

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC WELFARE

DIVISION OF HOUSING AND TOWN PLANNING

ANNUAL REPORT FOR THE YEAR ENDING
NOVEMBER 30, 1929



MASS.
DOCS.
COLL.

The Commonwealth of Massachusetts
DEPARTMENT OF PUBLIC WELFARE
HOUSING AND TOWN PLANNING

RICHARD K. CONANT, *Commissioner*
EDWARD T. HARTMAN, *Consultant on Planning*
ADVISORY BOARD

HON. A. C. RATSHEKSKY, Boston, *Chairman.*
JEFFREY R. BRACKETT, Boston.
GEORGE CROMPTON, Worcester.
JOHN J. O'CONNOR, Holyoke.
MRS. ADA ELIOT SHEFFIELD, Cambridge.
MRS. MARY P. H. SHERBURNE, Brookline.

REPORT OF THE DIVISION OF HOUSING AND
TOWN PLANNING

The year shows the establishment of five new Planning Boards, in Canton, Orange, Scituate, Sudbury and Westborough, making 112 in all. But, as will be shown, this does not mean that there are 112 boards functioning.

Four new comprehensive zoning laws have been adopted, in Lincoln, Westwood, Revere and Lynnfield, while Barnstable adopted a somewhat elementary form of interim law. Revere replaces an interim law with a comprehensive law. Newburyport repealed her interim law without adopting any other form of zoning. So far as is known this is the first instance of a direct repeal of any kind and the only instance where an interim law has been repealed without substituting a comprehensive law. These changes bring the list of places in Massachusetts with some kind of zoning to 67, covering 70 per cent of the population of the state. Twentyeight places have prepared zoning schemes which have not been adopted. The number of zoned places in the country is over 800, covering a population of about 38,000,000 people.

AMENDING ZONING BY-LAWS

By Chapter 39, Acts of 1929, the provisions for amending local by-laws were changed. This renders void any provisions in local by-laws in regard to amendments. The new provision, Section 30 of Chapter 40, General Laws, as amended by Chapter 29, 1929, is that an amendment to a by-law or a town zoning map may be brought directly before a town meeting without a hearing. However, if previous to the time of the town meeting any objector files objection in writing with the Town Clerk, the matter cannot be acted upon until the objectors are heard by a special committee or by the planning board, and a report is rendered to the town meeting. This is apparently an ill-advised amendment. The hearings previously required were a good way of getting at the facts and securing action along sound lines. Moreover, the new provision states that the objectors shall be heard. It probably follows that unless the proponents are heard at the same time the action would be nullified by the courts. The general opinion is that the matter was unwisely rushed through.

PLANNING BOARDS

Places required to have planning boards under the law and now without them are Adams, Beverly, Cambridge, Chelsea, Danvers, Greenfield, and Marlboro. All of these places, except Danvers, have, at some time in the past, had planning boards. The Beverly, Cambridge and Greenfield boards resigned en masse because of dissatisfaction with the way their recommendations were received by the city governments and the people.

While there are 112 boards, a few of them have only a nominal existence. Two at least were established merely to comply with the law, with the definite understanding that nothing should be done. Several of the boards have succeeded in doing nothing because of lack of initiative on the part of the members and lack of stimulus on the part of the public. At least ten may be said to have been stillborn, while eight additional ones gave a kick or two and died; that is, they quit after the first bump. Contrasted with these, it is interesting

to note other boards that have received bumps and nothing but bumps but which adhere to their function of carefully studying specific town development problems and keeping them before the people.

One board that has received no encouragement from the townspeople has divided itself into several special committees for the careful study and observation of assigned problems. It is apparently unwilling to give up an important task simply because the people are not yet planning minded. "Steering or Drifting?", the title of a recent book, is a question every place should ask itself.

Contrasted with boards that consistently use every effort to keep sound suggestions before the people are those that make some hasty proposal and, when it fails of acceptance, quit entirely. Proposals should be worked out with care and presented to the people in such a way as to secure acceptance of the proposal or suggestions that will improve it so that it will be accepted.

Some boards seem unconscious of the fact that they exist. There are others conscious of their existence, but the townspeople are not, and the boards wonder why it is. It is generally the fault of the boards. If they are active in the consideration of the development problems of the town, if they see the town whole and study its comprehensive development, they will frequently present proposals to the townspeople. If matters are referred to them they will be a jump ahead of the situation, because they will already have given it some thought. Thus the town will be aware of the fact that it has a board.

