A GUIDE TO ANNEXATION AND SUBDIVISION CONTROL

Institute of Public Affairs
of the State University of Iowa,
Iowa City, in co-operation
with the League of Iowa
Municipalities

Iowa
352 Stoyles
St7 A guide to annexation and subdivision control

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Due

MAY 7 1969	
May 21'69	
Jun 5'69	
OCT. 15 1969	
Oct 4'69	
Oct. 15	
APR. 17 1970	
IN U. S. A.	

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DATE	ISSUED TO
MAY 7 1969	Mr James Wm White Muscatine 52761
OCT. 15 1969	Mr James Wm White Muscatine 52761
APR. 17 1970	

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of the State University of Iowa, Iowa City,
in co-operation with the
League of Iowa Municipalities
1959

As a service of the League of Iowa Municipalities and the Institute of Public Affairs, copies of this publication have been furnished free of charge to municipal officials in Iowa. Additional copies may be purchased at $1.00 each.

Foreword

THIS PUBLICATION is intended as a guide to city and town officials in the use of annexation and subdivision regulations as methods to control and regulate the growth and development of residential, business, and industrial sites, improvements, and buildings in the urbanized area in and surrounding cities and towns. This discussion is concerned largely with the control and regulation of residential areas of average growth and development since this is the normal pattern in Iowa.

It is obvious that building sites and buildings are increasing rapidly in the urbanized areas in and around most Iowa cities and towns. The results of a survey conducted by the Institute indicate that regulation and control are needed more widely than might be expected. More than ninety per cent of the cities in Iowa responded to this survey. Since 1951, more than half of these cities have annexed territory and more than ninety per cent have considered a subdivision plat.

The discussion in this publication is divided into two parts. Part One summarizes the law and possible regulation of annexation in Iowa. Part Two treats subdivision practices similarly. This combination is useful and logical since many problems and standards are similar in these two methods for the control and regulation of the growth of cities and towns.

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October, 1959

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Annexation

THE REGULATION of subdivisions generally leaves unanswered the problem of how to control and regulate the growth of population and building in urban territories outside cities and towns. The basic tool in Iowa for this purpose is annexation. The following discussion concerns annexation of such territory and the supplementary tools of county zoning and the powers of the larger cities over territories outside their limits.

In general, the persons who perform acts or make decisions in the annexation process need only to act in the good faith belief that annexation is necessary and to comply substantially with the statutory requirements. If they do this, the annexation will be upheld by the courts even though there may have been some technical irregularities. Furthermore, if substantial time has passed since a territory was annexed, and people have acted in the belief that the annexation was proper, it will be upheld. However, to avoid possible disputes and expenses, the acts suggested in this publication should be followed as closely as possible. Persons involved in the annexation should consult with the city attorney and other city officials for advice on how to act in each particular situation.

Control of Growth Before Annexation

The growth and development of urban territories outside of a city or town can be controlled and regulated to some extent either before or without annexation. This can be done either by providing that the territory will be in a state of development similar to that of the annexing city or town when it is annexed, or by postponing the need for annexation.

One of the most effective ways to regulate fringe territories before annexation is to make a bargain or agreement with the people living in the territory or their representatives and with the subdividers and builders who are developing the territory. This agreement should be in writing.

The agreement of the people of the fringe territory to comply with

regulations similar to those enforced in the city or town can be voluntary or forced. These persons probably will comply voluntarily if they wish to be annexed. But even if some of these persons do not want annexation, the city or town usually can require compliance with its regulations by refusing to furnish services to these outlying territories unless the people comply.

A city or town should avoid long term contracts to furnish municipal services to fringe territories. Such contracts may remove the need or motive for annexation. In our survey answered by most Iowa cities, about two-thirds furnished water service outside of the city limits, about one-fourth furnished sanitary sewer service, and about four-fifths furnished fire fighting service.

A city or town can get help in controlling and regulating these urbanized territories by bargaining and co-operating with the county and by convincing county officials that they should regulate these territories in order to provide orderly growth of the entire urban territory. For example, a city or town and county can co-operate on a nonstatutory basis by setting up joint committees to discuss their joint problems.

Counties have some control over the growth and development of these territories although they are more limited in their regulatory powers than are cities or towns within their municipal limits. A county has the power, for example, to police these territories, to prevent nuisances, and to build and maintain roads.

In addition, the county board of supervisors has the power under Chapter 358A, Code 1958, to zone unincorporated territories. However, farm lands are exempted from regulation. Under this power the board can regulate construction, maintenance, and use of buildings and land including: height, number, and size of buildings; plumbing; proportion of lot occupied; density of population; congestion of streets; adequacy of light, air, water, and sewage; and location of schools and parks.

A city or town also can help the urbanized fringe territory to construct and maintain certain types of improvements for furnishing services. For example, it and the territory could establish special sanitary, water, or drainage districts to furnish these services to persons in the territory and in the city or town. Or the municipality could consult and co-operate with these districts if already established.

In the case of cities that have populations of 25,000 or more, the city has a direct control over the development of urbanized territories in that any plat of a subdivision in the city or within one mile of the city limits must be approved by the council and planning commission. The discussion in Part Two of this publication indicates what these cities could require before approval.

Advantages and Disadvantages of Annexation

Before a city or town annexes adjacent urbanized territory, it should carefully check and record the facts for and against annexation. This information will help in making the final decision whether or not the territory should be annexed, and in educating the public. The facts will be needed in drafting the required notices to city and town residents, to residents and land owners in the territory considered for annexation, and to the court. This information will be useful also in presenting proof to the court that the city or town can furnish the required benefits and services to the territory if it is annexed. The following list of the possible advantages and disadvantages to a city or town in annexation and the possible benefits and disadvantages to the annexed territory may help city and town officials in gathering this information and in determining if annexation is justified.

1. TAXES. The Iowa Code requires that annexation should not be "sought merely for the purpose of increasing the revenues from taxation of such municipal corporation." However, the persons who are interested in the annexation will want to know what additional tax income will be received in comparison with how much money will be spent in furnishing additional services to the territory proposed for annexation. Therefore, the county auditor's records should be checked for the value of the property in the territory proposed for annexation and for past assessments and payments from such property.

Actually, it is very unlikely that a city or town will realize a net gain in increased tax revenues over increased costs for services for any significant period of time. Therefore, the requirement that the annexed territory has to help pay past or future debts of the annexing city or town probably will not benefit the city or town. There might be such a profit or benefit if the annexed territory contains a large proportion of commercial or industrial properties or sites rather than residential properties or sites. Furthermore, agricultural plots of more than ten acres within the city or town limits can be assessed only for street purposes and only up to one and one-fourth mills annually.

A city or town may benefit from the addition of assessed valuation that would enable the municipality to increase its indebtedness. Cities and towns may be indebted only up to five per cent of the value of the property in their limits. By annexing additional territory, a city or town might be able to build a water plant, for example, that is needed to serve the entire urbanized area but that would have cost more than five per cent of the value of taxable property in the city or town before annexation.

The residents and property owners of the territory proposed for annexation probably will object that their taxes will be raised. Therefore, proponents of the annexation should be ready to show that the benefits of the services outweigh their cost.

2. Planned Growth. Any city or town should function as a planned social, economic, and governmental unit and, therefore, needs to be able to plan the growth and development of any adjacent urbanized territory. The municipality will want to enforce planning, zoning, building, and other municipal regulations in these territories to prevent temporary and unsatisfactory housing developments from springing up on the outskirts of the city or town. This regulation also will benefit the residents of the annexed territory by protecting the value of their own homes and properties. Some cities or towns also may need territory for future residential, industrial, or commercial expansion.

Facts for and against the need for annexation for the planned growth and development of the city or town can be discovered by checking the city plan, if there is one, by questioning city officials, and by viewing the territory proposed for annexation. The investigators should check and record on graphs, charts, and maps these features: building and population trends, existing and proposed subdivisions, possible natural barriers such as a river or swamp, distances of places in the territory from public buildings such as the city hall and schools and from places of work, transportation facilities, possible extensions of city streets, possible park sites, and the types of commercial, industrial, residential, and public buildings already in the area.

3. Services. A city or town may need to annex a territory in order to provide services for the residents of the territory or for residents of the city or town, or both. For example, if there are railroad tracks in the fringe territory, the city police may need authority to make arrests of tramps in the territory. They can make arrests as peace officers only within the city limits. Other examples are fire hazards that might spread fire into the city, possible nuisances such as kilns or garbage pits, and health hazards such as open sanitary sewage ditches.

To annex territory, a city or town must prove to the court that it will be able to furnish benefits to the territory. These benefits consist mainly of additional services. Examples are: water, sewer, and drainage systems; police and fire protection; garbage collection; street improvement, including construction, maintenance, cleaning, lighting, sidewalks, and tree control; parks and playgrounds; city and town regulations such as zoning and building; available experienced public officials such as legal and health officers; and central purchasing and contracting on a greater volume with better terms.

Of course, a city or town generally will have to pay part of the costs of furnishing these additional services, although part of the costs will be paid by the residents of the annexed territory. They might agree to pay a larger share of the costs than their future tax payments in order to be annexed to the city or town. For example, they might agree to pay half of the cost of extending the main sewer or water lines into the territory. Such agreements should be incorporated in a written contract. Special statutory assessments may be levied for some utilities against the land owners in the annexed territory for direct benefits to individual property, such as for sewer and water lateral lines and for grading, surfacing, and curbing streets. However, the annexation proponents should realize that agricultural and undeveloped land in the territory cannot be expected to help pay immediately for services that are not needed at that time. Rate payments, such as for water charges, by the residents of the annexed territory also will help pay for some of these added services.

A city or town may be able to use street, water, sewer, drainage, and other utility systems already installed in the territory when it was annexed. However, a municipality might have to pay the private owners of such systems. Des Moines has compromised on such a payment, but there is no reported Iowa decision concerning such a requirement.

A city or town should check carefully to see if the extension of its services to the fringe territory will require additional plants, stations, men, or equipment. For example, service to territory that has a different water level may require additional pumps in a water or sewer system, and narrow streets or lack of fire hydrants may require new fire fighting equipment. Also, the city may have to acquire additional right of way for streets.

The proponents of annexation should be ready to answer possible objections to proof of benefits. For example, the residents of the territory proposed for annexation may allege that they will be paying for services long before it will be possible to furnish them. Therefore, the proponents should set up a tentative time schedule for the furnishing of services, based on the opinions of city officials. Data on the costs of various municipal services should be made available.

