

GREENHILLS OHIO

PLANNING ADMINISTRATION

1964

LADISLAS SEGOE & ASSOCIATES · CITY PLANNERS · CONSULTING ENGINEERS · CINCINNATI · OHIO

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I N T R O D U C T I O N

In the mid-1930's, during the depths of the economic depression, the Resettlement Division of the Farm Security Administration, as part of the New Deal's huge relief program, was authorized by the Congress to undertake the construction of four new towns within the continental United States.

The two primary objectives of this program were: to provide constructive work for persons on unemployment relief, and to supply adequate housing accommodations for families of low income, at rentals they could afford.

The nature of the problem presented to the federal planners is expressed in the official statement which directed that a large tract of land was to be found, and on it the planners were:

"to create a community protected by an encircling green belt; the community to be designed for families of predominantly modest income, and arranged and administered so as to encourage that kind of family and community life which will be better than they now enjoy."

It was further stipulated that the land and improvements were to be held in one ownership, with title to be transferred preferably to a corporate entity which will lease the dwellings to families and which will pay taxes on the property.

To this end, locations for the projected "greenbelt" towns were chosen after a detailed study of social and economic factors in about one hundred large cities, the majority of which had a long record of steady growth, sound wage levels, enlightened labor policies, and an acute need for better

housing. This selection was finally further narrowed as the result of applying further criteria, such as: availability of cheap land with suitable topography for building homes and constructing roads; availability of fertile soil for gardening and farming; and the presence of wooded areas for parks and recreational areas.

The original program included four such communities, to be placed in carefully diversified regions, each near a major city. However, only three were finally completed, the fourth being cut short in the planning stage by a local court injunction. The projects now in operation are in widely separated locations; one known as Greendale is near Milwaukee; another, Greenbelt is in the vicinity of Washington D.C.; the third, Greenhills is on the outskirts of Cincinnati.

Greenhills, Ohio

For the future city of Greenhills, Ohio, a tract of approximately 5,930 acres, situated about 11 miles north of the then corporation limits of Cincinnati was chosen because it lay in the direction of the machine tool city's industrial growth. Studies undertaken at that time indicated this industrial growth to occur along the course of the Mill Creek Valley and it was realized that this would offer an even larger number of opportunities for industrial employment within a short distance of the new community.

The project tract was located between two important radial highways of regional significance. The Cincinnati-Hamilton Pike (US 127) ran in a north-south direction at the western property line of the tract, and the

Carthage-Hamilton Pike ran one mile to the east of the eastern property line of the site. These two highways carried the major automobile traffic into Cincinnati from outlying communities and the more distant points to the north. Advantage was taken of an existing minor highway (Winton Road) which entered the project from the south and was retained to provide direct access to the Cincinnati metropolitan area.

The Original Concept:

The Town Planners for Greenhills: Justin B. Hartzog and William A. Strong, evolved a plan for the entire 5,930 site. In order to minimize traffic hazards, only one through highway (Winton Road) was permitted to pass through the tract, with but a few project streets intersecting this highway. A circuit road was designed to provide access to all of the best building areas within the community's corporation limits, which covered a 782 acre area, the balance of the acreage being in the surrounding protective green-belt. Secondary roads and cul-de-sacs were located so as to reach in from the circuit road and service the individual building sites. All residential buildings were placed closely to these arteries in order to minimize utility line costs and also to create maximum interior blocks with park areas onto which all of the buildings were to face.

A variety of types of housing, mixed together, was proposed. These included individual single-family houses, semi-detached two family houses, group houses for three to six families, and multi-family housing. In the center of the plan, carefully located so as to be easily accessible to all parts

of the new town, was located a Community Center, designated to provide administrative, shopping and school facilities for the Greenhills residents.

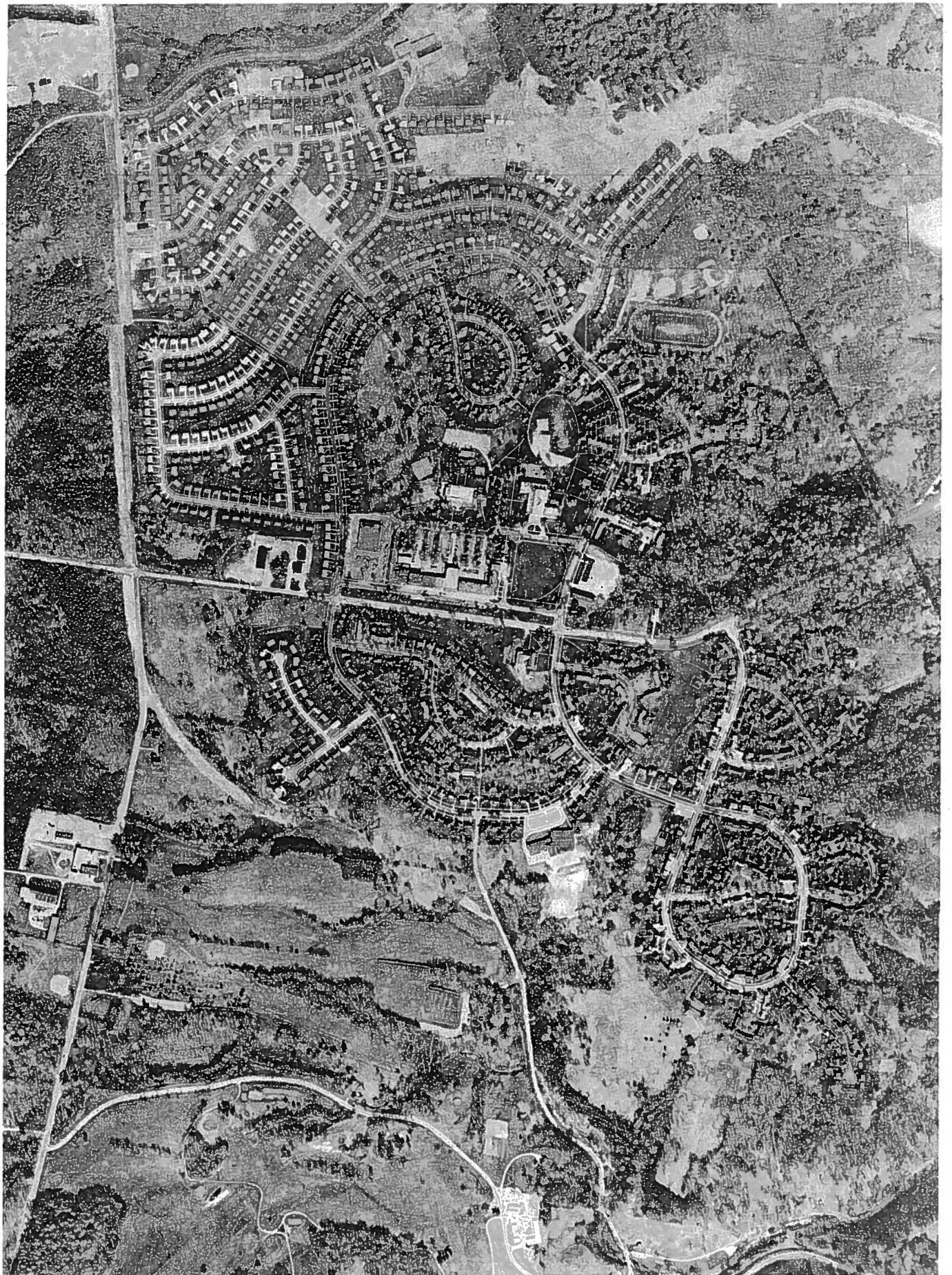
A greenbelt, surrounding the entire community, was designed to assist in the preservation of the community's entity and to protect the town from intrusion of unrelated developments. Sections of the greenbelt actually penetrated into the residential blocks from the south, east, and west, along the course of ravines and heavily wooded areas, thus adding to the scenic attractiveness of the community and providing space for various types of active and passive recreational enjoyment.

It was intended to immediately develop the area of rolling and well-wooded terrain in the southern section of the tract, meanwhile leaving the northern section undeveloped as a reservoir from which land could be withdrawn at a future date for residential and related development.

Land optioning began in September 1935 and construction started in January 1936. Although the program called for approximately 3,000 housing units, the entire project was cut short due to a shortage of funds, when only 676 dwelling units, plus a school, swimming pool and half of the shopping center had been completed.

With the termination of World War II, and the return of veterans to civilian life, the severe shortage of housing caused the Federal Government to allow Damon Road and Gambier Circle to be developed. In 1939 the Village of Greenhills was incorporated, with its own Mayor and Council. The Federal Government disengaged itself from the community in 1950, and in 1961 Green-

hills was officially proclaimed a City, having passed the 5,000 mark in terms of resident population. At the present time, due to the expansion of Cincinnati, Hamilton and neighboring cities into the rural fringes, and the general flood of population into the suburbs, approximately 95% of all available building sites in Greenhills are fully developed.