It is a part of the duty of a planning board to consider matters in every single instance. If in the meantime citizens or officials bring matters they have under consideration to the board for cooperative consideration, all the better. But the planning board may not absolve itself because things have been done without consulting it. If the board is up-to-date it will constantly keep development problems before the town, and it will find itself with a more or less definite opinion on any matter presented to it. If it is not this kind of a board it is time for the townspeople to act.

An indication of the dormancy of some boards is that after two requests, twenty-four of them have not reported their membership for 1929.

ZONING ADMINISTRATION

While every place needs zoning and will never grow properly without it, the greatest need of the moment is proper zoning administration. Zoning schemes are constantly being broken down by those who seek special privilege. People of all stations, members of boards who see a chance to make some money from a contract for work, reformers, educational institutions, prominent citizens who should be above such things, and those persons who regularly seek special privilege, calmly apply for permits in violation of the law. Frequently they get what they request. If refused, they appeal and frequently get from the board of appeals a permit to violate the law, under the guise of a variation. If they fail here, they go to the legislative body and get a change in the law. Such changes are seldom in accordance with a sound scheme of growth. They are and always will be mainly special privilege granted by careless, mistaken, favoring or corrupt officials or legislative bodies.

For example: A man applies for a permit to erect a large apartment house in a one-family district. A man applies for a permit to erect stores in a residential district. A man applies for a permit to erect an apartment 155 feet high in a 60 foot district. Or it may be an application for a permit to erect a filling station, or a garage, or a factory, or a laundry, in a one-family residential district. It is not that these are occasional happenings. There are hundreds of such cases. One might think they were the results of ignorance, but it is seldom so. Many agreements of sale are entered into with the understanding that it is to go through only in case the owner secures for the purchaser a special privilege in violation of the zoning law.

In one case a building inspector complains because he has had to refuse permits amounting to \$75,000 of taxable property. He overlooks the fact that

his town is already so spotted with intrusions and shacks that every effort needs to be made to protect it and induce the building of better homes, that the proposed \$75,000 of taxable values would probably kill \$150,000 of taxable values, and that every proposal for a violation is only hastening the doom of the town. Why do these people apply for these violations? What is the attitude of an official who complains because he cannot grant every application that is made? What is the need of a law, or a permit, or of an officer to grant permits, if all the applications for permits are to be granted?

People frequently come to various state officials for aid in avoiding local laws. Their attitude may be disclosed by an example. It was desired to erect two dwellings on a lot. "It can easily be done by getting a deed to several feet of land on the side and deeding it back in a year."

BOARDS OF APPEAL

In this connection, boards of appeal should note the numerous court decisions where the courts decline to substitute their judgment for that of the legislative body, and the constant reiteration of the statement that on many questions reasonable minds may differ, and that as long as there are considerations that would justify a certain legislative action the courts must assume that those considerations were used.

The Massachusetts statute permits variations from the requirements of a local law by a board of appeals only when they may meet a physical difficulty or avoid an unnecessary hardship, and then *only in case what is done is in accord with the purpose and intent of the zoning law.*

The intent of zoning is to protect the health, safety and general welfare of the people, to prevent congestion and confusion, to guard against fire, to provide light and ventilation, and to see to it that those who observe the law have the protection of the law. If Brown observes the law and builds a one-family house with a proper set-back and side and rear yards, and a hundred others have done the same, why should Jones be allowed to buy a vacant lot in their midst and erect a ten-story apartment covering the entire lot, and for a hundred families? In such a case, Jones is given special privilege. He is permitted to steal his light and air from his law-abiding neighbors, to increase the fire and traffic hazards, to create a nuisance, or in the words of the U. S. Supreme Court, "put the pig in the parlor instead of in the barn-yard."

Every such action is of a piece with our general lawlessness and wastefulness. It is in line with our treatment of all our natural resources, our forests, our streams, our roadsides. As Struthers Burt says: "The rich men of Syria did not take time to think when they cut their forests that they were bequeathing a desert to their descendants. The self-seeking German and English business men of thirty [five] years ago did not know when they christened their little sons that one day those sons would die because of their fathers' shortsightedness. The Worldly Wiseman of today is the father of the hunted fool of tomorrow."

THE VALUE OF ZONING

Ask real estate men operating in Metropolitan Boston as to the best place to live. They will mention no unzoned place. The reason is that all wise real estate men know that the only thing that will make a desirable residential area is some sort of protection, such as is found in private restrictions and zoning. Unfortunately, some zoned places will not be mentioned, because they waited too long. Some very fine places will not be mentioned, because they are without protection. Zoning has never been considered or has been defeated by some selfish interest seeking to mine the town just as we mined our forests. After that is done there is little hope. It takes many years to overcome such conditions.