The proponents of annexation should keep in mind that the city or town, in addition to proof that it can furnish these services, must furnish a substantial amount of them within a reasonable time after annexation. It should be ready to furnish at least some services similar to those given residents of the city or town. Some services, such as police protection, should be furnished immediately after annexation. If the municipality fails to furnish these services, the land owners in the annexed territory can get the territory severed from the city or town.

Basic Tests for Annexation

The ultimate decision whether or not to annex will have to be based on an indefinite balance of the relative merits of the advantages and disadvantages in the particular annexation proposal. Knowledge and records of the facts, however, will make this decision as accurate as possible. A general test, apart from the costs of annexation, is whether the urbanized fringe territory can survive socially, financially, and politically without benefits from the annexing city or town. Theoretically, if it cannot, it should be annexed. The ultimate costs of the annexation should be de-emphasized, although they must be considered seriously. Modern services that the territory probably will need eventually cannot be furnished economically on a small scale. However, the basic motive that a city or town should have for annexing territory should be to provide for the orderly growth and development of the entire urban area.

Of course, annexation may not stop the development of fringe areas if the development is motivated predominately by a desire to escape city regulations and taxes. The only sure control over these territories is effective statutory authority to regulate their development.

Limits of Territory to Be Annexed

Once a city or town has decided that it will attempt to annex some urbanized territory, it must determine how much territory it will annex. The territory must touch the city limits at some point. It should not be so irregular in shape that it is evident that the city or town wants to annex only property that would benefit the city or town taxwise. The city or town can annex a reasonable amount of unplatted agricultural or undeveloped land if such land probably will be needed for the expected growth of the city or town. All of a street should be annexed to avoid jurisdictional conflicts with the county.

Surveying and Preparing Maps, Plats, and Descriptions

A city or town will need accurate maps, plats, and descriptions of the territory to be annexed and a list of the land owners in the territory. It will need these papers for its own information and records and for required annexation procedures.

This information can be obtained from the county records in the recorder's and auditor's offices and from the county surveyor, from the state land office, or by employing a private surveyor, realtor, or abstract company. The council should consult with the city engineer or similar

official about these matters. The record descriptions should be checked in the field to be sure they are accurate.

The written description that is required need not be technically perfect but should be worded so that the average person could understand what property is described.

The descriptions, maps, and plats should designate specifically how much of a street, river, lake, or railroad is to be annexed. Otherwise, there might be a future conflict regarding whether the side or center lines are the boundary, and whether the city or town or the county should maintain the property and receive the tax income from it.

Paying for Annexation Proceedings

Although there is no express statutory authority for a city or town to investigate in order to determine the need for annexation, it probably is implied under the council's legislative power. Generally, the power to legislate and investigate is held to imply the power to finance these acts. Therefore, the council probably could use part of the general government fund to finance this investigation.

First Formal Step in Annexation

The Iowa Supreme Court has held that a city or town council legally starts annexation proceedings when it makes a motion to notify the clerk to publish notice of a meeting and hearing on the proposal to annex. This is important because it prevents the land owners in the territory proposed for annexation from incorporating any part of the territory. (The first legal step in the incorporation of a city or town is the filing of a petition in the district court.) This motion to notify the clerk also will prevent any nearby city or town from annexing the territory.

This situation is unfortunate in that a city or town may be forced to start annexation proceedings before it has had a chance to investigate thoroughly and to determine the need for annexation. The Iowa Legislature in its 1957 session helped to some extent to prevent this race as far as cities with populations of 15,000 or more are concerned. The Code now provides that there can be no incorporation of a city or town within three miles of the limits of a city with a population of 15,000 or more.

The council's decision to hold a hearing might be based on requests from other persons. Ten per cent of the land owners in any territory adjoining any city or town can petition the council for annexation. Also, the city planning commission, if there is one, might request an annexation.

The recommendations of the city planning commission probably should be followed in any annexation proceedings, since that body is

responsible for planning the growth and development of the city. The Iowa Code does not require that the council annex property only as recommended by the planning commission, but the Code does provide that there shall be no substantial modification of the comprehensive city plan, which includes plans for the future growth and development of neighboring territory, until the proposed change has been referred to the plan commission for its recommendations. If the commission does not recommend the change, it cannot be adopted by less than a three-fourths vote of the council members.

In some cases territory can be annexed without the formal legal procedure of a hearing, election, and trial. All the land owners in any territory adjoining any city or town can ask the council to annex the territory. The request should be in writing and have a plat of the territory attached to it. The council may annex the territory by resolution.

Public Relations

The goals of a city's or town's public relations policies regarding annexations should be to publicize the intended annexation, to educate the public, and to obtain their co-operation. The city or town should attempt to obtain the good will particularly of residents of the municipality and of the territory to be annexed and of county officials.

The city or town certainly should educate and obtain the co-operation of the following persons and organizations: newspapers, radio and television stations, chamber of commerce, taxpayer's associations, service organizations, women's clubs, private utilities, civic workers, business leaders, educational and professional organizations, and city, county, and state public officials.

Hearing

After the clerk has been told to publish notice of a meeting and hearing on a proposed annexation he has the notice published in the city or town newspaper once each week for two consecutive weeks. (See Chapter 618, Code 1958) If there is no newspaper published in the city or town, the clerk must have the notice published in any newspaper that is circulated generally in the city or town. If the newspaper in which the notice is inserted is published more than once a week, the second publication should be on the same day of the week as the first. The published notice should contain a description of the territory proposed for annexation and the date, time, and place of the hearing.

At the hearing the council should listen to and consider suggestions of all annexation proponents and objectors. Any interested person,

whether from inside or outside the city or town limits, should be invited to participate. The council can hold subsequent meetings to hear further suggestions and to obtain additional facts.

At its final meeting in this hearing, the council should adopt a resolution either to annex or not to annex the proposed territory or any part of it.

If the electors of the city or town are to vote on the proposal to annex at the regular municipal election, the council's resolution must be passed at least one month before that election (the first Tuesday after the first Monday in November in odd numbered years). The resolution should be enacted in the normal way. It must be approved by a majority of the members elected to the council and submitted to the mayor for approval or disapproval.

A resolution for annexation, in addition to enactment provisions and provisions setting out the intent to annex, should contain provisions for notice and election on the proposal to annex and a provision that the annexed territory shall be zoned as the most restricted residential district until the zoning commission has a chance to rezone the territory.

Election

The clerk of the city or town must publish notice of the election on the proposition to annex territory once each week for three consecutive weeks. (See Chapter 618, Code 1958) This publication should be placed in the city or town newspaper, or, if there is none, in a newspaper that is circulated generally in the city or town. If the newspaper in which the notice is placed is published oftener than once a week, subsequent publications should be made on the same day of the week as the first.

The published notice of the election should contain: the name of the city or town, the date of the notice, the date and fact of the passage of the resolution to annex, a description of the property proposed for annexation, the date, place, and hours of the election, and the exact wording of the proposition to be submitted to the electors.

The proposition to be submitted to the electors should be in the following form: "Shall the proposition to annex the territory described as follows: (here set out legal description of the territory); in the resolution adopted by the council of the city (or town) of _____, on the _____ day of _____ be approved?"

The proposition for annexation can be submitted to the electors either on the regular municipal election day (the first Tuesday after the first Monday of November in odd numbered years) or at a special election. Residents and land owners in the territory proposed for annexation do not vote. The annexation must be approved by a majority of the quali-

fied electors. The vote is regulated and counted as in other general elections.

Court Approval

The annexation of territory must be approved by the district court. The district court cannot disapprove on grounds that the annexation is not politically, socially, or economically desirable. It can refuse to approve the annexation only if the city or town has not complied substantially with a required procedural step in the annexation proceedings, or if the city or town cannot show that it can furnish substantial additional municipal services and benefits to the territory and that the annexation will not result merely in increasing the tax revenues of the city or town.

The council requests the district court's approval by filing a petition after the voters have approved the annexation. The petition should contain: a statement that under the council's resolution the electors of the city or town voted for annexation of the territory; a description of the territory proposed to be annexed; a list of the land owners in the territory as shown by the county auditor's plat books; a general plat of the territory that is sufficient to indicate its location; and a statement of facts showing that the city or town can furnish the territory substantial additional municipal benefits and services and is not merely annexing the territory to obtain additional tax revenue.

Notice that there is a petition on file in the district court and that a proposed annexation is to be considered by the court must be given to all land owners in the territory proposed for annexation. The statutes require only that this notice be given by publication once each week for three consecutive weeks in the same manner as the notice of election. However, to be sure of adequate notice and to create good public relations, the city or town should mail or deliver this notice personally to all land owners in the territory to be annexed.[1]

"Land owners" required to be notified under the annexation procedure has been defined recently by the Iowa Supreme Court to mean owners as listed in the auditor's plat book. This includes purchasers by contract if their names are listed on the plat book.

The notice should contain: the names of the city or town and county where the district court will consider the annexation, the date the court

1. The case of City of Cedar Rapids v. Cox, 93 N. W. 2d 216 (Iowa, Nov., 1958) held basically that such notice by publication is sufficient and not violative of due process, and that the landowners who are to be made parties in the equity action need include only those shown listed as owners on the auditor's plat books. An appeal to the United States Supreme Court was dismissed for want of a federal question. Anderson v. City of Cedar Rapids, 3 L. Ed. 2d 976, 79 S. Ct. 1118, May 18, 1959

will consider the annexation, a statement that the petition is on file with the clerk of the district court, a short summary of the petition including a general description of the territory to be annexed, and the signatures of the mayor, clerk, and city attorney.

If the city or town has taken the proper procedural steps and has proved that it can furnish the required benefits and services, the court must decree that the annexation is complete and effective.

The city or town clerk must make and file with the county recorder a transcript of the parts of the city or town records that show the final action of the council. The clerk of the district court must make and file with the recorder a certified copy of the record of the final action of the district court. The city or town clerk also should send a notice of the annexation to the Secretary of State of Iowa.

From that time on the territory is officially a part of the annexing city or town. Therefore, the city or town should request that the court decree final approval on January 1 so that there will be no overlapping of the fiscal and tax years between the city or town's and the county's. This probably can be accomplished in time if the city or town has prepared its facts thoroughly to present to the court.