PART 1

M A P P I N G

M A P P I N G

Preparatory to undertaking this zoning and land use study, it was necessary to extend the base map of the city to include areas recently developed, e.g.: in the area served by Beckford Drive and Bayham Road and the extensive development to the north and east of Ingram and Farragut Road.

The base map, at a scale of 1" equals 200', was sufficiently large to show the various features in satisfactory detail, while being at the same time of manageable size. In addition to the base map, a skeleton map at a somewhat smaller scale was prepared for study purposes.

PART 2

LAND USE

LAND USE

Land Use Map

The land use survey was conducted in Greenhills and environs during the early summer of 1963. It consisted of a lot by lot inspection of the entire city and surrounding area. The use and condition of each lot and building, as well as each undeveloped parcel of land, were recorded on suitable field maps.

This field information was then transferred to the 200' scale map, described hereinbefore, by means of colors and symbols denoting various land uses and facilities so as to provide a visual picture of the pattern of land utilization. This land use map, an original exhibit in color not readily adaptable to reproduction, shows by distinctive colors: residential uses (single-family, two-family, three or more families), commercial uses, public and institutional uses.

Present Use of Land

Presently, the city comprises approximately 745 acres or about 1.2 square miles. Of this total, almost 2 acres of land have been platted for residential uses, but are vacant. The remainder of the land is used as follows:

257 acres (34.5%)	<u>Residential</u>
	one-family - 175 acres (68.0%)
	two-family - 16 acres (6.0%)
	3 or more families - 66 acres (26.0%)
86 acres (11.5%)	<u>Street rights-of-way</u>
338 acres (45.5%)	<u>Greenbelt, parks, and protective areas</u>
64 acres (8.5%)	<u>Commercial, schools, etc.</u>
<u>745 acres (100.0%)</u>	<u>Total</u>

Of the total area within the community, the largest proportion of land (45.5%) is used for greenbelt, parks and other protective uses, while the second largest proportion of land use is occupied by housing (34.5%). Single-family housing is predominant and accounts for 68% of all the residential land. 11.5% of the land area is in use for street purposes, while the remainder, or 8.5% is taken up predominantly by commercial and educational facilities. With very little land available for further building, it can be safely assumed that the City of Greenhills is closely approaching its maximum development.

A review of development pattern in the light of the original federally sponsored greenbelt town concept is extremely difficult by reason of changing conditions. For example, whereas it was originally intended for the federal government to construct the entire community in accordance with a predetermined total plan, all construction was halted when only one-quarter of the total number of dwellings had been completed. Following a period of inactivity, development was again begun, but no longer under federal supervision or close adherence to the Master Plan. Thus we see that whereas originally it was intended that the layout of the road system be carefully adapted to the contours of the land, and designed to meet the needs of a logical distribution of land uses, development in the north-eastern section of town - encompassing the housing in the vicinity of Junefield, Junedale, Julip and neighboring streets has ignored the intent of the original plan. The federal planners had as their basic block plan a scheme whereby living quarters faced rear gardens, open spaces and

play areas, away from the traffic - and the service entrance to the homes faced upon the streets. In addition, the greenbelt area was to penetrate into the immediate vicinity of each block - so as to give good access from the dwelling units, to an area of rural or semi-rural characteristics. This very important aspect of the original plan has been followed in the older portions of Greenhills, some parts of which have extensive areas of trees and green spaces protecting them from any other use. For example, houses on Avenell Lane have approximately 700 feet of open and permanently undeveloped land between them and the corporation line. To the west, residents along Damon Road have at least 300 feet of space between their rear lot lines and the western corporation lines. However, in the northeastern portion of town the greenbelt is so feeble as to be nonexistent. Even more regretful is the fact that whereas the original plan called for the townsite to be surrounded by almost 5,000 acres of virgin land, so that the development would lie in the approximate center of a large tract of, and be surrounded by farm and woodland, this has not come to pass. The City of Forest Park shares a common northern and eastern boundary line with Greenhills, while to the south and west the Hamilton County Park Board has jurisdiction.

Changing economic conditions have also left their mark on this community. An explanation for the rather dull look which characterizes a portion of the housing in the older parts of the community and especially some of the apartment buildings, can be readily understood when it is realized that there were major economic factors which influenced the design of these housing units. Because the work was being undertaken in connection with the Work

Relief Program, a minimum of highly skilled labor could be expected and thus it was necessary to select a variety of building materials that could be handled by the less skilled workers who made up the bulk of the relief rolls. The objective of employing large numbers of men at the site prohibited the use of any prefabricated units. In addition, economy in construction was dictated by the policy of providing low rent housing, intended for those earning between \$1,200.00 and \$2,000.00 per annum. However, the Town Planners, realizing the aesthetic problems inherent in a large community of very low income housing, purposely mixed the various types of housing into interesting arrangements, so as to avoid any appearance of regimentation.

For example: a typical residential block of 25 acres called for 19.5 acres for housing, 1.1 acres for interior play spaces and 4.4 acres for streets. The block was, in addition, tied into the greenbelt. It was to contain 14 one-family houses, 10 two-family houses, and 19 houses containing three or more families. As far as can be ascertained at this time by diligent research, the original proposal called for approximately 3,000 total housing units in the community, of which only 2.5% or 75 would be single detached houses, 18.0% or 540 would be two family units, and the remainder, or 79.5% multi-family for three or more families.

As of this date, it is estimated that almost 50% of the structures have been built for single-family occupancy - which is a much higher proportion than originally proposed. The prevalence of single-family housing is characteristic of many new communities developed since the War; however, the complete absence of any mixing of units, as originally proposed in the

Plan, has robbed the community of one of its most charming as well as socially significant aspects.

At the hub of the community, and with direct access onto Winton Road is the commercial and community center of Greenhills. It was designed to provide an administration building with a management office, office space for professional services, fire and police facilities, a postoffice and general storage space. The retail shops were intended to include two food shops, a general store, barber shop and other such facilities to serve the immediate area. The community building was intended to provide facilities for general commercial recreation, a combination auditorium-gymnasium to seat 1,100 persons, a grade and high school with facilities for 1,000 pupils, plus supporting facilities.

At the time the Plan for Greenhills was being finalized on the drawing boards, during the mid 1930's, one could hardly foresee that within a comparatively short time, an affluent society would emerge characterized by, among other things, a multitude of automobiles and ribbon highways which allowed easy access to major retail centers miles away. The original commercial concept was sound: to provide facilities for day-to-day purchases within easy walking and bicycling distance of all Greenhills residents. However, as the population overflowed into the suburban areas surrounding Cincinnati and Hamilton, shopping centers sprang up in neighboring communities and along major highways. The result has been that a major shopping center, offering more than just day-to-day purchases, has given strong

competition to the Greenhills commercial center. In addition, at a time when a great portion of retail sales is transacted by women during the daytime, during which they have access to the family car and can leisurely shop and dine, the very characteristics of retail shopping have undergone much change. Shops and facilities need to be up-to-date, with a certain amount of glamour; they must offer merchandise appealing to the discriminating clientele. The present Greenhills commercial center has tried desperately to pose as an informal, relaxed place to shop, but it is bearing the marks of old age. The center needs a sprucing up in order to make it attractive and competitive again.

PART 3

LAND USE PLAN

LAND USE PLAN

There are several major objectives of the Land Use Plan, which may be stated as follows:

- 1) Preserve and enlarge the greenbelt wherever possible. As stated hereinbefore, the community has reached the point where it is almost totally developed. There are at present approximately 95 vacant building lots, all of which are intended for single family use. Several of these are in the subdivision to the west of Burley Circle, and the majority of the others are in the south-eastern portion of the corporation. When these are developed, there will be no further building sites available, unless portions of the greenbelt are to be violated and despoiled. This belt of green was specifically set aside to form a continuous permanent open space around the city and thus protect it from encroachment, and gives the community its unique character. Its importance is ever increasing as the neighboring communities continue to expand.

- 2) Explore the feasibility of the community acquiring the greenbelt so that it will eventually become community property. There are two major methods for accomplishing this, as illustrated by the Village of Indian Hill, Ohio, a Cincinnati suburb, which has successfully acquired several hundred acres. First, it can purchase some of the tracts which are in strategic locations. Second, it can adopt an official policy of accepting donations of land from private property owners. This latter method

has been detailed in a pamphlet, published by the City of Indian Hill, Ohio, which indicates the advantage of tax benefits which may be derived by the donor of the properties. It is not uncommon for persons purchasing greenbelt land, and then in turn donating this land to the community as a living memorial.