CONSTRUCTIVE ACTION

Contrasted with the attitude of a number of places, it is encouraging to note the enthusiasm with which zoning is administered and generally received in some of the more wideawake communities. One town of fourteen thousand

inhabitants reports that it built in 1927 \$1,500,000 worth of homes and in 1928 \$1,400,000; that the average cost of these homes, based on the permit value, is \$6,000; and that the zoning law has been a godsend. In short, zoning is encouraging a substantial type of residential development and is in marked contrast with the areas, of which there are examples, where the tax income from the homes does not even pay school expenses.

Another contrast may be noted where selectmen, acting under a condition precedent, and boards of appeal, weigh every question in the scales of impartial justice, and take such action as will result in the best good of all, the applicant, the neighbors, and the whole community. Recent decisions by such boards, prepared with all the skill and care of the best court decisions, mark the beginning of a new epoch in zoning administration.

A board of appeals may have the ability of a good court, as recent happenings prove, but this does not put such able boards, and the far greater number of less able ones, above the law. It is a too common custom for boards to grant direct violations with the mere statement that they thus avoid unnecessary hardships. By this reasoning it is an unnecessary hardship to obey the law. The man who would do as he pleases is given the privilege. The man who obeys the law is denied the protection of the law. Every such denial is apt to be entirely illegal, as amounting to a use, or height, or area zone change. And there is no recourse for citizens except to go to court against their chosen officials in order to secure common justice.

Some of these cases of violation are almost ludicrous. According to a rather full newspaper report a combination sales and eating place is given a "variation" to build and operate in a residence district. The account discloses no reason, but it would seem to be because the building is to resemble a bean pot, 56 feet high and 51 feet wide. An ordinary store or restaurant is illegal in a residence area, though such uses without this excellence of design are frequently permitted.

ZONING LOADED WITH DYNAMITE

It has recently been said that zoning is loaded with dynamite. It would seem to be so.

The citizens receive the disastrous effects if their officials violate the law, if their zoning amounts to no zoning, if special privilege voids all efforts towards a scheme of growth and protection for the people, if the place becomes so objectionable that no one will build a decent home in it, or start a decent business or industry, if insurance rates and tax rates go up, if those investing in real estate securities refuse to invest in such a place.

The dynamite operates on the officials if the people refuse to submit to such maladministration. The people select the officials and they may submit to having all their efforts nullified, or they may nullify the nullifiers. There are many cases where the people have submitted to maladministration. There are cases where they have refused. The future of zoning is going to be decided for each place by the attitude of the people.

THE EFFECT OF MAIN HIGHWAYS ON VILLAGE LIFE

In considering this question, the chief point of interest is village life. The villages of Massachusetts have many unique and desirable qualities. In many ways they contrast favorably with villages in other parts of the country and bear, in some respects, likeness to the villages of England which are probably the most beautiful in the world. The outsider, when he approaches a New England village, is impressed by the beauty of the roadside scenery, the quiet village streets arched with elms and lined with attractive homes. It is these characteristics plus the climate, the hills and the waterfronts of Massachusetts, which are bringing increasing numbers of American people to spend their summers in Massachusetts (this applies, of course, to all of New England but we are now considering it especially from the point of view of Massachusetts highway development and its effects on village life).

Before the coming of the automobile, Massachusetts was developing an efficient highway system. These main highways naturally tied in with existing roads, in fact, consisted largely of improved roads. Village main streets were used the same as country highways. This was satisfactory in the day of the horse and carriage but where it means anywhere from five hundred to fifteen hundred automobiles per hour, it is an entirely different problem. As has been said by one irate citizen of Cape Cod, "These hell-bent-for-election highways are rendering our village streets more of a hazard to our children, to our mothers with young children, and to everybody, than ever were the railroads, and we never asked them to walk on the railroads."

Unthinking people are too apt to work on the assumption that it is too expensive to build new highways. If people would think this matter through, they would see that in the end we cannot afford not to build new highways. In short, every village should be by-passed by the main highway and such highways should have spur-roads leading into the village centers. If this is not done, the villages will be ruined, their elms will be cut down, their homes rendered uninhabitable, and the expense of re-establishing all this village life will be infinitely greater, and will extend over a much longer period of time, and will produce a much greater unhappiness than can possibly be produced by building new highways. Many of the country roads as they now stand may be used for these main highways. The chief point of importance is to by-pass the village centers and save them.