Annexation of State Property

The Iowa Legislature provided in 1957 (See Code 1958, sections 362.-.34-.37) that territory owned by the state and adjacent to any city or town could be annexed but that limited access rights acquired by the highway authorities would not be affected. This act requires the city or town to give additional notice to the state of the pendency of the action by serving notice on the county attorney and by sending a copy of the notice by certified mail to the Attorney General.

Subdividing

THEORETICALLY a city or town council could use practically all of its municipal powers to regulate the development and improvement of subdivisions. For example, it could use its extensive police powers to control health or safety hazards, or it could use its power to regulate and forbid specific nuisances, such as cottonwood trees. However, in actual practice, in accord with the statutory designation of "subdivision regulations," there has been a much more limited scope in subdivision regulations. Broadly speaking, subdivision (or platting) regulations have been used to control the development and improvement of subdivisions up to the time actual construction of buildings is begun; actual construction is regulated by housing and building codes. However, it is still possible to use other types of powers and regulations, such as zoning, planning, building lines, and housing and building codes, to accomplish the statutory purposes of subdivision regulations. For example, both plumbing and subdivision regulations can be used to regulate the installation of sewer and water mains. This publication will call attention to examples of specific uses of these other powers in enforcing necessary subdivision regulations.

Before we go further, we should define two terms: "subdivision," and "plat." For purposes of this book, a subdivision is any division of a tract or parcel of land into three or more parts for the basic purpose of immediate or future sale or building development; a plat is a map, drawing, or chart on which the subdivider's plan of the subdivision is presented and which he submits for approval and intends to record in final form.[1]

1. Chapter 409, Code 1958, does not define "subdivision" as such, although section one requires the recording of plats of "subdivisions" which are any tracts or parcels of land that have or shall be subdivided into three or more parts for laying out an addition or part of a city or town or suburban lots.

Some Iowa cities have attempted to amplify or modify this implied definition by setting additional standards, including the following: A subdivision of land is either (1) the division of land into three (some have even changed this to two) or more tracts, sites, or parcels of three acres or less in area, (2) establishment or dedication

Jurisdiction of Subdivision Regulations

Can a city or town control the development of subdivisions outside the city or town limits? From certain phrasings in the statutes, it might be inferred that municipalities have such powers.[2] In our opinion, such an interpretation is of doubtful legality and, as a practical matter, very few communities have tried to adopt such regulations. Therefore, the discussions in this book are limited to regulating subdivisions within the city or town limits. It should be noted also that other municipal powers, such as building codes, that might be used to supplement enforcement of subdivision regulations apply only within the corporate limits. Please refer to Part One of this publication for discussion of the limitations on possible regulation of fringe areas.

Under section 409.14, Code 1958, cities that have 25,000 population or more can enforce subdivision regulations within one mile of the city limits. Our survey indicates that the regulations enforced by the thirteen cities in this group in the fringe areas are less strict, in general, than the regulations that apply to subdivisions within the corporate limits.[3]

The Need for Comprehensive Regulations

All cities and some towns need to formulate and adopt clear and comprehensive subdivision standards, requirements, and procedures. (According to our survey, nearly all Iowa cities have had at least one subdivision developed since 1951.) The basic reason for need for regulation

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of a road, highway, street, or alley regardless of area, or (3) resubdivision of land heretofore divided or platted into lots, sites, or parcels, provided, however, that the sale or exchange of small parcels of land to or between adjoining property owners, where such sale or exchange does not create additional lots, shall not be considered as a subdivision. Although the statute is admittedly ambiguous and because the modifications set out in these representative ordinances have not been tested in court, in this publication we will use the statutorily implied definition.

The definition of "plat" is based on municipal ordinances now in effect and is believed to be non-controversial.

2. See sections 409.1 and 409.4, which refer to plats of "additions"; also, it might be held that the requirements of sections 409.5-.6 refer to the "plats" listed in sections 409.1 and 409.4; see also section 389.11. There have been no reported cases in which the possibility of using these provisions as authority to enforce regulations outside the corporate limits has been discussed.

3. An unreported Iowa district court opinion has held that the final proviso of paragraph four of section 409.14, Code 1958, impliedly restricts such cities from requiring any specific improvements in subdivisions outside the city limits. Apparently, under this decision, the city can regulate only the location, width, and alignment of streets in these territories. There has been no Iowa Supreme Court decision on this issue.

is to protect the municipality, the public, subdividers, builders, investors, and potential home owners.

The public needs adequate protection of public health, safety, and welfare. It is obvious that an unregulated, substandard subdivision development may later become a health or safety hazard. Subdivision regulation assures the public that all subdivisions will conform to the city plan, zoning, and other regulations, and, therefore, should conform with public policy.

The potential property owner shares in the general public's needs and, in addition, adequate subdivision development and improvement means that his property will have and will continue to have a high value. Subdivision regulation also assures him that necessary public services will be furnished.

The municipality also is interested in upholding property valuations in order to maintain a high, stable tax base. Premature subdividing and building also causes unoccupied housing that might lead to tax delinquencies. In the interest of maintaining the quality and efficiency of municipal services, such as water and sewer, the municipality will want to discourage premature and excessive subdividing. Premature and excessive subdividing generally causes sparsely settled subdivisions which increase the unit cost of municipal services.

Last but not least, the subdivision regulations should be formulated and adopted on the basis of the needs of the subdivider, developer, builder, and investors. Fortunately, most of the requirements that benefit buyers, the public, and the municipality also benefit the sellers. Furthermore, sound, clear subdivision regulations assist the subdivider in determining the financial feasibility of a proposed subdivision and how, when, and where he should subdivide. Such regulations will also make it easier to obtain loans and approval by governmental units, such as the Federal Housing Administration and the Veterans Administration. Recordation of subdivision plats tends to lower the subdivider's deed costs and lessens the danger of a misdescription since the deed can refer to the plat number as a description. Ultimately, of course, lots in a subdivision that is developed and improved under adequate standards will be easier to sell and will bring better prices.

Need for an Ordinance to Regulate Subdivisions

Subdivision regulations should be adopted in written form because enforcement under written regulations will probably be more uniform.

While a city or town could adopt informal written regulations or a resolution, an ordinance is preferable. Adoption of an ordinance will be

considered more seriously; enforcement officials and subdividers will be more likely to comply with its requirements, and it will be more adequately publicized. Furthermore, the statute requires that an ordinance be adopted if certain subdivision regulations are to be put into effect. Section 409.14, Code 1958, provides that the council of any city that has a population of 25,000 or more "shall have authority by ordinance to prescribe reasonable rules and regulations governing the form of said plats and require such data and information to accompany same on presentation for approval as may be deemed necessary by the said council."

Local needs vary regarding the number and strictness of subdivision regulations. Among the variable factors that should be considered are population, kinds of housing needs, local physical conditions such as topography, and availability of municipal services. Opinions may differ concerning the amount of discretion that should be given officials in enforcing the details of regulation. It may be desirable to adopt certain details of procedure to supplement the available statutory procedures. These additional ordinance provisions might include the time at which certain steps should be taken, what officials should enforce the regulations, and what information should be included in the tentative plat or in the final plat.

It is our intention that, from the discussion that follows, local officials can select the provisions that are needed locally and draft an ordinance with the aid of an attorney.

General Standards for Subdivision Regulations

Chapter 409, Code 1958, and in particular sections four through seven and fourteen, furnish the basic authority and standards for regulation of subdivision development and improvement. However, the statute lists only in a general way the types of improvements and developments that can be required. Detailed requirements concerning certain types of materials and methods, etc., must be supplied in local regulations or through enforcement if they are desired. See "Developments and Improvements That Can Be Regulated" for a discussion of the large number of possible detailed requirements that have been used in ordinances or suggested by the writers and experts in this field (pages 24 to 38).

This publication is limited, to a large extent, to discussion of the regulatory powers available to towns and cities under 25,000 population. Attorneys in larger cities should consider also the additional powers granted by section 409.14, Code 1958.

Municipal officials should take note of the possibilities of using other municipal powers, in addition to the provisions of Chapter 409, to regulate subdivisions effectively (see page 17). In many cases it may be

possible to obtain voluntary submission to necessary subdivision regulations by the threat to use these powers.

The city or town council must decide what improvements and developments are to be regulated, and the strictness of each regulation. These decisions must take into account many considerations affecting the future welfare of the community. For example, the regulations should not be designed to relieve the municipality of the costs of providing usual public services. On the other hand, the council should consider possible future public costs of repair, maintenance, and operation.

Regulations should not be too strict, for this might cause unwanted consequences. Regulations that are too restrictive may delay or halt the development of needed subdivision, or increase the costs to the purchaser unreasonably. This might lead to critical housing shortages, or it might encourage subdividers to build outside the city or town limits to avoid regulatory control.

Subdivision regulations should be designed to provide uniform treatment to all subdividers. For example, local subdividers and builders should not be favored over outside contractors, either through subterfuges in the written regulations or in enforcement.

Since topographical and other conditions vary among proposed subdivisions, the council and other responsible officials should be granted some measure of discretion in enforcing the subdivision regulations. Some Iowa ordinances have granted discretionary powers that apply to all or most of the subdivision regulations in the ordinance. Other Iowa ordinances grant this power for the enforcement of only one or a few specific regulatory provisions. The legality of a grant of a broad, blanket power of discretion for all regulations or all regulations for a certain type of improvement, such as sewers, depends on what official or officials are to use this power. The council can have extensive discretionary powers, but such grants to other municipal officials might be held to be an unconstitutional delegation of legislative authority. The solution is to set maximum and minimum general specifications and requirements in the specific regulatory provisions since the council makes the final approval or disapproval of subdivisions. Any grant of discretion should not be so broad that enforcement could be based on personal or political desires.

A city or town might be divided into zones or districts according to economic or topographic conditions; regulations would apply with different degrees of strictness in the various zones or districts. However, this probably would be practical only in the larger cities. It would be best and safest to provide this flexibility by granting limited discretionary powers to enforcement officials.

Local Factual Considerations for Subdivision Regulations

In determining what subdivision regulations should be adopted and how strict these regulations should be, the council should consider all local conditions. The facts can be discovered in the following ways:

A. Knowledge of:
   1. General needs of the municipality, public, subdivider, builder, investor, and potential home owner; see "The Need for Comprehensive Regulations," page 19.
   2. General standards for drafting subdivision regulations; see "General Standards for Subdivision Regulation," page 20.
   3. Existing ordinances that have the same general regulatory function, such as a zoning ordinance. This will help the council to know what necessary subdivision regulations are already in effect and if the regulations are too strict or not strict enough.