- 3) Preserve the existing open space land pattern and where possible introduce additional ones. The open space pattern, for example, the interior common spaces within the Burley Circle block, and in other parts of Greenhills, should be preserved. On the other hand, the north-eastern portion of the city has little greenbelt land surrounding it, and it is here that preservation of the open spaces immediately adjacent to the eastern corporation limits is critical and needs to be kept free of any encroachment.
- 4) Encourage redevelopment of those residential sections of Greenhills which are characterized by small-sized dwellings on minimum sized lots, and the replacement of aging multi-family structures with new apartments, without increasing density of population. The housing within the community is aging, and although the general atmosphere of charm and informality is prevalent in many parts of Greenhills, it must be realized that almost 600 of the housing units are 25 years or older, including many of the apartment buildings. This means they will either have to be modernized or replaced if the community wishes to keep a fairly good standard of quality of housing.

- 5) Enhance the attractiveness and efficiency of the Greenhills shopping center. The shopping center, located at the hub of the community and easily accessible to all residents of the community, is a mark of the general prosperity of the city; it's condition and successful operation is of interest to all residents of Greenhills.
- 6) Preserve current height limitations so as to keep a fairly low skyline silhouette. It is recommended that the generally low building heights, punctuated by spires of churches, are in good scale with the existing trees, and should be maintained. Efforts to bring high-rise types of structures into the community should be discouraged.
- 7) Assure that no incompatible land uses are introduced into any area which would be detrimental to the community at large. As buildings are replaced or converted, most likely in the near future, it is imperative that the zoning ordinance, which translates the objectives of the Land Use Plan into regulations, be carefully implemented so as to prevent the introduction of adverse land uses.
- 8) Assure that all street fixtures and other public structures and appurtenances are consonant with the general residential character of the community.
- 9) Keep current, and fully implement all codes, ordinances, and regulations necessary to preserve the amenities of the community. Many of the earlier structures in Greenhills were originally built under economic conditions which sacrificed quality for quantity. Thus any signs of

deterioration or general neglect of any of the structures in the community should become a matter of concern to the city administration.

- 10) Assure all administrative bodies of the city administration understand their prerogatives and responsibilities insofar as implementation of the Land Use Plan, Zoning Ordinance, and other regulatory devices are concerned.

The New Zoning Ordinance and Map

The proposed Zoning Ordinance, besides taking care of normal zoning requests and problems, has been specifically designed to translate the objectives of the Land Use Plan into regulations for implementation. For example, it proposes a Conservation District, which embraces the greenbelt area, and prevents any development within the district, but on the other hand allows certain community uses considered proper and in full agreement with the original concept.

The proposed Ordinance, in order to preserve the low skyline of the community, has set height and yard requirements basically similar to those now in existence; however in order to be geared to the problem of replacement and conversion of the older residential structures, it has tightened the minimum lot area per family requirement as follows:

Use	<u>Existing Ordinance</u> Lot Area Per Family	<u>Proposed Ordinance</u> Lot Area Per Family
One-family dwelling	7500 square feet	7500 square feet
Two-family dwelling	4500 " "	4500 " "
Group dwelling	2600 " "	4000 " "
Multiple Family Dwelling	2100 " "	4000 " "
Row Houses	2250 " "	4000 " "

The proposed Zoning Ordinance recognizes that renovations and changes to the Shopping Center are inevitable and desirable and after much study has proposed that no building or structure shall be erected, altered or enlarged unless all pertinent architectural, engineering and site plans therefor have been reviewed and approved by the Planning Commission. The purpose for this is to assure that the proposed construction, alteration, erection or enlargement will result in a building or structure of harmonious design together with properly arranged facilities for traffic and parking, landscaping and other features which tend to create an attractive, efficient, convenient, pleasant and safe shopping center. It allows all types of shops and retail services found in such type centers and expressly requires that all outdoor advertising be subject to approval of the Planning Commission and limits such signs to advertising the use on the premises or to merchandise sold or services rendered on said premises. Other provisions of this Ordinance are consistent with good shopping centers as developed throughout the United States.

The Zoning Map, and textual provisions of the new Zoning Ordinance are the result of thorough and careful surveys and studies. These were fashioned to fit not only prevailing conditions, but to satisfy also foreseeable future requirements. The delineation of the zoning districts and the formulation of requirements and standards were based largely on studies of existing, and estimates of potential, physical developments founded on a comprehensive land use field survey and inventory, as well as the actual experience of the Planning Commission with the present ordinance.

In order that zoning be sound, reasonable and meet the criteria established by judicial decisions in zoning cases throughout the United States, in general, and in the State of Ohio, in particular, the Zoning Ordinance is based on a comprehensive plan of land uses for the City of Greenhills including careful appraisals of future land requirements for various necessary or desirable uses and activities. All of the basic city plan surveys, studies and plans were brought to bear on the drafting of the maps and textual provisions of the Zoning Ordinance. This procedure ensured the integration of the zoning plan with other related features of existing developments. Zoning district boundaries were plotted on overlays to the Land Use Map and checked in the field and against property maps by the consultant.

All parcels of land within the City have been allocated to one or another of four zoning districts: one-family residence district; multi-family residence district; conservation district; and shopping center district.

The location and exact boundaries of each district are shown on the Zoning Map and require no explanation. The regulations applying in each of the four districts are set forth in detail, along with other provisions, in the text of the Zoning Ordinance itself.

Annexation

Because the community is presently surrounded by the City of Forest Park and park land under the jurisdiction of the Hamilton County Park Board, annexation of any land to the community is highly improbable. However,

if by chance there is any release of area to the City of Greenhills, it is strongly recommended that such land be placed immediately in the greenbelt district so as to further strengthen this band of protective land.

Three-mile Jurisdiction for Subdivision Control

Insofar as subdivision control within the three-mile area without the corporation limits, such jurisdiction has been placed in the Hamilton County Planning Commission by an act of the Ohio Legislature passed during the summer of 1963. However, it is strongly recommended that the Greenhills Planning Commission cooperate closely with the Hamilton County Planning Commission so that problems of subdivision and zoning which arise within the area contiguous to Greenhills are discussed, and the recommendations of the Greenhills Planning Commission considered. For this reason it is also necessary for good cooperation to be effected with the Planning Commission of Forest Hills.

PART 4

ADMINISTRATION

Scope of Planning Administration

The Planning Commission has no legislative or administrative powers. Its functions are primarily that of an advisor to the Council, Mayor and officials, also to other public agencies such as Board of Education, the county and town government where mutual problems of city-county or city-township development are involved; and to private builders and developers as well. To function effectively, the Commission should have a place in the local governmental structure commensurate with its important task, and it should be consulted by legislative and administrative officials on all matters within its jurisdiction. The Commission must, of course, be granted appropriations adequate to do its job effectively, so that it may carry out its assignments with the same competence as other departments of the local government.

Functions and Duties of the City Planning Commission

The functions and duties of the Planning Commission in guiding the future development of Greenhills and the legal basis therefore as well as the limitations of its jurisdiction are established under the statutes of the State of Ohio. These may be summarized as follows:

1. Preparing and adopting a comprehensive City Plan or Master Plan for the physical development of Greenhills and its surrounding territory including the extension, amendment and preparation of addition to such Plan when deemed advisable.
2. Reviewing and passing upon the location, character and extent of public buildings and structures, streets, parkways, parks, playgrounds, bridges, viaducts, grade separations, and other public ways and public or privately-owned utilities - in the light of the adopted comprehensive City Plan.
3. Furthering the preservation of historical land marks and passing upon the design, location and general desirability of municipal works of art, bridges, street fixtures and other public structures and appurtenances.
4. Passing upon the vacation or change in use of streets and other public ways, grounds and places; determination and selection of sites for slum clearance and urban redevelopment.
5. Preparing, adopting and administering regulations governing the subdivision of land within the jurisdiction of the Greenhills Planning Commission - including their design and improvement installations.

6. Preparing for adoption by the City Council a zoning ordinance, including both text and map, for regulating the use of land and advising the Council in respect to any future amendments thereto.
7. Preparing for adoption by the Common Council such official maps as may be authorized by law, including precise maps of streets, highways, parkways, parks and playgrounds.

While the functions of the planning agency, as already stated, are in the main advisory, its function of rendering advice and making recommendations concerning both public and private developments carries considerable weight under the statutes of Ohio. Obviously, this places a serious responsibility on the Planning Commission to investigate and study thoroughly any project or proposal in regard to which it is required to make recommendations to the Council. Prior to such recommendation the Planning Commission must assure itself that the proposed project or proposal will:

1. Promote the best interest of the community as a whole;
2. Be in scale with present and probable future needs; and
3. Will not impair or be in conflict with other features of the community's desirable future development under the City Plan.

The scope of the Commission's functions in respect to private developments is nearly as broad as in regard to public improvements. The statutory requirement that all subdivision plats must be submitted to the Commission and approved by it before they may be recorded; and that such subdivisions under the law can be made to conform to the comprehensive City Plan with respect to the layout of streets and other public open spaces, and can be required to meet adequate standards of design - along with the installation by the subdivider of requisite street and sanitary improvements - one of the most significant among the subdivision regulations - will go a long way toward incurring satisfactory environmental conditions and good quality of residential building. Effective administration of the Zoning Ordinance will ensure that the various types of residential and nonresidential buildings and uses will be placed in the districts assigned to each under the City Plan; and that such buildings will not exceed the height and will at least have as much open space about them as specified for the various categories of buildings in the Ordinance.