If we do not save them, we will have to re-establish them in new locations, or go without them. If we go without them, Massachusetts will no longer be Massachusetts as we have known her. It will be killing the goose that lays the golden egg. As to re-establishing these village centers, it is practically impossible. The village centers have largely developed where they ought to be. This is notably true on Cape Cod where the villages are on or near the water-fronts, and wherever villages are located in the vicinity of ponds, streams and other natural attractions.

Take the Cape as a concrete example. The main place for an attractive Cape village is on the waterfront. There are other attractive villages more inland but they lack some of the characteristics of the waterfront villages. The present system of highway development on the Cape will ruin all the villages, waterfront and inland. This destruction is already going on. It is so gradual that people have been slow to see it. Much of it is done in the name of "progress and improvement." It is of a piece with the development of the entire continent where in the name of progress we have ruined our natural assets. Ruin these Cape villages and what will be the results as far as they affect the permanent residents of Cape Cod, and, if these are substantially driven out, what will be the effects on the summer residents of Cape Cod?

The obvious solution for Cape Cod, for example, is an almost entirely new main highway cutting through the town of Bourne in the least destructive way and then following the main backbone of the Cape, at any rate as far as Orleans. Such a main highway, with a proper branch following the main base of the highlands south through Bourne and Falmouth, with spur-roads, already largely existing, leading to the village centers, would save the village streets for village purposes, in short, for village life which is largely the life of Cape Cod.

This is but a hasty peep at the subject. Involved in it are numerous aspects not here mentioned. It is high time for the people of the state to think this matter through and to make up their minds what they are going to do. Things in this direction are happening almost every day and almost universally they have injurious qualities.

Planning boards should be particularly active in the consideration of this problem. In many cases where such work is under development the planning boards are comfortably asleep, under the assumption that there is nothing to do.

INJURIOUS LAND DEVELOPMENTS

Perhaps the worst enemy of sound municipal development in both the United States and Canada is the land developer. There are land developers who fit a reasonable interpretation of that term. A considerable number of them are land butchers. Attention has been called to a place in Metropolitan Boston where a land and homes developer (and particularly note the "homes") has 400 houses with streets in such condition that one can't get to the homes with a machine except under the best weather conditions. A doctor had to walk to three of these homes in order to attend his patients. It is this sort of thing that is ruining our towns. People are promised everything and get nothing but the land until the town taxes itself and produces the values for which the developer collected and the purchasers paid but did not get.

Struthers Burt has put this whole matter in a nutshell. He says, "I believe that there is no more fundamental passion in the breasts of men of the northern races than their passions for a home, and I believe that one of the wickedest things other men can do is to balk or prey upon this passion. There is most certainly a special hell for such jackalls."

LAND FOR PUBLIC NEEDS

In spite of this, many officials and citizens are most considerate of the interests of the jackalls and deaf to the pleas of those who would protect the people and the communities. A year ago, we reported on the action of a jury in awarding \$77,000 to a holder of land assessed at \$4,500 in the town of Oak Bluffs. As a result of this action, the town was obliged to secure from the legislature authority to borrow money to meet the judgment. This experience of Oak Bluffs, together with the experience of Falmouth and other places where juries and courts have awarded unreasonable amounts in cases of land takings, has caused the legislature to pass a new law, Chapter 80A of the General Laws. Among other things, this law provides that before final judgment of condemnation is issued, the proposed action for which the land was to be secured may be abandoned and any action rendered void.

Abandonment of the action enables a city or town to avoid being mulcted by an unpatriotic owner, but it does not enable it to secure the land it needs for the use of the people in the most advantageous location.

When private land conspires against a town it benefits only as it bears a small ratio to the total, which it thus succeeds in penalizing. When all private land conspires against a town it conspires against itself, for it properly carries the bulk of the community expenses.

When expert testimony as to the value of land varies from 1 to 5, and even as high as 14, it is time for courts and juries to question the quality of the experts.

The recent action of the National Association of Real Estate Boards ought to make available appraisals that would do justice to all concerned.

STEERING OR DRIFTING?

Every place should ask, are we steering or drifting? A town is improving or deteriorating, it seldom stands as is. Improvement accompanies deliberate action of the people towards desired ends. Deterioration must follow mere drifting, carelessness on the part of the people as to how things are done, whether it is due to common indifference or to complete selfishness in attending only to personal pursuits.

Constructive selfishness, which is only another name for good citizenship, makes all desirous of living in a good and constantly improving town.

A marked tendency to which attention should be called is the too common assumption that some form of community advertising will overcome all tendencies towards deterioration. Excessive advertising may for a time aid a commodity that is the poorest in its field. But it is only temporary. With a town, every thoughtful home-builder will consider the conditions. If conditions are bad and growing worse advertising is the poorest substitute for constructive action.