B. Methods:
   1. Obtain information and facts from experts such as subdividers, architects, builders, utility company officials, real estate brokers, and municipal, county, and state officials.
   2. Hold adequately publicized hearings to find out the wants and needs of interested parties.
   3. Personal investigation or use of agents.

C. Sources:
   1. City plan—Subdivision regulations are an interrelated phase of planning and plan enforcement, and, therefore, basic information obtained and used for city planning can be used in subdivision regulation. This is particularly true for cities of 25,000 population or more since section 409.14, Code 1958, requires that their subdivision regulations conform to the city plan, if there is one.
   2. Subdivision plan—If a city or town does not have a general plan, it should establish a specific subdivision plan for the entire urban area without regard to the city or town boundary, or draft an individual plan for each proposed subdivision including adjacent affected territory.
   3. Reports—The city or town can obtain reports—including maps, charts, surveys, etc., from public officials, private interest groups and individuals, library sources, and ordinances—of:
      a) Population trends, including present and expected location, family size, increase or decrease, and rates.

b) Economic studies, including a forecast of industrial and business growth and an analysis of the local housing market and needs.
c) Present and expected land uses, including zoning districts, lot sizes, and house types.
d) Municipal services, utilities, improvements, and facilities, including location, size, capacity, adequacy, and possible need for future extension.
e) Traffic and transportation, including traffic patterns, major street plan, and availability and adequacy of local transportation services.

DEVELOPMENTS AND IMPROVEMENTS THAT CAN BE REGULATED

The results of our survey indicate that most Iowa cities do not regulate subdivision developments and improvements to anywhere near the extent the statutes authorize. Only about one-fifth of the cities that answered the survey required paved streets, although most of the cities that have populations of 15,000 or more have such a requirement. Approximately one-third of the cities in our survey require the installation of streets and gutters, one-fourth require alleys, one-fourth require sidewalks, two-thirds require a water system, two-thirds require a sanitary sewer system, one-fifth require a gas system, one-fifth require an electric system, and a very few require the dedication of parks and other public grounds.

The discussion that follows relates to regulations that seem necessary for similar *residential* subdivisions of average growth and density. This discussion concerns the laws, desirable goals, standards, and possible regulations of distinct types of developments and improvements.

Streets

A primary goal of regulation of the establishment and construction of subdivision streets is traffic control. Municipalities need adequate streets to move people and goods quickly, efficiently, conveniently, and safely. Specifically, a city or town needs to control the volume, type, and speed of traffic on particular streets. The proposed use of a street may require particular standards of establishment and construction, such as a particular location, alignment, width, grade, or method of construction. Conversely, the particular location, alignment, width, grade, or method of construction may cause particular traffic uses because others are inconvenient. For example, narrow streets should cause truck drivers to take other routes.

The standards of establishment and construction of streets can have other effects. For example, the alignment, width, and surface of a street might affect the municipality's ability to furnish police and fire fighting protection. Subdivision streets should be established and constructed with due consideration of the needs for: access to the subdivision, traffic between adjacent neighborhoods, routes to work and business districts, snow removal, parking, and the protection of children. Municipal officials should consider also possible future maintenance costs of different widths and surfaces of streets, and the widths and surfaces of streets in the city in general and in the neighborhood of the subdivision. The desired shape and size of blocks and lots will affect street location. Topography is also a determining factor. Expert advice can be helpful in reaching these decisions.

The most efficient method of regulating the establishment and construction of municipal streets is to divide existing and potential streets into three classes according to necessary use. This method has been used in most of the available Iowa ordinances. The names most commonly applied to these classifications are (1) main streets, (2) feeder streets, and (3) residential streets. Streets also have been classified as arterial, collector, and minor streets. In smaller cities and towns the second classification often is omitted. *Residential streets* are designed to provide access and delivery to individual private properties. *Feeder streets* deliver traffic to and from the subdivision or residential streets to the main streets and between small neighborhood areas. *Main streets* move heavy traffic between basic areas of the city or town or in and out of the municipality. Requirements for the location, alignment, width, grade, surface, and method of construction vary for each class.

It has been suggested as a general standard that there should be a main street every one-half mile and a feeder street every one-fourth mile, but this should be varied to meet particular local conditions. Every city or town concerned with subdivisions should have a street or thoroughfare plan that shows the locations, alignments, dimensions, surfaces, and identifications of existing and proposed streets—at least the main and feeder streets. Every new subdivision development should comply with this plan.

It is desirable to have only residential streets within each particular subdivision; feeder or main streets should lie adjacent to the subdivision to provide through traffic. Plans for large developments, of course, should include provisions for through traffic.

Cities and towns have the power, under section 389.1, Code 1958, to establish, lay off, open, widen, straighten, narrow, vacate, extend, improve, and repair streets within their limits. Also see section 389.11, Code

1958. The procedures that are required for a valid dedication and acceptance of streets and other public property are discussed in this publication under "Dedication of Streets and Other Public Lands," page 46.

Municipalities have the power to control the location of streets in a subdivision. Section 409.4, Code 1958, requires that blocks and streets within a subdivision "conform as nearly as practicable to the size of blocks and the widths of streets . . ." in the municipality. This section also provides that streets in the subdivision must be extensions of the existing system of municipal streets. This requirement should be confined generally to main and feeder streets. Subdivision streets should be laid out so that they can be projected later into adjoining undeveloped areas.

Dead end or cul de sac streets can be used where topography requires that, or to discourage traffic, but they should not be overused. Such streets might create dead end water and sewer systems and make problems in garbage collection, fire protection, and street cleaning. Access to each lot should be assured. Dead end streets should have a turn around circle with a minimum diameter of 100 feet for right of way and 80 feet for roadway. Sometimes a "T" or "Y" shaped background will be adequate. The length of such streets should be restricted; 500 feet is suggested as a maximum. Loop streets may be used effectively in place of cul de sacs or dead end streets.

It can be assumed that the power of control under section 409.4, Code 1958, over blocks and streets implies the power to control the alignment of subdivision streets. Alignment regulations should control intersection placement and angles and street curves.

Traffic bottlenecks are usually the result of poorly designed intersections and not of street widths. Jogged cross streets should be avoided. Center-line offsets of less than 125 feet should be avoided. However, "T" intersections at sufficient intervals are helpful to detour through traffic from a subdivision. If jogs are unavoidable, the streets should be connected by means of a diagonal curve or line. Subdivision entrance streets should be kept to a minimum. Intersections of more than two streets should be avoided. Intersecting streets should be set generally at right angles or with a suggested minimum angle of seventy-five degrees. This helps in traffic safety and also produces usable building lots at corners. There should be no street interections within one hundred feet of railroad tracks.

A curved street pattern that fits the topography avoids the monotony of the old style grid pattern, improves drainage, and may help to divert heavy traffic from the subdivision. However, for visibility and safe traffic movement, street curves should have a minimum center line radius of 100 feet for residential streets and 300 feet for other streets.

Intersection corners should have a cut off with a twenty foot radius or its chord to improve visibility. This could be varied for different intersecting angles. Further, the municipality should regulate placement of trees and shrubs in the planting strips and should require minimum building line set backs. (See discussions under "Buildings and Structures" and "Trees.") Traffic visibility, particularly at intersections, should be approved by the city engineer or other similarly qualified official.

Street widths are a major factor in the costs of construction and maintenance, and in traffic control plans. Street widths should be defined to include planting strips, curbs, and sidewalk areas. In setting minimum and maximum street widths and roadway widths for the three classes of streets and for each particular subdivision, the council should consider all possible present and future uses of these streets. For example, it may become necessary later to install a sidewalk. The council should determine also how much space is needed for on-street parking. If the street is an extension of streets outside the subdivision, it probably should be the same width or wider. Wide streets are needed in multiple housing zones because of the greater traffic and parking demands. Half streets should be required on the subdivision boundary if necessary for present or future junction with half streets on abutting property.

Section 409.5, Code 1958, provides that "The council may require the owner of the land [subdivision] to bring all streets to a grade acceptable to the council . . ." All changes in grade should be connected by vertical curves of minimum length. Available Iowa ordinances generally have limited the maximum grade to six per cent for major streets and ten per cent for others, and the minimum grade for all streets to one-half of one per cent. Other experts have suggested maximum grades of four per cent for main streets, six per cent for feeder streets, and eight per cent for residential streets. These requirements are based on needs of traffic, drainage, access, and erosion prevention. Unusual topography may require approval of greater grades. Street grades should be below abutting property grades. Minimum and maximum crown requirements also could be set.

Section 409.5, Code 1958, provides that the council may require the installation of paving. This, and the power to require grading, apparently imply that the council could require the installation of less permanent surfaces such as gravel. In any event, the council could enforce such requirements by threatening to use the power to require paving or by threatening to refuse to accept dedication of the street. Some Iowa ordinances have provided that the city will pay for any pavement in excess of a width of twenty-five feet.

In consideration of the respective needs of the public and subdividers,

the council should not require concrete or asphalt pavement on all subdivision streets. The council should consult an engineer concerning the surface that will be adequate for the proposed use. This will depend upon the nature of the subgrade, climatic conditions, comparative costs, probable loads, character of the project, and cost limitations. The council should consider the road surfaces in the rest of the municipality and in areas adjacent to the proposed subdivision. Also, gravel surfacing may discourage heavy traffic. The council also should consider the ultimate costs of maintenance that probably will fall by assessment on the subdivision lot buyers. The subdivider should realize that poor street construction probably will be obvious to prospective buyers.

Although the statute does not provide expressly that the council can require the installation of curbs and gutters, it would seem that these improvements could be required as part of the street system. About one-third of the cities responding to our survey have required this improvement. The need for curbs and gutters may depend on the availability of storm sewers. Curbs and gutters help protect parking grass and give a finished look to the subdivision. If curbs are required, the subdivider should construct regular breaks for driveways, or the council might allow rolled curbs where they will be adequate.

Some Iowa subdivision ordinances have required the subdivider to install street signs but this is not expressly authorized by statute.

Sidewalks

Section 409.4, Code 1958, provides that the council may require the installation of sidewalks. The necessary right of way, materials, and method of construction vary with local conditions. The council should require sidewalks that are at least equal to those in the neighborhood. It might be practical to require sidewalks along only major or feeder streets or on just one side of some streets. Sidewalks should be constructed on both sides of streets leading to schools.