Requisites to Effective Planning Administration

The effectiveness and influence of city planning on the development or redevelopment of the community cannot be assured by even the best comprehensive City Plan and the widest legal authority for carrying out such

a plan, alone. It will depend in the main on the quality of administering and applying the planning and developmental control measures by the Planning Commission, in concert with the proposals of the City Plan; the respect which its recommendations will command; the cooperation it will receive from municipal and other governmental officials; and on the confidence and support it can elicit and sustain on the part of the citizens of Greenhills.

Obviously, members of the Planning Commission should have a genuine interest in community betterment and public welfare and a thorough understanding of the City's problems and needs. They should be familiar with planning laws and ordinances - especially as they pertain to the various phases of the City Plan, the Zoning Ordinance and Subdivision Regulations - and should be fully acquainted with the objectives, principles and functions of city planning, in general.

It cannot be over-emphasized that effective community planning calls for continual application of the planning process to the day-to-day activities of the city. Obviously, members of the City Planning Commission cannot be expected to devote the time and effort which the work of the Commission, if properly done, requires. In order to make sound decisions on the various matters before it - such as proposed zoning changes, proposed street improvements - the Commission will often need information or advice requiring investigations which the members of the Commission individually have neither the time nor the facilities to obtain. In addition, in many instances matters will be presented to the Commission which involve technical planning problems calling for the training and experience of a professional city planner, which the members of the Commission cannot be expected to possess.

By its very nature, the Planning Commission and its administrative staff become the clearing house of all significant public and private community projects as these relate to the physical improvement of the city. It is the Commission's foremost task to coordinate these to the advantage of the city as a whole, to reconcile inherent conflicts - guided by the principle that the public interest is paramount to that of any individual - and to advance the various projects proposed in the City Plan. Obviously, a city plan is not an inflexible blueprint for community building, but a general guide or outline of action subject to such modifications and additions as may be called for from time to time by changing conditions or technological advances. Only where competent planning administration is provided, supported by the municipal government in general and by the Planning and Zoning Commission and Board of Appeals in particular, can the planning process bear the fruit which the community may rightfully expect.

Administrative Practices and Procedures

The Planning Commission should hold regularly scheduled meetings once a month and more often when necessary. In order to expedite proceedings, it is well to prepare in advance an agenda listing matters to be considered in the order in which they will be taken up. In some cities these agendas are mailed to members of the Commission prior to the meeting, so that they may inform themselves or even inspect the areas or locations pertaining to the matters to be discussed. Strict adherence to such an agenda assures adequate hearings for all matters of reference from the Common Council requiring the Commission's report and recommendations, as well as for other matters, persons or groups properly before the Commission, while conserving the time of the Commission and of all others concerned. Likewise, all matters to be considered at each meeting should be required to be submitted to the Commission well in advance - at least a week or preferably more - so that adequate investigations and studies can be made by the staff. This is necessary particularly in the case of the city engineer, the city attorney, the building inspector or other official providing services to the Commission when called upon, in order that these services will not interfere seriously with other duties of such officials, and at the same time assure the Planning Commission of the availability of such various officials at the proper time.

The Commission, of course, should be kept informed of all improvement proposals or plans under consideration by the various administrative departments, which involve matters of concern to the Commission. The Mayor, or specially designated members of Council will be helpful by providing the liaison between the administration, the Council and the Planning Commission. The City Council, likewise, should make prompt referral to the Commission of matters before the Council which require investigation and report by the Planning Commission. This should be done, moreover, while the proposed projects or measures are still in the formative stage, so that the Planning Commission may make adequate studies and develop carefully considered recommendations. In addition to the approval or disapproval of subdivision plats, the handling of zoning changes, and recommendations concerning specific public improvements, the City's long-range public works or capital improvement program, as part of the comprehensive plan, should be reviewed and particularized by the Planning Commission from year to year, with the view, among other purposes, to implement the City Plan improvements as scheduled therein.

In its dealings with the City Council or with the administrative departments, commissions or boards, the Planning Commission will be acting as an advisory agency on planning matters, and therefore should address itself to the community planning aspects of the problems and solutions and not to legislative, engineering or administrative matters. By so doing

the distinctive nature of the Commission's function will be understood and accepted, its recommendations will carry more weight, and the dangers of encroaching on the rightful provinces of the Council and the various administrative agencies or departments will be avoided. Desirably, the City Planning Commission should meet jointly from time to time with County and Township planning bodies and provide for some form of representation of these at its own regular meetings. Likewise, it should cooperate closely with existing city-county agencies which can be extremely helpful in conjunction with planning matters of area-wide concern.

From the standpoint of administrative organization of the Planning Commission itself, the setting up of small committees for the handling of such matters as may frequently occur, such as subdivision plats, zoning amendments, thoroughfare improvements, has advantages. By this means the work of the Commission can better be distributed among the individual members, action can be expedited, the time of the Commission as a whole can be conserved, and the interest and sense of responsibility of each member developed and sustained. It is also highly advisable to have one of the members of the Commission serve on the Board of Zoning Appeals.

Principles of Zoning

Purpose and Scope

Zoning is the regulation of the use of private property - for the purpose of promoting the orderly development of the community and furthering the health, safety, and general welfare of its inhabitants. Under zoning, every property owner is allowed the enjoyment of all of his property rights so long as he does not encroach on the same rights of others. Thus it protects every property owner from injury by selfish or unwise neighbors, or other property owners, who would seek private gain at his expense and that of the community.

Zoning involves allocating all the land in the community to districts or zones of different categories; and regulating, district by district, the use of property and the height and size of buildings. It is the principal instrument for giving effect to that part of the comprehensive city plan which is concerned with the use of private land - as distinguished from that part which is concerned with public properties and facilities.

In order to devise the best practicable districting of the City - one which would realistically reflect the land use pattern as it exists today and at the same time be in concert with, and oriented toward the accomplishments in due course of, the long-range Land Use Plan - a new Zoning Ordinance and Map were prepared. This was held to be desirable also in order to remedy a number of shortcomings of the Zoning Ordinance now in effect and to bring this abreast with present-day zoning principles, techniques and standards.

The principles underlying the theory of zoning may be summarized as follows:

1. Zoning is one of several tools employed in the process of city, county, and regional planning - it is not synonymous with planning, and consequently, zoning is not a substitute for planning. Conversely, zoning which does not find its foundation in planning is of no value from a technical city planning point of view and must be considered whimsical, arbitrary and capricious from a legal point of view.
2. Zoning is intended to implement applicable sections of the community Master Plan. In the language of the late Alfred Bettman, a master plan finds its scientific justification and its justification within the philosophy of our law in the fact that it represents the product of a studied design for the promotion of the public health, safety,

convenience, prosperity, morals and general welfare - and that he or they who made the design kept these purposes in mind and laid out the plan in accord with recognized principles of public health, welfare, etc. The justification derives from the fact that the police power - the most significant power of government - recognizes the promotion of these purposes as being within its scope. In this sense the plan is a long-term, comprehensive development guide and zoning based thereon is recognized judicially as legitimate zoning enacted and administered in accord with the intent of the common statutory grant of power to zone as against zoning enacted in violation of these principles and based on mere opinion, whim or expediency which, traditionally, has been stricken down by the courts as being arbitrary and capricious.

3. A master plan is binding upon a zoning agency to the extent that it aims at guiding the agency's deliberations by furnishing factual information and technically feasible proposals toward an express community development objective. These, it is hoped, will prevent the agency from making decisions tending to effect adversely long-range land policy and unduly burden with requirements for new services and facilities the municipal or county administration.
4. The ultimate objective of all planning - including that of such regulatory measures as zoning derived therefrom - is land conservation. Land conservation - in the sense of orderly utilization of the available land for the purpose for which it is best suited - finds its justification in the fact that the aggregate land area available - while considerable in the United States - is, nevertheless not unlimited and cannot be physically enlarged. In specific reference to urban problems, land conservation in the form of land use planning derives its justification from the fact that urban land is never in abundant supply because (a) urban activities require relatively high concentration and the satisfying of intricate spatial relationships between one activity and another; and (b) because urban land uses are neither self-sufficient nor self-sustaining, but they are dependent upon the providing of certain facilities and services by the public - at reasonable cost equitably distributed - and are conditioned by the mutual interdependence of the urban dweller.
5. Master plan and zoning codes are not inflexible instruments. However, any departure therefrom, change or amendment will have validity only insofar as such departure, change or amendment is clearly and demonstratively in the public interest. This condition is generally met only where circumstances have changed substantially since initial adoption of the measure - as a whole or as it may be applicable to any particular aspect or area within the jurisdiction - due to

unforeseen developments, or technological advances, except, of course, in those instances where an amendment represents merely a minor adjustment in specific projects. The health, safety, convenience and general welfare of the body politic in its entirety must be served by any planning or zoning measure, whether initial or subsequent, and such measure loses validity if it becomes either (a) a mere conglomeration of neighborhood desires; (b) is abused to advance the interest only of certain individuals or groups; (c) becomes a means to stifle development or competition; or (d) in its application to properties, collectively or individually, becomes, in fact, confiscatory, unreasonable or otherwise abrogates fundamental property rights.