Everyone knows that there is abundant opportunity for creative action working constantly towards better and better conditions in every community of the Commonwealth. Such action is characteristic of creative statesmen.

(Statements in parenthesis are from office data.)

Amesbury. (Though little encouraged by the town,) the first act of the board was to appoint special committees on (1) Relocation of Main Street; before reconstruction as a cement road. (2) Systematic scheme of sidewalk construction. (3) Zoning; frequent intrusions begin to arouse interest. (4) Civic center; a new court house, one feature, now being built. (5) Systematic highway construction plan.

Amherst. No activity. The board hopes the people will see the value of zoning before further damage is done.

Andover. (Zoning was defeated and since then the board has been inactive.)

Barnstable. Town map completed. Platting of all properties continues. Data on ownerships much used by title examiners, engineers, etc. Improving lands owned by the town, seeking new waterfront areas, educational work on comprehensive zoning.

Boston. Intensive main thoroughfare studies, special studies on East Boston tunnel and approaches, traffic control at several points, widening Charles Street and other streets, filling Fort Point Channel, zoning, and the location of health centers.

Brookline. Two hearings on higher classification of certain areas under zoning resulted in approval by the board and the town meeting. Other petitions for a higher classification are pending. Several special studies and recommendations on street locations and improvements.

Duxbury. The board has been active on zoning, traffic and street adjustments, directional signs and other matters. (As in a few other cases, it is generally known that factional opposition is preventing progress.)

Everett. Efforts to curb billboards have met with little success. Some success in abating various minor nuisances.

Fairhaven. Working on enforcement of the zoning and building by-laws, land developments and the location and regulations of a landing field.

Fall River. (Mainly active on the treatment of the burnt area.)

Franklin. Preparing a zoning scheme for the next annual town meeting.

Hingham. Main activity, developing a park at the harbor, working on main arteries.

Holyoke. Active in advancing special studies of the school problem. Dr. Strayer and his group are at work on the matter.

Lexington. (A conference with all real estate firms operating in the town, called by the planning board, resulted in an agreement to do away with "sold" signs, to make all signs conform with the zoning regulation of six square feet per sign, all signs to be on posts and not on trees or other natural objects, all signs to be twenty feet from the property line, that but one sign shall go on each property, the aim being to develop attractiveness and promote the interests of the town and the realtors. The zoning by-law has been greatly improved by a complete revision.)

Lynnfield. The zoning by-law, rejected in January, was slightly amended and adopted in November.

Medford. (The board last year urged more careful planning to meet the needs of a largely developed area. News reports indicate that the board of appeals is not upholding the zoning law.)

Melrose. (Work is being done on a general plan.)

Milton. (Working on a special enabling act to give the town the necessary power to direct its growth.)

Newton. Largely active as a board of survey, working on development plans and new street locations. Work on new school and park sites and on zoning changes. Several petitions for change of zoning to a higher classification.

Reading. A special study of the treatment of Reading Common, to meet traffic needs and provide certain desired facilities, were rejected. Also studying methods of solving the "bottle-neck" problem at Reading Square. The board reports satisfactory administration of zoning.

Salem. The board hopes to send its report direct to the towns in time for

the town meetings. Active in upholding the intent and purpose of the zoning ordinance.

Scituate. The board has co-operated on the problems of harbor dredging and High School development. It joined in opposing a filling station in a residential area and is preparing a zoning scheme, plans for adjusting certain streets and the taking of lands for general protection.

Sudbury. The first step was to prepare a zoning by-law, on which hearings have been held. Studies in other directions are under way.

Watertown. Active mainly on zoning changes.

Wayland. Active on several road improvements, with quite a little already accomplished. A joint committee of the boards of Weston, Wayland and Sudbury is working on a proper location for the Worcester turnpike through the towns.

Wellesley. By a vote of the town the board is co-operating with the school committee and the park board in studying playground and skating areas. Similarly it is studying the traffic problem at Wellesley Square and will report. Recommends an aerial map to supplement other map work. Is co-operating with the school committee on street layout to facilitate the locating of a school. Studying the Worcester turnpike problem.

Winchester. Two efforts to extend business areas to permit apartments were defeated by the town in accord with the recommendation of the board. Co-operates with the board of survey on all developments, is studying playgrounds, new main ways and zoning administration. (Formal decisions rendered by the selectmen acting under a condition precedent and the board of appeals in a water tower matter attain a high degree of excellence.)

Worcester. Extensive street improvements are under way, one, suggested in 1871, now approaching completion at a cost of around \$5,000,000.