The required width of sidewalks and their rights of way depend on the intended use of adjacent property. On residential streets the right of way of the sidewalk and planting strip need include only two feet from the private property line to the sidewalk, four feet for the sidewalk, and six feet to the street. If there are to be trees in the planting strip, a minimum of ten feet should be required.

Sidewalks could be required to abut the street but a planting strip is often desirable for shade, to protect pedestrians from mud and water, and to avoid depressions for driveways.

Sidewalk surfaces should be at least four inches thick and six inches

where driveways cross. They should have a minimum pitch of one-quarter inch to the foot for drainage.

Alleys

Section 409.6, Code 1958, provides that the council "may require alleys to be platted separating abutting lots and if so platted, the alleys shall conform as nearly as practicable to the width of alleys in the city or town and shall be extensions of the existing system of alleys." It might be contended that the council does not have the power to require that alleys be paved or constructed in any particular manner. However, the municipality might force the subdivider to install paving by threatening to refuse to accept dedication or by threatening further assessments against the subdivider or lot buyers. If paving is necessary, the city or town might pay the additional cost under its general power in section 389.1, Code 1958.

Actually, the view of modern planners is that alleys are undesirable unless they are needed as continuations of existing alleys, and except when they are needed to provide egress or access for lots on major streets or in business districts.

If alleys are required, they should have a minimum width of sixteen feet in residential areas and twenty feet in business areas. The alley right of way should be used also for utility easements. There should be a five foot radius or chord cut off at intersections with other alleys or streets.

For a discussion of what regulations can be enacted and enforced to require subdivision alleys to be "extensions" of the existing municipal system, see the section on "Streets," page 24.

Blocks

The council can regulate the size and shape of subdivision blocks, under its power to control the location, width, and alignment of streets, and its specific power in section 409.4, Code 1958, to require subdivision blocks to "conform as nearly as practicable to the size of blocks" in the city or town.

In residential areas the traditional gridiron plat of small blocks is uneconomical and inefficient. Short blocks waste land and raise street costs; longer blocks help to keep unwanted heavy traffic out of the subdivision and also reduce traffic hazards by decreasing the number of street intersections. However, in business districts shorter blocks provide more corner locations and more convenient movement of traffic and pedestrians.

Consideration should be given to the shapes and sizes of other blocks

in the neighborhood, and to good subdivision design, but the primary consideration should be street needs. In general, block lengths should lie in the direction of the main traffic flow, and should not cause long detours in reaching schools, stores, and other main objectives. Topography and drainage should be considered also in designing blocks and locating streets.

The length of subdivision blocks should be between 800 and 1500 feet and their width should be between 200 and 300 feet. Block width usually should be based on two tiers of lots. The use of cul de sacs can justify wider blocks. Long blocks should have cross walks with ten-foot rights of way in approximately the center of each block.

Lot Sizes and Shapes

The regulation of lot sizes and shapes is basically a zoning power, but subdivision regulation control of street and alley placement affords some control. Lot sizes can't be fixed by law but the law can require that buildings cannot be placed on lots under a certain size. However, the lots fixed on the plat probably will be the lots for building. Sections 490.1 and .3, Code 1958, provide that the plat shall indicate lot numbers and their length and breadth. Furthermore, health and sanitation needs may require some regulation of the size and shape of lots. For example, if private septic tank systems are to be used in the subdivision, minimum lot sizes should be set. In most cases it should not be difficult to show the subdivider that good lot planning will enhance the value of the subdivision.

Subdivision lots should be designed to afford ample space for the enjoyment of fresh air, light, and sun, and some degree of privacy. Their size and shape should be based also on the particular subdivison conditions, such as topography, soil, sanitation needs, access, and the financial abilities of the expected lot purchasers. The required size of lots should not depend on personal preferences of neighborhood land owners or solely on keeping lot costs high. There also should be some degree of variety in lot sizes and shapes for pleasing subdivision design.

Each lot should abut on a public street, except under special conditions. If it is practical, private courts or places may be established. However, these courts should allow access to the public streets.

Lot lines should be at right angles or radial to the street fronting the lot. Wide shallow lots are preferable to deep lots with narrow frontage. Houses built on narrow lots take light and air from neighbors, increase fire hazards, decrease privacy, and overload streets and water and sewer systems. However, requiring excessively wide lots uneconomically increases the costs of improving each lot, and, therefore, lot widths should

be based to some degree on the expected purchasers' ability to pay. A frequently suggested minimum size for single family residential lots is fifty feet by one-hundred feet. Narrower widths can be allowed on curved streets. Lots fronting on main streets or abutting on uncontrolled land should be deeper. Corner lots should have from five to ten feet of extra width for proper building line set backs. Corner lot lines should have cut off radii or diagonals to compensate for street cut offs.

The council also should set a minimum area because a given lot may meet the minimum width or length requirement at one point only. Higher area requirements should be set for irregularly shaped lots. Remnant lots that have less than the minimum area should be added to adjoining lots.

If the land is to be subdivided into lots that are larger than usual building lots, these should be regulated so that they can be resubdivided. This might be achieved by having future streets shown on the plat.

Some available Iowa ordinances have required (under doubtful authority) that the subdivider grade the lots so that they are usable and suitable for erection of residential or other structures. This regulation might be valid if enforcement is based on other authorized municipal powers such as drainage, sewage, and street control.

Buildings and Structures

Regulation of the actual construction of buildings and structures is outside the scope of subdivision regulations. Possible regulation of construction can be found in the Iowa Code, municipal ordinances, and in the Institute's and League's *Iowa Model Ordinances* under housing, building, zoning, and plumbing, electric, and fire prevention codes.

In their subdivision ordinances, some Iowa cities have provided that building lines be set back at least as far as required in the municipal zoning ordinances. Staggered building lines add interest and should be recommended, although they probably cannot be required under statutory authority. Section 368.10, Code 1958, requires certain procedures for the passage of ordinances establishing building lines, including requirements for publication of notice, a hearing, and compensation to owners for loss of use or enjoyment of property. If a subdivision regulation ordinance includes building line regulations, it must comply with these requirements.

Zoning ordinances usually regulate yard sizes and potential building uses. Building uses can be controlled also by nuisance actions. Control of purely aesthetic matters such as the architectural design of private buildings should be exercised through restrictions between private parties.

Sanitary Sewer Systems

Section 409.5, Code 1958, provides that the council may require the installation of sewers. Also, sections 368.26 and 391.8, Code 1958, provide that cities and towns have the power to regulate sewer connections to private property. The State Department of Health should be contacted for regulations and requirements. See 1958 Iowa Departmental Rules, Rules and Regulations Relating to Sanitation, Part II, pp. 178-180.

The council must determine initially whether the subdivision can be served adequately by the municipal sewer system or whether a private system or systems will have to be installed. The council should receive expert testimony on the potential sewage needs of the rest of the municipality, nearness of the present municipal system to the subdivision, possible need for additional facilities such as a lift system, possible undesirable dead ends, possible assessments, and possible adequacy of a private system based on the topography, condition of the soil, and size of lots in the subdivision.

The minimum lot area needed for a private septic tank system depends on the topography and condition of the soil. The necessity for large lots can be avoided by installing a central private sewage disposal system for the entire subdivision or its neighborhood.

If a subdivider pays for the extension of the municipal system into the subdivision, a problem may arise later should another subdivider or land owner want to connect to the initial subdivider's mains. There is no authority in Iowa for sharing the initial costs of extension, but some Iowa cities have required the prorating of these costs. Section 391.17, Code 1958, might furnish some authority if the initial costs were paid by assessment under that chapter. Decisions of courts in other states disagree regarding the legality of the municipality or the initial subdivider refusing to grant sewer services on the basis that costs have not been shared. A city or town could avoid this problem by bearing the costs of extending the service to the subdivision boundary line, but this might not be regarded as fair to municipal residents and other sewer service patrons.

Some cities in the United States have required that a subdivider whose subdivision is to be served by a private system install a separate capped system for connection to the municipal system within a reasonable time. Although some state court decisions have held that this requirement is legal, it is believed that lack of authority in Iowa and the impracticable costs should discourage municipalities from enacting or enforcing such a requirement.

Sewer lines usually are laid in the street right of way. See the discussion under "Gas and Electric Systems," page 34, for requirements in laying lines in the lots.

Possible technical detailed regulations of the materials and methods to be used in the installation of municipal or private sanitary sewer systems can be found in the State Plumbing Code (pages 145-176 of the 1958 Iowa Departmental Rules) and the Rules and Regulations Relating to Sanitation (pages 178-180 of the 1958 Iowa Departmental Rules). The council can adopt the requirements of the State Plumbing Code by reference under the authority of sections 368.17 and 366.7, Code 1958, in the manner described in *Iowa Model Ordinances,* Title VI, Chapter 8, "Plumbing Ordinances."

Storm Sewer Systems

Sections 409.5 and 391.8, Code 1958, give the council the power to require the installation of storm sewers. Probably the city engineer or similar official should determine whether storm sewers should be installed in specific areas of the city or in specific subdivisions. He should be aware that development of the land probably will increase run off water and the need for storm sewers.

Certain points discussed under "Sanitary Sewer Systems" are relevant also to storm sewer system installation and regulation.

Some of the available Iowa ordinances have provided for a twenty foot easement on natural water courses for possible protection, improvement, widening, or straightening.

Water Systems

The council may require, under the authority of section 409.5, Code 1958, that subdividers install water utilities. Also, section 391.8, Code 1958, provides that cities and towns have the power to require that connections from water pipes be made to the curb line of adjacent lots before the permanent improvement of the street. Therefore, the council should be able to control the methods and materials used in installing water systems. The council should consider the comparative adequacy of private or public systems in the same manner as for sanitary sewer systems. According to our survey, the chances are much greater that a private sewer system will have to be used than that a private water system will have to be used. The State Department of Health should be contacted for regulations and requirements. See 1958 Iowa Departmental Rules, Rules and Regulations Relating to Sanitation, Part I, pp. 177-178.

Certain points discussed under "Sanitary Sewer Systems," apply also

to water system installation and regulation. These points include installation of an additional capped system for future connection to the municipal system, adoption of the State Plumbing Code or specific technical regulations, and repayment to a subdivider of his initial costs of extending a municipal system if another person connects to the subdivider's private system.

Water lines usually are laid in the street right of way. See the discussion of easements under "Gas and Electric Systems" for requirements in laying lines in the lots.