Zoning Administration

Zoning Certificates

The Zoning Ordinance should be administered by the City Zoning Inspector under the general supervision of the City Planning Commission. For the great majority of the people who - in the course of building, development or other real estate activities - will be concerned with zoning requirements or procedures, the Inspector will be the principal, and perhaps the only representative of the city government with whom they will be dealing. This in itself highlights the importance of his position. The satisfactory performance of his various duties is a task requiring competence, care, and tact - also continuity and effective administrative organization and practices. In order to comprehend fully the scope and nature of the task, it is important to understand and appreciate the Zoning Inspector's official position as a law enforcement officer, and the role of the commissions and boards to whom he is responsible.

Disregarding for a moment the matter of general law enforcement under zoning, there are two principal kinds of situations calling for contacting the Zoning Inspector's office: (a) in case a person intends to erect a new building or structure or proposes to make alterations on an existing one; and (b) in case a new use is to be established in a building or without a building on a site.

In either case the owner or his agent will be required to file a formal application. The Inspector will check the information set forth in the application against the provisions of the Zoning Ordinance and in most cases will issue a "Zoning Certificate." This, of course, will certify officially that the proposed use will conform with all applicable zoning requirements.

If a building or other structure is involved, the certificate will also confirm that such structure - as designed and shown on submitted and approved plans - meets the yard, setback, height and density requirements in the particular zoning district in which it is to be located. It is well to realize, however, that a zoning certificate issued in connection with an application for building permit does not in any way authorize construction. Therefore, to avoid confusion and misunderstanding, the Zoning Inspector, in practice, will not issue a zoning certificate in such cases without concurrently issuing the building permit - upon examination and approval of the requisite plans and specifications, of course.

Should the Inspector erroneously issue a zoning certificate or building permit, authorizing a use not permitted in the district or a building which does not meet the yard requirements of the Ordinance, for example, such a certificate would be null and void and of no force and effect whatever. When the error is discovered, it will have to be corrected by the violator in the case, namely, the legal owner of the property. He alone would be held responsible for the violation because a unit of government - under the law - is never bound by erroneous actions of its agents or employees.

As was pointed out in the foregoing, the majority of applications for zoning certificates will be matters of administration routine and approved readily by the Inspector. There will be instances, however, when the applicant will be denied a zoning certificate. In this case the Inspector will issue a "Refusal" form, setting forth therein the reasons for his action or order. It is prerequisite to proper understanding of the Zoning Inspector's position to remember that the Inspector must process and decide each case before him in strict compliance with the "letter of the law." It is not for him to modify or vary, alter or adjust, in any way whatsoever the provisions and requirements of the Zoning Ordinance. The Inspector must apply the requirements, regulations and standards of the zoning law mechanically and accurately. These principles and procedures must be observed religiously at all times if the administration of the Zoning Ordinance is to meet tests of fairness, effectiveness, as well as legality.

Appeals and Variances

But what recourse does the applicant have now that he is confronted with a refusal of his application for a zoning certificate? He can appeal to the Board of Zoning Appeals which is a quasi-judicial, administrative board empowered to grant relief where the strict enforcement of the Zoning Ordinance would result in undue or unreasonable hardship. An appeal from a decision by filing an "Appeal from Decision of the Zoning Inspector"

with the Board's Secretary. The appellant must state his case and, in addition, offer evidence to substantiate that specific exceptional conditions exist in respect to his property - not shared by others in its vicinity - which would cause exceptional difficulties and undue hardship to arise were the zoning requirements strictly enforced.

The Board will hold a public hearing on the appeal, after giving notice to the adjoining property owners and in the newspaper. Subsequent to such hearing it will hand down an appropriate decision by resolution: either overruling the order of the Zoning Inspector and authorizing the issuance of a zoning certificate, subject to whatever conditions it may deem proper to impose; or the Board may uphold the Inspector's ruling by turning down the appeal. The latter decision of the Board may be due to either (a) the failure of the appellant to prove, to the satisfaction of the Board, that his is indeed a "hardship case" arising from the exceptional conditions of his property; or (b) to the inability of the Board to grant the necessary relief without substantial detriment to adjacent property or without material impairment to the purposes of the Zoning Ordinance or the public interest. In cases of this kind the appellant seeking further recourse may take his case and complaint to the Common Pleas Court. (An appellant may withdraw his appeal at any time prior to the Board's final action thereon.)

Conditional Use Permits and Special Exceptions

The granting of administrative relief in "hardship cases" discussed above is but one of the assigned duties of the Board of Zoning Appeals. In addition to such appeals, applications for zoning certificates for certain uses over which the Board has original jurisdiction will be submitted directly to the Board. These uses are referred to throughout the Zoning Ordinance as conditional uses or special exceptions. Zoning certificates for these uses can be issued by the Zoning Inspector only after review and express authorization by the Board of Appeals subject to such conditions as the Board may deem appropriate - and the applicant in such cases will be so advised.

Conditional uses are all uses listed in the Ordinance under the heading "Conditional Uses Requiring Board Authorization," while special exceptions include, for example, the substitution of a different nonconforming building, authorization of a temporary use, and the extension of a use on the border of a zoning district.

The applicant will file an "Application under the Zoning Ordinance: Conditional Use or Special Exception." Upon investigation and public hearing the issuance of a Zoning Certificate will be authorized by the Board or refused. The discretionary powers of the Board are more limited in

these cases than in appeal cases, as the Board is bound to considerable extent by the applicable specific or general requirements or rules set forth in the Ordinance in respect to each such conditional use or special exception. At the same time, the Board is authorized in granting the application, to impose such conditions, in addition to those stipulated in the Ordinance, as the Board deems necessary for the protection of adjacent properties and the public interest.

Interpretations

There are still other kinds of situations which would bring an applicant in contact with the Board of Zoning Appeals, either personally or through the Zoning Inspector. This situation would arise in cases where there exists uncertainty or disagreement as to the intended meaning or applicability of certain textual provisions of the Zoning Ordinance, or in respect to exact location of district boundaries as shown on the Zoning Map. Upon request of the Inspector or on verbal or written application by anyone - or on its own motion - the Board is authorized - directed, in effect - to interpret the text of the Ordinance or the district boundary lines as shown on the Zoning Map. Its rulings in conjunction therewith are conclusive.

Enforcement and Prosecution

The foregoing dealt exclusively with procedures to be followed in conjunction with the filing and processing of applications for zoning certificates of one kind or another. However, it is to be remembered that the Zoning Ordinance is a police power measure aimed at preventing abuses in the use of property. Consequently, some of the Zoning Inspector's time will be taken up by investigations and subsequent actions in response to complaints. Any individual who believes that his property ownership rights or interests are placed in jeopardy by a violation of the Zoning Ordinance may contact the Zoning Inspector. The complainant will file his complaint verbally or in writing. There will also be anonymous complaints which, of course, should be disregarded.

Upon receipt of a complaint, the Inspector will investigate the matter and, if an actual violation is found, will serve an appropriate notice to "cease and desist." Normally, the violator - more often than not unaware that he is violating the law - will comply with the order within a reasonable time as specified in the order. The Zoning Inspector will certify such compliance to the violator, and also inform the complainant in writing that the violation has been remedied. If agreement cannot be reached and the violation continues, the Zoning Inspector will refer the case to the City Attorney for appropriate legal action against the violator.

District Changes and Regulation Amendments

The foregoing sums up the principal responsibilities of the Building and Zoning Inspector and Board of Zoning Appeals. There will be cases, however, where the establishment of a use cannot be brought about under any of the alternative procedures described, but where, nevertheless, such use would seem desirable from the standpoint of the neighborhood which would be directly affected thereby, as well as from the overall city development point of view. Yet, the Zoning Map - and in very rare instances, the Zoning Ordinance - make no provision therefor.

Then, too, notwithstanding the care and foresight with which the Zoning Ordinance and Zoning Map may have been prepared, amendments are likely to be necessary from time to time. Unforeseeable developments may occur or the conditions or trends upon which the regulations and districting were predicated may undergo drastic changes over a period of even a few years in view of these times of rapid technological changes; or major public improvements may make adjustments in zoning district boundaries necessary or desirable.

To provide for situations of this kind the Zoning Ordinance - in accordance with the Ohio statutes - sets up the mechanics for district changes and regulation amendments. A district change may be initiated by the City Planning Commission either on its own motion or on application by a bona fide owner or lessee of real property in the area for which a district change is sought; a regulation amendment may be suggested by anyone and is also initiated by the Commission.

