivision should be required to contribute, in terms of a percentage of the total area of the tract.

3. These subdivision regulations should provide a system of appraisal of the amount to be paid to the owner of the subdivision for any excess of his land which exceeds his maximum contribution.

4. The development of a means of financing the acquisition of this excess, by means of bonds or by means of a special fund created by the community for this purpose.

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5. Special assessment upon all plans within the benefited district.

Mr. Bettman observes that another valuable purpose of the general plan is that it will furnish a basis for designation of the boundaries of the assessment district.

Throughout his essay Mr. Bettman emphasizes the value of experimentation in a field of municipal regulation that is still undergoing change. PLANNING ADVISORY SERVICE believes that many of the subdivision regulations described both in the bulletin and in this supplement exhibit attempts to deal with complicated problems in new ways. The insistence on reference to the master plan is a fundamental approach. It also has the advantage that it is, or should be, both reasonable and scientific. The fee which contributes to a special fund and which is paid at the time of approval of the final plat is another example of a flexible and experimental technique. It also fulfills a number of the requirements posed as criteria for the fair and adequate open space provision enumerated at the beginning of this supplement. It is believed that when both cities and private developers realize that to build new subdivisions without adequate open space is to build new slums further solutions will be found to produce the amount and distribution of open space needed for the health and well-being of the people who will be living in new residential areas.