Gas and Electric Systems

Sections 409.5 and 391.8, Code 1958, provide that the council can require the installation of gas and electric utilities. However, only a few cities have required either of these improvements in their ordinances.

Subdivision regulations should provide for the dedication of easements for utility lines and facilities such as poles, wires, conduits, and mains. If there are no alleys for these easements, five foot rights of way should be provided, where necessary, at the side and rear of each lot. Wider easements may be required for main lines. Easements across lots may be necessary in some cases. The regulations and dedications should provide that these easements be kept free of plantings and other possible obstructions.

The council could require that electric and telephone wires be placed on one set of poles. A requirement that poles be placed in alleys or on easements at the rear of the lot helps to avoid cluttered parking areas and tree trimming, but utility companies may object that this unjustifiably increases service costs.

Street Lighting

The council does not have express statutory power to require subdividers to install street lights. Street lights probably cannot be classed as electric utilities that the council can require the subdivider to install under section 409.5, Code 1958. However, the council might refuse to accept dedicated streets, alleys, and public places until lights are installed.

Trees

Municipal corporations, under section 368.32, Code 1958, have power *by ordinance* to assume control of all trees and shrubbery on the public streets, which include all the territory between the private property lines on opposite sides of the street. They also can delegate this power *by ordinance* to a park board or commission created by law.

The council or park board should require that no shrubs or trees be planted on the planting strips where they will obstruct the view of drivers. The location and species of trees also should be regulated to avoid possible nuisances or future threats to public safety. Species should be selected that are not subject to prevalent pests and diseases and that can be trimmed high enough to afford proper light, air, and view. Shade requirements vary with the direction and use of the street and with the nearness and height of buildings. Trees should be planted in the proper season and with good planting practices. Experts have suggested that trees of one and one-quarter inch diameter be planted forty feet apart and that there must be ten feet from the curb to the sidewalk for proper growth.

In some cases it would be preferable to plant trees between the sidewalk and private property line. This offers several benefits. Traffic visibility is aided and trees are less subject to be injured in traffic accidents. There would be less interference with utility poles and lines. More soil and water might be available.

Regulation of the location and species of trees on private property is of doubtful legality. However, the Federal Housing Administration and the Veterans Administration require certain plantings if houses are built with loans guaranteed by these agencies. Furthermore, the subdivider might comply voluntarily with suggested tree standards even to the extent of retaining individual trees if he is convinced that higher property values will result to offset additional expenses.

Parks and Other Public Grounds

The Iowa Legislature has not expressly given cities and towns in general the power to require a subdivider to dedicate part of the subdivision land for parks and other public purposes. The legislature, in section 409.14, Code 1958, has given cities that have populations of 25,000 or more the power to require that parks and public places in a subdivision conform to the city plan. However, other sections of Chapter 409 do justify the contention that subdividers in all cities and towns could be required to dedicate land for public use before the subdivision will be accepted. Section 409.13, Code 1958, provides that the acknowledgment and recording of the plat shall be equivalent to a deed of the land set apart for streets or other public use. Section 409.25, Code 1958, provides that vacations of plats shall not affect lands that have been dedicated for parks or other public purposes. These sections could be held to refer only to voluntary dedications, but it is doubtful that the legislature believed as a practical matter that there would be many voluntary dedications of properties other than streets. However, if the forced transfer

of the property is determined to be a "taking" by the municipality, it may have to pay compensation under the laws of condemnation.

The council has some basis for persuading the subdivider to make a voluntary dedication. Neighborhood parks help to increase property values by improving attractiveness and view and by offering accessible play areas. If the subdivider wants a park in the subdivision, dedication of the necessary land will benefit him, since acceptance by the municipality transfers responsibility for maintenance and for possible liability for injuries to persons using the park.

Dedication is the only practical means for the city or town to obtain parks. It usually is too costly to purchase or condemn necessary land after the subdivision has been developed.

Park uses have changed from viewing to active use, and, therefore, park lands should be selected on the basis that it is better to provide several accessible smaller areas than one large park. The size of the park and its distance from populated areas should depend on the age groups that are expected to use it. Experts have suggested that parks be placed so that every small child is within one-quarter of a mile of a play area, that older children are within one-half of a mile, and that adults are within one mile. These standards should be varied on the basis of the size of the city or town and the size of the subdivision lots. Of course, the land usually can be selected also on the basis of ornament and development of natural scenery. The council should consider cooperation with the school board to combine school ground and park areas, since school grounds are not used for school purposes during the summer months.

Available Iowa ordinances have suggested two standards for total municipal park area: There should be at least one acre of park for each 100 residents; ten per cent of the city should be in park areas. These standards were suggested for larger cities. Less area would be needed in smaller cities and towns.

In actual practice, councils generally fail to use whatever statutory or bargaining power they have to require dedications. Our survey showed that only a few Iowa cities require the subdivider to dedicate land for parks or public purposes. A few of the available ordinances stated that the city's *policy* was that at least five per cent of the area of the subdivision, in addition to streets and alleys, be dedicated for such public purposes.

Usually the size of the subdivision won't allow it to be a complete economic and social unit. Therefore, each subdivision may not need its own park or parks. The ideal solution, which has been tried by a few cities in other states, would be to provide that subdividers who do not

dedicate their share of lands for parks should pay a proportionate share of the value of park lands outside the subdivision that are used by residents of the subdivision. However, there is no statutory authority for such a requirement in Iowa.

Two other interesting requirements have been discovered in the available Iowa ordinances. Several of these ordinances have provided that where a street runs parallel to a railroad and within less than 130 feet distance, the enclosed area must be dedicated as a park. The Bettendorf subdivision ordinance provides that the subdivider shall dedicate the land to the city under an option to purchase within one year, or eighteen months if extended by the council's serving notice of intent to acquire.

Off Street Parking Lots

Off street parking lots usually are needed only in business districts, or where there are to be multiple housing units, such as apartment buildings.

The authority for establishing parking lots is found in section 390.1, Code 1958, but this section only provides for the purchase of lots by the municipality. If the city attorney decides that these lots can be classified as being used for a public purpose, the discussion on dedication in the section on "Parks and Other Public Grounds," page 35, might apply.

There should be at least one parking space for each dwelling unit in a multiple dwelling building. The lot should have a durable, drained surface.

Survey Monuments and Markers

The council should require monuments and markers to be placed in the subdivision to mark boundaries and lot and street lines. Section 409.1, Code 1958, requires that the plat refer to known or permanent monuments. Ultimately, these physical monuments and markers might prevail over descriptions in the plat and field notes, particularly if the description in the records is indefinite or if the monuments and markers are used for an extended period and permanent improvements are built in relation to them.

Sufficient permanent markers and monuments should be placed on boundaries and lines so that another engineer or surveyor can retrace with accuracy. Stone or concrete monuments should be placed on the subdivision boundary lines at all corners and intersections of angle lines. Steel or iron marker pins should be placed, if there is no monument or natural marker, on block corners, on lot lines at all corners and intersections of angle lines and where the lot line intersects the street line,

and on street lines at the beginning and ending of curves and at angle points.

Natural permanent landmarks can be used as monuments or markers. However, the plat should designate clearly what line on the landmark is the boundary line. For example, it should designate whether the center line or one of the two side lines of a street or stream is the line.

Monuments should be made of concrete or stone and should be a minimum size of four inches by four inches by three feet. Their tops should be cross scored or inset with a copper dowel or iron bar to mark the exact line or lines. Markers should be iron or steel pins with a minimum diameter of one-half of an inch and minimum length of thirty inches. Markers and monuments should be placed level with the surface after grading is completed so that construction equipment won't damage them.

PROCEDURE

Planning Commission—Functions and Powers

In a city that has a population of 25,000 or more, the planning commission, if there is one, has powers that are almost equal to the council's in the regulation of subdivisions and approval of proposed plats. Section 409.14, Code 1958, requires that if the council and planning commission find that a proposed plat conforms to state statutes, city ordinances, and the general city plan, the council and planning commission shall approve the plat. The council only has additional powers to prescribe reasonable rules and regulations for the form of plats and to require necessary data to accompany the plats.

In towns and cities that have populations of less than 25,000 a planning commission, if there is one, has power only to *recommend* approval or disapproval of subdivision plats. However, section 373.12, Code 1958, requires that plats of subdivisions in or adjacent to the municipality "be submitted to the city plan commission and its recommendation obtained before approval by the city council." This section does not require the commission to give its recommendation within any set number of days, as is required for commission recommendations in other sections of this chapter. Section 373.13, Code 1958, does provide that no plan for any street or park shall be approved until the proposal has been submitted to the planning commission; the commission has thirty days within which to file its recommendations. The drafter of the subdivision regulations probably should assume that a reasonable time should be set for recommendations on plats since the statutes do not require planning commission approval of subdivisions.

Section 373.20, Code 1958, provides that the general city plan cannot

be modified or amended substantially unless the proposed change is referred to the city planning commission for its recommendations; if the commission refuses to recommend the change, the council can adopt the proposed change only by a three-fourths vote of its membership. If any proposed subdivision regulations or the enforcement of such regulations would have the effect of modifying or amending the city plan substantially, then the requirements of this section would apply.

However, even if the planning commission only has advisory powers, its recommendations should be carefully considered. The commission has more time and expertness than the council to determine necessary subdivision regulations that affect city planning. Subdivision regulations probably should provide that the planning commission attach to the plat a written statement of any reasons for recommending disapproval. Plats should be resubmitted to the planning commission for recommendation if the council makes any substantial changes.

Submitting a Plat

Before submitting a plat, the subdivider should consult with the council, planning commission, and other local officials. The State Department of Health also should be consulted about its requirements. Local and state officials should point out the state statutes and state and local regulations and policies for subdivision regulation. They should indicate generally whether the plan for subdividing is feasible, and may furnish helpful maps and data. The subdivider should show these officials an informal sketch or drawing of the proposed subdivision.

Section 409.7, Code 1958, provides that the plat shall be filed originally with the clerk of the city or town. All of the available Iowa ordinances provide for the submission of both a tentative, or preliminary, plat and a final plat. Although the statute does not provide for a tentative plat, procedural efficiency and expediency should justify its use as one of the details needed to fill out the statutory procedure. Expedient disapproval of a tentative plat might save the subdivider or builder from incurring unnecessary expenses. The subdivision ordinance should suggest that no subdivision construction work be done until the tentative plat has been approved.