The Planning Commission will investigate the proposal and may cause it to be advertised in the newspapers and, in the case of a district change, also notify all owners of real property located wholly or partly within 200 feet of the exterior boundaries of the area in question. All persons interested in the matter will be afforded an opportunity to state their position at a public hearing to be held in the City Hall. After such hearing the Planning Commission will take its formal action approving or disapproving the case and so certify the same to the City Council. The Council in its capacity as the local governing and legislative body - will hold the legally required hearing thereon and, eventually, by ordinance either change the zoning district, amend the regulations, or deny the request.

Similar procedures apply in regard to the processing of applications for community development projects and neighborhood or community shopping centers. These projects also are initially reviewed by the City Planning Commission and, upon approval by this body, referred to the City Council or the Board of Appeals, as the case may be, for final action.

Public Records

The keeping of accurate public records of these many and frequently intricate cases processed by the Zoning Inspector is prerequisite to effective zoning administration. Standard forms should be prepared and used to facilitate the administrative task.

It is important that the minutes of the proceedings before board or commission be carefully prepared, as these represent the principal record of their actions and the most important documents in case of litigation. Minutes should be filed, one copy each, in the office of the City Clerk and in the office of the City Planning Commission. The latter should be the appointed custodian of all official zoning records, including, in addition to the minutes, the case files and board calendars. The minutes should be bound at the end of the year and kept for at least ten years.

Copies of the minutes should be mailed as follows:

Board of Zoning Appeals Minutes - to all members of that Board; the members of the City Planning Commission; the City Attorney.

City Planning and Zoning Commission Minutes - to all members of that commission; the members of the City Council; the chairmen of the planning commissions of the unincorporated adjoining townships, if any, and the Chairman of the County Planning Commission or the President of the Board of County Commissioners.

Mailing should be as soon as possible after each meeting, so that every board or commission member may be familiar with their contents at the next following meeting at which the minutes are to be approved. Frequently the agenda of the forthcoming meeting is forwarded to the members with the minutes of the last preceding one. The record copy of the minutes should be signed by the chairman of the board or commission, not by the clerical or executive secretary. If a regular meeting has to be cancelled by reason of lack of quorum, minutes should nevertheless be prepared and properly signed indicating such fact.

To cover advertising and other clerical expenses in connection with appeals or applications under the Zoning Ordinance - other than applications for zoning certificates and requests for interpretations - it is customary to charge an appropriate filing fee. Based on experience elsewhere the following schedule is suggested:

Appeal from a decision of the Zoning Inspector, Conditional Use Permit, Permit for Special Exception	\$ 15.00
District Change or Regulation Amendment	35.00

The City Planning Commission and the Building Inspector should be given appropriate personnel, office space, equipment and supplies to discharge competently and effectively their duties and responsibilities. Furthermore, it is important that the board and commission assist the staff by observing practical and consistent rules of business order and operation. Such rules should be drafted, along the lines of the illustrative one in Appendix II, and formally adopted.

APPENDIX I

STATEMENT OF BASIC PRINCIPLES CONCERNING FUNCTION AND
SCOPE OF JURISDICTION OF THE BOARD OF APPEALS

STATEMENT OF BASIC PRINCIPLES CONCERNING FUNCTION AND
SCOPE OF JURISDICTION OF THE BOARD OF APPEALS

I. GENERAL SCOPE OF FUNCTION OF BOARD OF APPEALS

Statement of Principle:

The Board of Appeals must accept the Zoning Ordinance and Zoning Map as correct. Curing what it considers bad zoning is not within its province.

Discussion:

The enacting of a Zoning Ordinance, including the Zoning Map, is a legislative function.

The Board of Appeals is an administrative board, whose function it is to apply the Zoning Ordinance - as voted into law by the City Council with adjustments to exceptional situations as provided in the Ordinance. These adjustments, however, must be consistent with the zoning plan and zoning regulations as mapped and as set forth in the Ordinance.

The Zoning Inspector of the Board of Appeals arises on appeal from a decision of the Zoning Inspector or on direct application to it, the Board acts in an administrative capacity. Consequently, it is not the function of the Board to attempt correcting what it may consider defects in the Zoning Ordinance or the Zoning Map.

The Board of Appeals has the authority to hear and determine each case which, on appeal or by original application, falls within its jurisdiction as defined in the State statutes and the Zoning Ordinance. But in its decision, it must assume the correctness of every part of the Zoning Ordinance, including the Zoning Map, and restrict itself to the narrow, though highly important, field of adjustment, interpretation and administration.

In performing these functions, sound policies and practices by the Board of Appeals are of vital importance. The success or failure of zoning administration is dependent in large measure on such policies and practices.

If the Board takes its task lightly, interprets its discretionary powers too liberally and thereby encroaches on the province of the Common Council it can badly impair, if not destroy, the effectiveness of the Zoning Ordinance, antagonize the governing body and break down public respect for zoning directly, as well as through adverse court decisions. Conversely, the Board which interprets the Ordinance too rigidly - in the same sense that it refuses to extend the relief in specific cases of practical difficulty or exceptional hardship to the limit of what it is authorized to do under the Zoning Ordinance - will fail to build up and may largely dissipate public goodwill and support, without which zoning, as any other legislation in a democracy, cannot prevail in the long run.

II. TYPES OF CASES REVIEWED BY BOARD OF APPEALS

Statement of Principle:

The cases coming before the Board of Appeals are of three entirely different types as follows:

1. Interpretation of the Zoning Ordinance
2. Conditional Permits or Special Exceptions
3. Variances

Clear understanding of the difference between them is most important, because the procedures, principles and limitations in handling each type of case by the Board are quite different; and failure to distinguish between them has been found to result not only in confusion and inappropriate action by the Board but adverse decisions by reviewing courts.

Discussion:

1. Interpretation of the Zoning Ordinance by the Board is called for when, in a particular instance, the Zoning Inspector is uncertain as to the correct interpretation of a specific provision of the Ordinance, or of the precise location on the ground of a zoning district boundary as shown on the Zoning Map; or when an applicant feels that the interpretation or decision of the Zoning Inspector is in error. In such cases, the interpretation of the Board prevails over that of the Zoning Inspector.

2. Conditional uses or special exceptions are those types of cases, named and described in specific terms in the Zoning Ordinance for which, in special situations, the Board has authority - in conformance with general rules, tests, conditions and the standards of guidance set forth in the Ordinance - to authorize the issuance of a zoning certificate - subject to such additional conditions and safeguards as the Board may consider inappropriate in order to adequately protect the public interest and prevent impairing the intended purposes of the Ordinance.

3. Variances are modifications of the strict terms of the Zoning Ordinance, which the Board is empowered to grant under authority couched in general terms in the Ordinance, in cases where - by reason of the exceptional narrowness, shallowness, or shape of an individual piece of property at the time of the effective date of the Ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, or the established uses or conditions of immediately adjoining properties - the strict application of any provision of the Ordinance would result in peculiar and exceptional practical difficulties or exceptional and undue hardships on the owner of such piece of property.

A request for a zoning certificate for a conditional use or a special exception comes from the Board on direct application; a request for variance on appeal from the decision of the Zoning Inspector.

III. CONDITIONAL USE PERMITS OR SPECIAL EXCEPTIONS BY BOARD OF APPEALS

Statement of Principle:

The Zoning Ordinance authorizes the Board of Appeals to permit conditional uses or to make certain exceptions - that is, to authorize the issuance of zoning certificates for certain conditional uses in particular special situations which are stipulated in the Ordinance. In such cases, the Zoning Ordinance prescribes the conditions or principle or test which the Board must observe in the grant of such a conditional use certificate. The Board is not granted the power of itself creating the principle, rule or test, as this is a legislative function; nor is the Board granted the unregulated power to make these exceptions or to authorize the issuance of these zoning certificates as it may deem wise. The Board's authority to authorize conditional uses or make special exceptions is strictly limited to the cases and situations set forth in the Zoning Ordinance and then only in accordance with the principles and under conditions prescribed therein for each type of case.

Discussion:

Experience in zoning and the development of zoning legislation and practice has demonstrated that there are certain types of cases or situations which cannot be covered by the general standards of use, height, area, etc., fixed in the Zoning Ordinance and which can best be met by the authorization of conditional uses or special exceptions under proper safeguards, and that the Board of Appeals is the best type of agency for dealing with these uses and situations as they arise.

The intent of the Zoning Ordinance is to avoid throwing the zones entirely open to certain uses at any location and unconditionally, while at the same time permitting them at such locations and under such conditions as will prevent or mitigate possible detrimental effects upon surrounding uses.

The simplest way to deal with this type of problem would be to permit the Board of Appeals to determine each case entirely according to its own discretion. This, however, is a dangerous method. It reposes so uncontrolled an authority in the Board, as to verge at least on the delegation of legislative power to the Board, and as to place in the power of the Board a very serious gradual breakdown of the zoning plan. Therefore, the general rules, measures or tests to be applied to the grant of these conditional uses or special exceptions under the terms of the Ordinance are a safeguard against such danger.