For cities that have populations of 25,000 or more, section 409.14, Code 1958, provides that the council may prescribe reasonable rules and regulations governing the form of plats and may require such data and information as may be deemed necessary by the council to accompany the plats on presentation for approval. However, it would seem that towns and cities that have less population have a similar power under their general legislative power to fill in the general statutory procedure

with necessary details that are not inconsistent with the statute. The following suggested requirements are intended to present the maximum types and strictness of requirements. The council, with the advice of the city attorney, can select and modify the requirements that are necessary under local conditions. However, requirements that are designated as statutory requirements should not be deleted or modified materially.

Contents of Plat and Attached Statements

The statute expressly requires only that the plat contain: a reference to known or permanent monuments, the numbers and dimensions of lots, and the breadth and courses of the streets and alleys. Also, certain statements and affidavits are required by statutory sections to accompany the plat. The following lists indicate the statutory requirements and suggest additional contents and attachments that the council or planning commission needs or could use to determine fairly and correctly whether a subdivision plan should be approved. Requirements for the tentative plat were selected on the basis that the council should be able to give a speedy but reasonably accurate decision as to whether the subdivision plan is in general unwarranted, incomplete, or premature.

A. Tentative Plat

The following maps and plans should be drafted in ink with figures and letters large enough to be read easily. This data may be shown on available city maps. The number of copies required will depend on the number of officials who are to examine or record the plat.

The tentative plat should include:

1. A Vicinity Map showing:
   a) Title, scale, north point, and date
   b) Subdivision location
   c) Names and addresses of owners of property within 500 feet of subdivision boundaries
   d) Existing or proposed platting and zoning uses of land within 500 feet of the subdivision boundaries
   e) Streets, alleys, and sidewalks within 500 feet of the subdivision boundaries with their names, widths, and types of surfaces
   f) Public transportation lines
   g) Main shopping center
   h) Neighborhood stores and churches
   i) Elementary and high schools
   j) Parks and playgrounds
   k) Location of monument of nearest congressional district corner in the city or town or subdivision

2. A Land Inspection Sketch showing terrain features, wooded areas, water courses, areas subject to inundation, buildings, railroads, and other natural or artificial surface features that would affect the plan of the subdivision
3. A Contour Map with contours shown at vertical intervals of two feet if the general slope of the site is less than ten per cent, and at vertical intervals of five feet if the general slope is greater than ten per cent
4. A Site Map showing:
   a) Title, scale, north point, and date
   b) Subdivision boundary lines, showing dimensions, bearings, angles, and references to section, townships, and range lines or corners (section 409.1)
   c) Present and proposed streets, alleys, and sidewalks, with their rights of way, in or adjoining the subdivision, including dedicated widths, approximate gradients, types and widths of surfaces, curbs, and planting strips, and location of street lights (sections 409.1, .4, .13)
   d) Proposed layout of lots, showing numbers, dimensions, radii, chords, and the square foot areas of lots that are not rectangular (section 409.1)
   e) Building setback or front yard lines
   f) Parcels of land proposed to be dedicated or reserved for schools, parks, playgrounds, or other public, semi-public, or community purposes (section 409.13)
   g) Present and proposed easements, showing locations, widths, purposes, and limitations (section 409.9)
   h) Present and proposed utility systems, including sanitary and storm sewers, other drainage facilities, water lines, gas mains, electric utilities, and other facilities, with the size, capacity, invert elevation, and location of each
5. A Preliminary Plan showing:
   a) The proposed name of the subdivision which must be distinct from other subdivisions' names in the city or town
   b) Names and addresses of the owner, subdivider, builder, and engineer or surveyor who prepared the tentative plat, and the engineer or surveyor who will prepare the final plat
   c) Any zoning of the site and adjoining property
   d) Legally established special function districts such as benefited water districts and sanitary districts that include land in the subdivision

e) A general summary description of any protective covenants or private restrictions to be incorporated in the final plat

f) A general summary of any agreements with the owners of other property within the neighborhood that involve general plans for the entire neighborhood

B. Final Plat

This plat should contain the same basic information as the Site Map for the Tentative Plat plus:

1. It should be a legible, inked drawing on tracing cloth to the scale of fifty feet to one inch, or, if this would make the drawing larger than thirty-six inches in its shortest dimension, to the scale of one-hundred feet to one inch. It should conform to modern drafting and reproduction methods.
2. The linear dimensions in feet and decimals of a foot of the subdivision boundary, lot lines, and street, alley, and sidewalk lines should be exact and complete to include all distances, radii, arcs, chords, points of tangency, and central angles.
3. The subdivision name.
4. Street names and clear designations of public alleys. Streets that are continuations of present streets should bear the same name. If new names are needed, they should be distinctive. Street names might be required to conform to the city plan. Section 409.17, Code 1958, gives cities and towns the authority to change by ordinance the name of a platted street. The mayor and clerk certify this ordinance to the county auditor and recorder.
5. Location, type, materials, and size of all monuments and markers including all U.S., county, or other official bench marks.
6. The plat should be signed and acknowledged by the subdivision land owner and his or her spouse (section 409.12)
7. The plat should have the following attached to it:
   a) A correct description of the subdivision land (section 409.8)
   b) A certificate by the owner, and his spouse, if any, that the subdivision is with the free consent, and is in accordance with the desire of the owner and spouse. This certificate must be signed and acknowledged by the owner and spouse before some officer authorized to take the acknowledgments of deeds (sections 409.8 and 558.20 and following)
   c) A complete abstract of title and an attorney's opinion showing that the fee title to the subdivision land is in the owner and that the land is free from encumbrances other than those secured by an encumbrance bond (section 409.9)

d) A certificate from the county treasurer that the subdivision land is free from taxes (section 409.9)
e) A certificate from the clerk of the district court that the subdivision land is free from all judgments, attachments, mechanics', or other liens of record in his office (section 409.9)
f) A certificate from the county recorder that the title in fee is in the owner and that it is free from encumbrances other than those secured by an encumbrance bond (section 409.9)
g) A statement of restrictions of all types that run with the land and become covenants in the deeds of lots
h) A deed of dedication of streets and other public property. Technically, under section 409.13 the acknowledgement and recording of the plat is equivalent to a deed of dedication.
i) Profiles, typical cross-sections, and specifications of street improvements and utility systems, to show the location, size, and grade. These should be shown on a fifty foot horizontal scale and a five foot vertical scale with west or south at the left.
j) A sealed certification of the accuracy of the plat by the professional engineer or land surveyor who drew the final plat
k) Resolution and certificate for approval by the council and for signatures of the mayor and clerk (section 409.7)
l) A certificate by the city engineer or similar official that all required improvements and installations have been completed, or that a bond guaranteeing completion has been approved by the city attorney and filed with the city clerk, or that the council has agreed that the city or town will provide the necessary improvements and installations and assess the costs against the subdivider or future property owners in the subdivision
m) The encumbrance bond, if any

Approval of the Plat

After a plat is filed with the city or town clerk, he must deliver it to the council for consideration and approval or disapproval. If the city or town has a planning commission, the clerk delivers the plat to the commission first for its recommendation. Section 409.7, Code 1958, requires that the council act within a reasonable time. Available Iowa ordinances generally have provided that the council must approve or reject the plat within thirty days, or, if the subdivider agrees to a time extension, within sixty days. However, section 409.15, Code 1958, provides that if the *city*

council fails to approve or reject the plat within sixty days, it can be validly recorded.[1]

Literally, under section 409.7, Code 1958, the council *must* approve the plat if it is found to conform to sections 409.4-.6, Code 1958. These sections concern requirements for blocks, streets, alleys, sidewalks, and sewer, water, gas, and electric systems.[2] However, additional requirements might be enforced under the threat or use of other municipal powers.

If both a tentative plat and a final plat are required, the regulations should provide that the final plat must be filed with the clerk within a certain time after approval or filing of the tentative plat. Available ordinances set various limits ranging between thirty days and eighteen months. The time limit should be longer if improvements must be completed before final approval of the plat. The regulations should provide also that approval of a tentative plat is not acceptance of the subdivision nor final approval; rather, it is only authority to proceed.

Some Iowa ordinances have provided for a public hearing at the time the council considers the final plat. The statutes don't require this, but it might be useful. The council certainly should listen to expert testimony on the adequacy of the improvements that have been installed or guaranteed. The council should call in the subdivider for consultation and could require additional information.

The Iowa Code requires that the council approve the plat only by resolution. The resolution, under the requirements of section 366.4, Code 1958, must be enacted by a majority of the members elected to the council and the yeas and nays must be recorded. The council must direct the mayor and clerk to certify the resolution, which is affixed to the plat.

Section 409.15, Code 1958, provides that if a plat is disapproved, the council must point out its objections, and that the applicant can appeal the decision to the district court within twenty days by filing written notice with the city clerk.

Encumbrance Bond

The subdivider may be required to post an encumbrance bond under the authority of sections 409.10 and .11, Code 1958, to guarantee the payment of creditors who could require payment by the forced sale of

1. The statutory limitation to the *city* council probably was not intentional. This section follows the section that is concerned only with cities that have populations of 25,000 or more. However, if section 15 is presumed to refer only to plats considered by city councils in cities of 25,000 or more population, then there is no provision for appeal from decisions of councils in smaller cities and towns.

2. See discussions in this publication under the heading of the particular improvement.

all or part of the subdivision land. If the land is encumbered with a debt that the creditor will not accept with accrued interest or with a rebate of six per cent per annum if it draws no interest, or if the creditor can't be found, the land owner can make an affidavit stating that he offered to pay and that the creditor would not accept payment, or that the creditor can't be found. Then the land owner executes and files an encumbrance bond with the county recorder in double the amount of the debts. This bond must be approved by the recorder and the clerk of the district court. The Iowa Legislature in Laws 1957, Chapter 198, provided that utility easements were not "encumbrances."

Improvement Bond

Section 409.5, Code 1958, provides that "in lieu of the completion of such improvements and utilities [streets, sidewalks, and sewer, water, gas, and electric systems] prior to the final approval of the plat, the council or [planning] commission may accept a bond with surety to secure to the city the actual construction and installation of such improvements or utilities within a fixed time . . . "

Practically all of the cities that have populations of 15,000 or more and about half of the other cities allow a subdivider to furnish an improvement bond.