Therefore, the general rules, measures or tests to be applied to the grant of these conditional uses or special exceptions under the terms of the Ordinance are a safeguard against such danger.

IV. VARIANCES BY BOARD OF APPEALS - ONLY ON DEMONSTRATION OF UNDUCE
HARDSHIP AND SUCH HARDSHIP MUST BE THAT OF THE INDIVIDUAL LOT

Statement of Principle:

A showing that the strict application of the provisions of the Zoning Ordinance would result in unnecessary and undue hardship is prerequisite of the granting of a variance by the Board of Appeals. Moreover, the hardship which justifies a variance from the provisions of the Zoning Ordinance must be that of the individual lot, and not a hardship due to those aspects of the regulations or districting which affect other properties not possessing the peculiar or exceptional characteristics from which the hardship ensues. The Zoning Ordinance specifically lists the conditions under which a variance may be granted. While every effort should be made to hear the comments of owners of nearby properties, the decision must be based on a finding of facts.

Discussion:

The Board of Appeals, in granting variances, must accept the Zoning Ordinance as correct in every particular. It should base its action solely on characteristics of the individual lot for which the variance is requested and not on characteristics which that lot shares with other lots in the neighborhood or the district. For if the hardship arises out of a characteristic common to the neighborhood or to other lots similarly situated, but not having the peculiar characteristics of the lot in question, then the need is obviously that of amending the Zoning Ordinance. Unless the need of a variance be due to exceptional and extraordinary circumstances, it obviously falls within the legislative field and not within the proper function of the Board of Appeals.

Exceptional topographical conditions, which make compliance with the regulations patently unfair to a particular lot of unusual shape or size, are illustrations of the appropriate field of the Board of Appeals hardship cases to be relieved by a grant of a variance from the strict application of the provisions of the Zoning Ordinance.

V. VARIANCES OF USE REGULATIONS AND USE EXCEPTIONS

Statement of Principle:

Use variations should be rare indeed and granted only in the case of extraordinary situations.

Discussion:

There may exist within a particular district a lot which at the time of the effective date of the Zoning Ordinance is of so extraordinary and exceptional topography, shape, or size or location as to be physically incapable of economic use for a conforming use. Such a situation, however, if the original zoning plan be a carefully drawn one, should be so exceptional as to be almost negligible in any statement of zoning principles. Provision for the grant of temporary permits for temporary nonconforming uses may be made without violating the true principles of zoning. Other than these, there ought to be no use variations except in the rarest and most extraordinary cases produced by the physical conditions of the lot for which the variation is sought. Otherwise the integrity of the zoning plan would be impaired, and the Board of Appeals would be invading the field of zoning amendment which belongs to the Common Council.

VI. APPROPRIATE INFLUENCE OF THE FACTOR OF FINANCIAL EFFECT OF ZONING REGULATIONS ON INDIVIDUAL LOTS

Statement of Principle:

Adverse financial effect does not demonstrate hardship, unless it arises from some facts or factors peculiar to the particular lot in question and not resulting from the effects of the zoning of the neighborhood or district in which the lot is located.

Discussion:

One of the types of proof usually produced to demonstrate hardship is the adverse financial effect on appellant's property of the regulations which he desires to have varied or from which he desires to have his property excepted. Insofar as such adverse financial effect is shared by other properties in the general neighborhood, or other similar properties subject to the same zoning regulations - in other words, is the product of the districting and regulations exclusive of the factor of some exceptional peculiarities of the particular lot in question - such effect is obviously due to the nature of the zoning districting and the regulations applicable to the district in which the neighborhood or other similar properties fall. Such adverse financial effect may be evidence tending to show defective zoning. However, the curing of the defect, if any, is not within the functions of the Board of Appeals but within the jurisdiction of the Common Council.

Only where the decisive factor in producing the financial hardship is some exceptional physical characteristic of the lot itself or some exceptional situation in the adjoining property, which produces extraordinary difficulties in that lot's compliance with the zoning regulations, is the case one that justifies variance by the Board on ground of financial hardship.

VII. APPROPRIATE INFLUENCE OF THE FACTOR OF APPEARANCE IN CONSIDERING VARIANCES OR EXCEPTIONS UNDER THE ZONING ORDINANCE.

Statement of Principle:

The jurisdiction of the Board of Appeals, in the grant of variances and conditional uses or special exceptions, is not based on the purpose of promoting or preserving the appearance of a neighborhood. Where the

facts of exceptional hardship due to topographic or other physical reasons exist and justify the variance, the Board may impose conditions which relate to preservation and promotion of the appearance of the neighborhood; but these conditions are solely for mitigation, that is, mitigating the effect of the variance or the conditional use or special exception, and in and of themselves can never justify the variance or the granting of a conditional use or special exception.

Discussion:

Proponents of a variance or a conditional use or special exception frequently argue that the building which they propose to erect, or the reconstruction or alterations they propose to make, will add to the good appearance of the neighborhood; or that the existing use is less attractive in appearance than the use they desire to make through obtaining the right to a variance or exception. Boards of Appeals sometimes tend to treat preservation or improvement of neighborhood appearance as itself a justification for the grant of the variance or a special exception. This is not consistent with the fundamental purposes of zoning regulations.

Where the undue and unnecessary hardship or other reasons exist to a degree which justifies a variance or where authorizing a conditional use or special exception is justified on other grounds, the power of the Board to impose conditions in respect to design or appearance is properly used to present or mitigate the detrimental effect which may ensue otherwise. Appearance conditions, however, should be conceived of solely as a means of mitigation, never as themselves justifying the variance of special exception, for, otherwise, the cumulative effects of rulings of the Board of Appeals would be in danger of producing the very sort of spotty use development which zoning is intended to prevent.

APPENDIX II

RULES OF PROCEDURE - BOARD OF APPEALS

RULES OF PROCEDURE

BOARD OF APPEALS*

Article I

O F F I C E R S

1. The Board shall hold an organization meeting annually during the month of _____.
2. The Chairman shall preside at all meetings and hearings of the Board. In the event of the absence or disability of the Chairman, the Vice-Chairman shall preside.
3. The Chairman, subject to these rules, shall decide all points of order or procedure, unless otherwise directed by a majority of the members of the Board in session at that time.
4. The Chairman shall appoint any committees that may be found necessary.
5. The Chairman shall report at each meeting on all official business that does not otherwise come to the attention of the Board.
6. The Secretary, who shall be an administrative employee of the City Government, shall conduct all official correspondence subject to these rules and the direction of the Board; send out all notices required by these rules and the order of the Board; attend all meetings and hearings, keep minutes of the Board's proceedings; compile the required records; maintain the necessary files and indices and generally be responsible for all the clerical and technical work of the Board.

*These procedural rules - although written specifically for the Board of Appeals - are, of course, applicable in principle to the Planning Commission.

Article II

JURISDICTION OF THE BOARD

1. This Board obtains its jurisdiction, power and limit of authority from the Zoning Ordinance of _____ which became effective _____, as it may be amended, and from the applicable state statutes.

Article III

PROCEDURES FOR SUBMITTING APPEALS AND APPLICATIONS

1. Every appeal or application shall be made on the forms provided by the Board, which can be secured at the office of the Zoning Inspector. Such appeal or application shall be filed with the Secretary of the Board by the owner of the property involved, or by his agent.

All items shown on the form which apply to the case must be filled in. Special attention should be given to the following items:

- a. Arguments in support of the appeal or application. In the case of appeal for a variance, these should pertain to the peculiar or exceptional conditions of the site, rather than special problems or desires of the appellant, and should clearly demonstrate practical difficulty or unnecessary hardship.
- b. Plans, drawn to scale, showing the actual shape and dimensions of the lot, of the buildings and accessory buildings existing, and the lines within which the proposed building shall be erected or altered, the existing and intended use of each building or part of building, the number of families or housekeeping units the building is designed to accommodate, and the location and distance from lot lines of buildings on neighboring lots, as may be necessary to determine and provide for a proper hearing.

- c. Each appeal or application shall be accompanied by a required payment in the amount of \$_____ for the purpose of defraying the expense of publishing and serving notices and necessary clerical and stenographic services.
2. The appellant or applicant shall provide the Secretary with such additional information and data as may be required to advise the Board fully with reference to the case, whether such information or data is called for in the official forms or not. Any failure or refusal on the part of the applicant or appellant to furnish such additional information or data shall be grounds for dismissal of the appeal or application by the Board.
3. Every appeal shall be filed within twenty (20) days from the date of any refusal of a permit by the Zoning Inspector, or the date of any order, ruling, decision or determination of such Zoning Inspector from which an appeal was made.
4. Any communication purporting to be an appeal or application shall be regarded as mere notice of intention to seek relief, until it is made in the form required. Upon receipt of such communication, the writer shall be supplied with the proper form for presenting his appeal or application. If he fails to file with the Board an appeal or application form properly filled out and executed and to supply the required data within twenty (20) days from the date of the refusal of a permit by the Zoning Inspector, or from the date of any order or decision of such Zoning Inspector, his case may be dismissed for lack of prosecution.
5. No appeal or application shall be entertained where a case has been decided previously, involving the same premises and Zoning Ordinance requirements, except in cases where new plans or new facts pertaining to said requirements are presented, showing changed conditions or circumstances which, in the opinion of the Board, materially alter the aspects of the case.