The form and content of the bond should be approved by the city attorney and engineer. Most of the available Iowa ordinances have provided that if the guaranteed improvements are not completed within one year from the approval of the final plat, the city can use the bond money to complete the improvements. The council or commission might require improvements in part of the subdivision to be completed before final plat approval and allow improvements in other parts of the subdivision to be guaranteed by bond. It would be best to divide these requirements into units of blocks. The council or commission also might require completion of some types of improvements, such as streets and sidewalks, before final plat approval and allow other types of improvements to be guaranteed by bond.

Note that the final plat requirements suggest a third method for payment of improvements: the council could agree to assess the costs against the subdivision lots. This requirement is set out in several available Iowa ordinances.

Recording the Plat

The signed and acknowledged final plat with attachments of the attorney's opinion, the certificates of the city clerk, county recorder, and county treasurer, the encumbrance affidavit and bond, if any, and the

council's certificate of approval must be recorded with the county recorder. Then only the plat must be recorded with the county auditor. Several available Iowa ordinances have required that these papers be recorded within one year after approval of the final plat.

Dedication of Streets and Other Public Lands

Section 409.13, Code 1958, requires only that the plat be acknowledged and recorded in order to dedicate streets and public places to the city or town. The council should be sure that the plat is properly recorded because the date of recording sets the date of transfer of the dedicated property. Purchasers of subdivision lots after that date, or purchasers with knowledge of the dedication, cannot claim superior rights to the dedicated property. The council should examine the plat to be sure that the property proposed for dedication is properly described, that the designation clearly indicates that it is for a public use, and that the intended public use is properly designated; the municipality might be restricted to that use. The council should have the city engineer or other qualified official examine the physical layout of the dedicated property because actual markers might eventually control the plat description. Dedication signatures should be obtained from all persons, such as mortgagees and contractors, who have any title interest in the dedicated property.

Separate deeds should be obtained for the transfer of easements that are needed in the installation and maintenance of utilities. The city attorney should determine what property interests the city or town needs. Subdivision regulations probably should require the dedication of water and sewer mains under the streets.

Subdivision land can be transferred for public use without following the statutory procedures. The land can be deeded to the municipality. Also, the property owner can effect a common law dedication by acts or declarations that show a manifest intent to devote the property to public use. However, unwritten and unrecorded dedications often cause law suits and possible loss of the property by the city or town.

The city or town must accept the dedication before there is a transfer of ownership rights in the dedicated property. The safest, surest, and most accurate means of acceptance is by passage of a resolution or ordinance. Section 389.2, Code 1958, provides that no street, avenue, highway, or alley shall be deemed to be public unless the dedication is accepted by a resolution. Formal acceptance allows the council to determine the exact property the city needs and wants. For example, the city may not want to accept as wide a street as is offered. The formal acceptance also determines publicly who is responsible for the maintenance

of the property and who is liable for injuries suffered by persons on the property. The formal action may prevent the dedicator or lot purchasers from taking back the dedicated property.

The dedicated property can be accepted also by one or a combination of the following informal means: general, known, continuous, and frequent public use over an extended period; general recognition by the public and city officials that the property is public, such as by the failure to tax; and municipal expenditure of labor and materials to make improvements, such as grading or installing water systems.

The dedicated property can be accepted formally later as it is needed. The subdivider or lot purchasers technically cannot vacate their dedication of the property, but if the municipality or public does not use the property, abutting lot owners may be able to own the property eventually by building permanent improvements on it. Permanent improvements do not include such acts as the planting of trees or the building of fences. However, until the city or town accepts and uses the property, the subdivider and purchasers of lots abutting on the dedicated property can possess and use it in any manner not inconsistent with possible future acceptance by the municipality.

Vacation of Plats

Sections 409.18-.26, Code 1958, set out the procedures for and the results of the vacation of a plat. The particular procedures and results that are applicable depend upon whether the vacation is attempted before or after the sale of any subdivision lots. The city attorney should be consulted if this situation arises.

Enforcement

Of course, the real test of the effectiveness of subdivision regulations is how well they have been enforced in the improvement and development of each subdivision. The council does not have the time or ability to enforce these regulations directly. Therefore, experts such as the city engineer or building inspector should carry out the actual inspection and enforcement. Each expert, in the ideal situation, should inspect and regulate the improvements within his field. For example, the sewage system should be checked by the plumbing inspector and health officer.

The results of enforcement should be reasonable, uniform, and thorough and should not be based on personal preferences or aesthetic values. Enforcement should be based on statutory authority and the protection of the public, potential lot buyer, and the subdivider. The enforcement official should be given some discretion in the interpretation of regulations and their application to particular situations. He should

be able to vary the strictness of regulations between maximum and minimum limits depending on the conditions in the particular subdivision.

Available Iowa ordinances and other authorities have suggested that the enforcement official or officials be allowed to modify subdivision regulations if certain general conditions exist. Some of the standards for determining that these conditions exist are: the subdivision presents an unusual or exceptional case; variation would be in the public interest or would benefit the public health, safety, and welfare; the normal subdivision regulations would cause undue hardship; the land is subject to flooding; or the land is hilly or contains slopes of more than ten per cent. Such standards might be held to be unconstitutional delegations of legislative powers. However, since the council can approve or disapprove a plat, such standards might be constitutional.

The Iowa statutes give a city or town several methods of enforcing subdivision regulations. Section 409.45, Code 1958, provides that any person who sells or offers to sell or lease any subdivision lots before the plat is recorded must pay fifty dollars for each lot sold, leased, or offered for sale. Section 366.1, Code 1958, provides that municipalities can enforce obedience to ordinances based on their police powers by a fine not exceeding one hundred dollars, or by imprisonment not exceeding thirty days. The city or town could refuse to issue building permits, or to accept, maintain, or make improvements.

The purchasers of subdivision lots also are given a statutory remedy against the subdivider. Section 409.2, Code 1958, provides that the seller of subdivision lots promises by his deed that the plat is filed for record and that he will pay the lot purchaser all assessments, costs, and damages paid for failure to file the plat.

Certain benefits can arise from recordation. After the plat is validly recorded, subdivision lots can be sold or taxed under the plat description. For example, a lot could be referred to in a deed description as lot 1 in Block 1 of Smith's Subdivision to the city of X, without describing it by metes and bounds that might prove to be inaccurate. Also, under section 409.13, Code 1958, the recording of a plat is equivalent to a deed of the portions of the subdivision set apart for streets or other public use or for charitable, religious, or educational purposes.

Any person who enforces any part of the subdivision regulations should be familiar with zoning, planning, building, and subdivision regulations and building, construction, and subdivision practices and problems. He should do an effective job of selling the need for subdivision regulations to subdividers, builders, investors, and the public. He should keep accurate and complete records of regulatory practices and enforcement proceedings against a particular subdivision. These records

will help to guide future uniform enforcement and could be used in any possible court review of his actions.

Some of the available Iowa ordinances have provided for the collection of fees from subdividers. This is probably justified and legal if the fees are based on probable administration and inspection expenses.

The council should check the results of the subdivision regulations frequently, and amend them if the results are undesirable or if better construction and subdivision practices and regulations are discovered.

Additional Sources of Information

For attorneys

ANNEXATION

1. Constitutionality of statute—
   State v. Town of Crestwood, 80 N. W. 2d 489 (1957)
   State v. Town of Riverdale, 244 Iowa 423, 57 N. W. 2d 63 (1953)
2. Legal commencement of proceedings—
   Matter of Incorporation of Town of Waconia, 82 N. W. 2d 762 (1957)
   State v. Town of Crestwood, 80 N. W. 2d 489 (1957)
3. Possible future income and expenses from annexation—
   Isard and Coughlin, *Municipal Costs and Revenues Resulting from Community Growth,* American Institute of Planners, Chandler-Davis Publishing Co., Wellesley, Mass. (1957)
4. Payment for investigation—
   Ebel, *Investigatory Powers of City Councils,* 38 Marquette Law Review 223 (1955)
5. Benefits that city must be able to furnish—
   City of Des Moines v. Lamport, 82 N. W. 2d 720 (1957)
6. Severance if fail to serve—
   Ward v. Town of Clover Hills, 240 Iowa 900, 38 N. W. 2d 109 (1949)

SUBDIVISION

1. General—
   Land Subdivision Regulations, League of Wisconsin Municipalities, 30 East Johnson Street, Madison, Wisconsin; Bureau of Government, Extension Division, University of Wisconsin; State Planning Division, Bureau of Engineering, State of Wisconsin (1956)
   Lautner, *Subdivision Regulations,* Chicago, Public Administration Service (1941)
2. Definition of "addition" (jurisdiction in which municipality can regulate)—
   Carter v. City Council of Council Bluffs, 180 Iowa 227, 163 N. W. 195 (1917)

Des Moines v. Hall, 24 Iowa 234 (1868)

3. Conditions which force council approval—
   Carter v. City of Council Bluffs, 180 Iowa 227, 163 N. W. 195 (1917)
4. Dedication and acceptance of streets and public property—
   Wolfe v. Kemler, 228 Iowa 733, 293 N. W. 322 (1940)
   Dugan v. Zurmuehler, 203 Iowa 1114, 211 N. W. 986 (1927)
   Iowa Loan & Trust Co. v. Bd. of Supervisors of Polk County, 187 Iowa 160, 174 N. W. 97 (1919)
   De Castello v. City of Cedar Rapids, 171 Iowa 18, 153 N. W. 353 (1915)
5. Payment for future tapping onto subdivider's water or sewer system—
   9 University of Florida Law Review 225 (1956)
6. Forms of certificates to be attached to plats—
   Lautner, *Subdivision Regulations,* Public Administration Service, Chicago, 1941, p. 41 et. seq.
7. Possible restrictive covenants—
   The Community Builders Handbook, Urban Land Institute, 1737 K St. N. W., Washington 6, D.C., 1947, p. 85 et. seq.

For Subdividers

The Community Builders Handbook, Urban Land Institute, 1737 K St. N. W., Washington 6, D.C. (1947)

For Councilmen and other Municipal Officials

Isard and Coughlin, *Municipal Costs and Revenues Resulting from Community Growth,* American Institute of Planners, Chandler-Davis Publishing Co., Wellesley, Mass. (1957)

Lautner, *Subdivision Regulations,* Public Administration Service, Chicago (1941)

The Community Builders Handbook, Urban Land Institute, 1737 K St. N. W., Washington 6, D.C. (1947)

Land Subdivision Regulations, League of Wisconsin Municipalities, 30 East Johnson Street, Madison, Wisconsin; Bureau of Government, Extension Division, University of Wisconsin; State Planning Division, Bureau of Engineering, State of Wisconsin (1956)