Article IV

MEETINGS OF THE BOARD

1. Regular meetings of the Board for the hearing of cases shall be held on _____ in the City Hall.
2. Special meetings may be called by the Chairman or at the request of two (2) members, provided notice of same shall be given to each member at least twenty-four (24) hours before the time set, except that the announcement of a special meeting at any meeting at which all the members are present shall be sufficient notice of such special meeting.
3. A quorum of the Board shall consist of three (3) members and the concurring vote of three (3) members shall be necessary to reverse any order of the Zoning Inspector.

Article V

THE CALENDAR, NOTICE OF HEARING

1. Each appeal or application in proper form, together with required data, shall be filed at least fifteen (15) days before the date of the Board meeting at which it is to be heard, and shall be placed on the Calendar of the Board by the Secretary, for hearing within twenty (20) days after the date it is filed. Cases shall be numbered serially, beginning with unity at the start of each calendar year, and the calendar or case number shall be hyphenated with the number of the year in which the appeal or application is filed. The following letters shall be suffixed to the case numbers:

- V - to identify variance cases;
- C - to indicate conditional use permit;
- I - to identify a request for interpretation.

2. Appeals or applications will be assigned for hearing in the order in which they appear on the Calendar, except that they may be advanced or postponed for hearing by order of the Board, upon good cause being shown. Where all appeals or applications cannot be disposed of on the day set, the Board may recess from day to day, or to any future day or until the next regular meeting, as it may order. When a recess is taken, the recessed meeting shall be construed as a continuance of the regular meeting, and no further notice need be given thereof.
3. Upon the filing of an appeal or an application, together with the required fee, or as soon thereafter as the date of the hearing is determined, the Secretary shall cause a notice of such hearing to be published and served personally or by mail in accordance with provisions of the Zoning Ordinance.
4. The term "parties in interest" as referred to in the Zoning Ordinance shall include the applicant or appellant and all owners of record of the real property abutting wholly or in part the property for which a conditional permit, special exception or variance is sought.

Article VI

ORDER OF BUSINESS

The order of business at all regular meetings of the Board shall be as follows:

1. Roll call
2. Reading of minutes of previous meetings and action thereon.
3. Hearing of cases (as set forth in Article VII - 1 & 2 below).
4. Communications (not relating to cases heard).
5. Reports of Committees (not relating to cases heard).
6. Unfinished business.
7. New business, including consideration of cases (as set forth in Article VII - 3 below).
8. Miscellaneous business.

Article VII

HEARING OF CASES

1. At the time of the public hearing, the appellant or applicant shall appear in his own behalf or may be represented by counsel or agent. In the event of absence of the appellant or applicant, the statements of the opposition (if any) may be heard and the transcript thereof presented at the subsequent hearing.
2. The procedure of the hearing of cases shall be as follows:
 - a. The Chairman shall call upon the Secretary to name and describe the first case on the Calendar.
 - b. The Chairman shall request the Zoning Inspector to explain reasons why a building permit was denied the appellant.
 - c. The Chairman then shall call upon the appellant or applicant to give reason why his appeal or application should be granted. Board members and the Zoning Inspector may ask questions as necessary to obtain complete information regarding the case.
 - d. The Chairman then shall ask if there are interested persons present who wish to be heard: first, those in favor; second, those who may be opposed. The name and address of each person who appears before the Board shall be recorded in the minutes of the meeting.
 - e. The Chairman then shall ask the appellant or applicant whether he wishes to be heard in rebuttal.
 - f. The Chairman then shall call for the next case, which shall be treated in the same manner as described in steps a. through e. above. At the termination of the hearing on each case, the Chairman shall inform the appellant or applicant that the case will be taken under advisement and a decision rendered as soon as possible.
3. After all cases to come before the Board have been heard, and the items preceding new business disposed of, the Chairman shall call

for official action pertaining to each case, in the order of the hearings, and in so doing,

- a. The Chairman shall call upon the Secretary for a review of each case and shall ask for comments from the members;
- b. The Chairman then shall call for a motion that a resolution be adopted granting or denying the appeal or application, and if granted, specifying conditions under which it will be granted. If the Board decides that it is not yet in a position to take action, it may agree to inspect the premises in question, or request further information from the appellant or applicant, or from the Secretary, and may set a time for a recessed hearing or action on the case.

Article VIII

FINAL DISPOSITION OF CASES

1. All final actions of the Board pertaining to appeals from the provisions of the Zoning Ordinance shall be by resolution, in accordance with the provisions of the said Zoning Ordinance. Such Board resolution shall contain the following:
 - a. Name and address of person making the appeal.
 - b. Description of premises involved in the appeal, by block and lot or by other legal description and by street address; also the zoning district in which located.
 - c. Zoning provision from which appeal is made, or under which appeal is made.
 - d. Physical conditions of the premises, or other premises affected, and of the building or use proposed by the appellant which are pertinent to a decision.
 - e. Opinion of the Board as to the degree of practical difficulty or unnecessary hardship which compliance with provisions of the Resolution would place upon the appellant.
 - f. Statement of resolution that the appeal be granted or denied; date the action is entered.

2. All final actions of the Board pertaining to conditional use permits or authorizations of special exceptions shall also be by Board resolution. Such resolution shall contain the following:
 - a. Name and address of person making the application.
 - b. Description of the premises involved in the application, by block and lot or other legal description, and by street address; also the zoning district in which located.
 - c. Zoning provision under which application is made.
 - d. Physical condition of the premises, or other premises affected and of the building or use proposed by the applicant which are pertinent to the decision.
 - e. Opinion of the Board as to the desirability or undesirability of the proposed building or use as regards adjoining premises and the general intent of the Zoning Ordinance.
 - f. Statement of resolution that the application be granted or denied; date the action is entered.
3. Interpretations of textual provision of the Zoning Ordinance and of the location of district boundaries shown on the Zoning Map shall also be by Board resolution and the Zoning Inspector shall establish a reference file thereof.
4. The concurring vote of three (3) members shall be necessary to act on an appeal or application. If a resolution presented at any meeting fails to receive the required number of concurring votes, it shall be presented again at the next meeting. In the event, after such second presentation, the appeal or application be not granted, the same shall be considered a refusal.

In cases where no serious controversy exists, and where the Board authorizes, the Secretary may notify the appellant or applicant verbally of the action of the Board prior to the mailing of the final resolution.
5. An appellant or applicant may, by written statement, withdraw his appeal or application at any time prior to decision by the Board thereon.
6. Unless an appeal or application be perfected within twenty (20) days of the date of filing same, the Board may, by a concurring vote of three (3) members, dismiss said appeal for want of prosecution.

7. No re-hearing of the decision of the Board shall be had except:
 - a. On a motion to reconsider the vote, or
 - b. On a written request for a re-hearing.
8. If the motion to reconsider receives three (3) affirmative votes, a re-hearing shall be held, subject to such conditions as the Board may in each case stipulate.
9. No request to grant a re-hearing will be entertained unless new evidence is submitted, which could not reasonably have been presented at the previous hearing. If the request for re-hearing is granted, the case shall be put on the Calendar for a re-hearing and the owners of adjoining property again notified. In all cases, the request for re-hearing shall be in writing, reciting the reasons for the request, and shall be fully verified and accompanied by the necessary data. The person requesting the re-hearing shall be notified to appear before the Board on the date set.
10. A decision of the Board shall not become effective until the expiration of five (5) days from the date of such decision unless otherwise specified by the Board.

Article IX

RECORDS

1. The Secretary shall keep minutes of meetings, which shall include the names of Board members in attendance, the name of the appellant or applicant and of other persons appearing before the Board, the case number and description of premises involved, a description of the appeal or application, names of members making and supporting all motions, and the vote of all members thereon.
2. The Secretary shall keep a file for each case, which shall include all forms submitted or mailed as listed in Article IX, correspondence and diagrams pertaining to the case, copy of notice and the original resolution.
3. Such records shall be kept in the office of the Zoning Inspector, and shall be accessible to the public at all reasonable hours.

Article X

GENERAL ACTIONS OF THE BOARD

Every action of the Board not otherwise provided for shall require three (3) affirmative votes of the members.

Article XI

AMENDMENTS TO RULES AND REGULATIONS

These rules and regulations may be amended or modified provided that such amendment be presented in writing at a regular meeting and action taken thereon at a subsequent regular meeting.

Article XII

ADOPTION OF RULES AND REGULATIONS

These regulations are hereby adopted this _____ day of _____, _____ 19____, by affirmative vote of the following members:
