

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1959

ENROLLED

SENATE BILL NO. 264

(By Mr. Moreland and Mr. Davis)

PASSED March 14, 1959

In Effect ninety days Passage

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JOE F. BURDETT
SECRETARY OF STATE

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(By MR. MORELAND AND MR. DAVIS)

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AN ACT to repeal article five, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article five, relating to the development, through planning and zoning, of urban and rural areas, and providing for the creation of city and county planning commissions; for the authority of said planning commissions to prepare comprehensive plans for the physical development of the territory within its jurisdiction; for the approval of such comprehensive plans; for cooperation between planning commissions and other governmental bodies; for subdivision control and plat approval;

for the issuance of improvement location permits; for authority to zone both urban and rural property; for the procedure for the adoption of such zoning ordinance; for the creation of zoning boards of appeals, prescribing their powers and duties, and the procedure to be followed therein; for judicial review of administrative decisions; and providing for the enforcement of the article, and the penalties for the violation of the provision thereof.

Be it enacted by the Legislature of West Virginia:

That article five, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and a new article five be enacted in lieu thereof, to read as follows:

Article 5. Urban and Rural Planning and Zoning.

Section 1. *Statement of Intent.*—The governing body of
2 every municipality in the state and the county court of
3 every county in this state may by ordinance create a plan-
4 ning commission in order to promote the orderly develop-
5 ment of its governmental units and its environs. It is the
6 object of this legislation to encourage local units of gov-
7 ernment to improve the present health, safety, conven-

8 ience, and welfare of their citizens and to plan for the fu-
9 ture development of their communities to the end that
10 highway systems be carefully planned, that new commun-
11 ity centers grow only with adequate highway, utility,
12 health, educational, and recreational facilities; that the
13 needs of agriculture, industry and business be recognized
14 in future growth; that residential areas provide healthy
15 surroundings for family life; and that the growth of the
16 community is commensurate with and promotive of the
17 efficient and economical use of public funds.

18 In accomplishing this objective, it is the intent of this
19 legislation that the planning commission shall serve in an
20 advisory capacity to the governing body of a city or a
21 county court, and in addition, that certain regulatory
22 powers be created over developments affecting the public
23 welfare and not now otherwise controlled, and that ad-
24 ditional powers be granted legislative bodies of cities,
25 towns and counties to carry out the purposes of this act.

Sec. 2. *Continuation of Powers and Duties.*—Upon the
2 taking effect of this act, a planning commission heretofore
3 established shall continue to operate as though authorized

4 under the terms of the present act. All actions lawfully
5 taken under prior acts are hereby validated and continued
6 in effect until amended or repealed by action taken under
7 the authority of this act.

8 The membership of existing commissions shall continue
9 unchanged until the first regular meeting of the governing
10 body of a city or the county court in the January of the
11 year following the passage of this act. At that time, any
12 appointments or changes necessary shall be made to bring
13 the membership of the commissions within the provisions
14 of this act.

Sec. 3. *Definitions.*—As used in this article:

2 1. “Municipality” shall mean a city or town incorpor-
3 ated under the laws of West Virginia;

4 2. “City” shall mean a municipal corporation with a
5 population in excess of two thousand;

6 3. “Town” shall mean a municipal corporation with a
7 population of two thousand or less;

8 4. “Governing body of a city” shall mean the council or
9 commission created by the charter of a city or town which

10 enacts ordinances and resolutions and is responsible for
11 the public policy of the city or town;

12 5. "Administrative authority of a city" shall mean the
13 officer or body which is responsible for the conduct and
14 management of the affairs of the city or town in accord-
15 ance with general law, the charter and the ordinances,
16 resolutions and orders of the governing body;

17 6. "County court" shall mean the governmental body
18 created by article eight, section twenty-two of the West
19 Virginia constitution;

20 7. "Commission or planning commission" shall mean a
21 city planning commission or a county planning commis-
22 sion;

23 8. "Comprehensive plan" means a complete compre-
24 hensive plan or any of its parts such as a comprehensive
25 plan of land use and zoning, of thoroughfares; of sanita-
26 tion; of recreation, and other related matters, and includ-
27 ing such ordinance or ordinances as may be deemed
28 necessary to implement such complete comprehensive
29 plan or parts thereof by legislative approval and provision

30 for such regulations as are deemed necessary and their
31 enforcement;

32 9. "Public place" includes any tracts owned by the
33 state or its subdivisions;

34 10. "Streets" includes streets, avenues, boulevards,
35 roads, lanes, alleys, and all public ways;

36 11. "Unit of government" means any federal, state,
37 regional, county, city, town, or government corporation;

38 12. "Utility" means any facility used in rendering serv-
39 ice which the public has a right to demand;

40 13. "Person" means individual, firm or corporation.

Sec. 4. *Powers Conferred.*—Where power is conferred,
2 singly or disjunctively, on the governing body or admin-
3 istrative authority of a city, that power may be exercised
4 only in relation to the city planning commission. Where
5 power is conferred, singly or disjunctively, on the county
6 court, that power may be exercised only in relation to the
7 county planning commission.

Sec. 5. *City Planning Commission; Membership.*—The
2 city planning commission shall consist of not less than
3 five nor more than fifteen citizens, all of whom shall be

4 freeholders and residents of the municipality, who shall
5 be qualified by knowledge and experience in matters
6 pertaining to the development of the city, who shall in-
7 clude representatives of business, industry and labor,
8 three-fifths of all members shall have been residents of
9 the municipality for at least ten years prior to nomina-
10 tion, and who shall be nominated by the administrative
11 authority and confirmed by the governing body of the
12 city. One member of the commission shall also be a mem-
13 ber of the governing body of the city and one member
14 shall also be a member of the administrative department
15 of the city. The term of these two members shall be co-
16 extensive with the term of office to which he has been
17 elected or appointed, unless the administrative author-
18 ity and governing body of a city, at the first regular
19 meeting of each year, appoint others to serve as the city's
20 representatives. The remaining members of the commis-
21 sion first appointed shall serve respectively for terms of
22 one year, two years and three years, divided equally or
23 as nearly equally as possible between these terms. There-
24 after, members shall be appointed for terms of three

25 years each. Vacancies shall be filled by appointment for
26 the unexpired term only. Members of the commission
27 shall serve without compensation, but shall be reim-
28 bursed for actual expenses incurred in the performance
29 of their official duties.

Sec. 6. County Planning Commission; Membership.—

2 The county planning commission shall consist of not less
3 than five nor more than fifteen citizens, all of whom shall
4 be freeholders and residents of the county, who shall be
5 qualified by knowledge and experience in matters per-
6 taining to the development of the county, who shall in-
7 clude representatives of business, industry, labor and
8 farming, three-fifths of all members shall have been
9 residents of the county for at least ten years prior to
10 appointment, and who shall be appointed by the county
11 court. One member of the commission shall also be a
12 member of the county court. The term of this member
13 shall be co-extensive with the term of office to which he
14 has been elected, unless the county court, at the first
15 regular meeting of each year, appoints another member
16 to serve as its representative. The remaining members of

17 the commission first appointed shall serve respectively
18 for terms of one year, two years and three years, divided
19 equally or as nearly equally as possible between these
20 terms. Thereafter, members shall be appointed for terms
21 of three years each. Vacancies shall be filled by appoint-
22 ment for the unexpired term only. Members of the com-
23 mission shall serve without compensation, but shall be
24 reimbursed for actual expenses incurred in the perform-
25 ance of their official duties.

Sec. 7. *Advisory Members.*—In case the city is situated
2 in a county which has a county planning commission, a
3 designated representative of the county planning com-
4 mission shall be an advisory member of the city planning
5 commission. In case there is a city planning commission
6 a designated representative of the city planning com-
7 mission shall be an advisory member of the county plan-
8 ning commission. Such advisory members shall have all
9 the privileges of membership except the right to vote.

Sec. 8. *Regular and Special Meetings.*—The commis-
2 sion shall fix the time for holding regular meetings, but it

3 shall meet at least once in the months of January, April,
4 July and October.

5 Special meetings of the commission may be called by
6 the president or by two members upon written request to
7 the secretary. The secretary shall send to all the mem-
8 bers, at least two days in advance of a special meeting, a
9 written notice fixing the time and place of the meeting.

10 Written notice of a special meeting is not required if
11 the time of the special meeting has been fixed in a regular
12 meeting, or if all members are present at the special
13 meeting.

Sec. 9. *Quorum.*—A majority of members shall con-
2 stitute a quorum. No action of the commission is official,
3 however, unless authorized by a majority of the commis-
4 sion at a regular or properly called special meeting.

Sec. 10. *Officers; Appropriation.*—The county court in
2 the case of the county planning commission, and the gov-
3 erning body of the city in the case of city planning com-
4 mission shall provide the commission with suitable offices
5 for the holding of meetings and the preservation of plans,
6 maps, documents and accounts, and shall provide by ap-

7 appropriation a sum sufficient to defray the reasonable ex-
8 penses of the commission.

Sec. 11. *Officers.*—At its first regular meeting in each
2 year the commission shall elect from its members a presi-
3 dent and vice president. The vice president shall have
4 authority to act as president of the commission during
5 the absence or disability of the president.

Sec. 12. *Appointment of Employees.*—The commission
2 may appoint and prescribe the duties and fix the com-
3 pensation of a secretary, and such employees as are neces-
4 sary for the discharge of the duties and responsibilities of
5 the commission. All such compensation, however, shall
6 be in conformity to and in compliance with salaries and
7 compensation theretofore fixed by the city or county court
8 of such cities or counties.

9 The commission may make contracts for special or
10 temporary services and any professional counsel. The
11 prosecuting attorney of a county, upon request, shall
12 render legal assistance and service to the county planning
13 commission.

Sec. 13. *City-County Commission; Powers.*—The governing body of any city located in a county having an established planning commission may, by ordinance, designate such county commission as the city planning commission.

A county planning commission designated as a city commission shall have for that city all the powers and duties granted under this act to a city planning commission.

Any city designating a county planning commission as its city planning commission may contract annually to pay the county a proportionate part of the expenses which is properly chargeable to the planning service rendered such city and any such payments received by the county shall be appropriated by the county to the county planning commission in addition to any funds budgeted for planning purposes.

Sec. 14. *Administrative Powers and Duties.*—To effectuate the purposes of this act, the commission shall have the power and duty to:

1. Exercise general supervision of and make regula-

5 tions for the administration of the affairs of the commis-
6 sion.

7 2. Prescribe uniform rules pertaining to its investiga-
8 tions and hearings.

9 3. Supervise the fiscal affairs and responsibilities of
10 the commission.

11 4. Prescribe the qualifications of, appoint, remove, and
12 fix the compensation of the employees of the commission,
13 such compensation to be in conformity to and in com-
14 pliance with salaries and compensations theretofore fixed
15 by the governing body of a city or county court of such
16 cities or counties. Delegate to employees authority to
17 perform ministerial acts in all cases except where final
18 action of the commission is necessary.

19 5. Keep an accurate and complete record of all depart-
20 mental proceedings; record and file all bonds and con-
21 tracts and assume responsibility for the custody and
22 preservation of all papers and documents of the commis-
23 sion.

24 6. Make recommendations and an annual report to the
25 governing body of a city or county court concerning the

26 operation of the commission and the status of planning
27 within its jurisdiction.

28 7. Prepare, publish and distribute reports, ordinances
29 and other material relating to the activities authorized
30 under this act.

31 8. Adopt a seal, and certify to all official acts.

32 9. Invoke any legal, equitable or special remedy for
33 the enforcement of the provisions of the act or ordinance
34 or its action taken thereunder.

35 10. Prepare and submit an annual budget in the same
36 manner as other departments of city and county govern-
37 ment and shall be limited in all expenditures to the pro-
38 visions made therefor by the governing body of such city
39 or the county court of such county.

40 11. If deemed advisable, establish an advisory com-
41 mittee or committees.

Sec. 15. *Appropriation; Expenditures; Gifts.*—After a
2 governing body of a city or a county court has passed an
3 ordinance creating a planning commission, the governing
4 body or county court shall appropriate funds to carry out
5 the duties of the commission.

6 The planning commission shall have authority to ex-
7 pend, under regular city or county procedure as provided
8 by law, all sums appropriated to it for purposes and activi-
9 ties authorized by this act.

10 A city or county may accept gifts and donations for
11 planning commission purposes. Any moneys so accepted
12 shall be deposited with the city or county in a special non-
13 reverting planning commission fund to be available for
14 expenditures by the planning commission for the purpose
15 designated by the donor. The disbursing officer of a city
16 or county shall draw warrants against such special non-
17 reverting fund only upon vouchers signed by the presi-
18 dent and secretary of the planning commission.

Sec. 16. *Comprehensive Plan; Purposes.*—A planning
2 commission shall make and recommend for adoption to
3 the governing body of the city or the county court, as the
4 case may be, a comprehensive plan for the physical devel-
5 opment of the territory within its jurisdiction. Any county
6 plan may include the planning of incorporated towns to
7 the extent to which, in the commission's judgment, they
8 are related to the planning of the unincorporated territory

9 of the county as a whole, provided, however, that the
10 plan shall not be considered as a comprehensive plan for
11 any incorporated town without the consent of the plan-
12 ning commission and the governing body of such incor-
13 porated town, and provided further that the county plan
14 shall be coordinated with the plans of the state road com-
15 mission, insofar as it relates to highways or thoroughfares
16 under the jurisdiction of that commission.

17 The comprehensive plan, with the accompanying maps,
18 plats, charts and descriptive and explanatory matter,
19 shall show recommendations for the development of the
20 territory covered by the plan and may include, among
21 other things, the general location, character and extent
22 of streets or roads, viaducts, bridges, waterways and
23 waterfront developments, parkways, playgrounds, forests,
24 reservations, parks, airports and other public ways,
25 grounds, places and spaces; the general location and ex-
26 tent of publicly owned utilities and terminals, and other
27 purposes; the acceptance, widening, removal, extension,
28 relocation, narrowing, vacation, abandonment or change
29 of use of any of the foregoing public ways, grounds, places,

30 spaces, buildings, properties, utilities or terminals; the
31 general character, location and extent of community cen-
32 ters, town sites or housing development; the general loca-
33 tion and extent of forests, agricultural areas and open-
34 development areas for the purposes of conservation, food
35 and water supply, sanitary drainage facilities or the pro-
36 tection of urban development; a land-classification and
37 utilization program; the distribution of population, and
38 the uses of land for trade, industry, habitation, recreation,
39 agriculture, forestry, soil and water conservation and
40 other purposes.

41 In the preparation of a comprehensive plan, a planning
42 commission shall make careful and comprehensive sur-
43 veys and studies of the existing conditions and probable
44 future changes of such conditions within the territory un-
45 der its jurisdiction. The comprehensive plan shall be made
46 with the general purpose of guiding and accomplishing
47 a coordinated, adjusted and harmonious development of
48 the area which will, in accordance with present and future
49 needs and resources, best promote the health, safety,
50 morals, order, convenience, prosperity or general welfare

51 of the inhabitants, as well as efficiency and economy in the
52 process of development, including, among other things,
53 such distribution of population and of the uses of land for
54 urbanization, trade, industry, habitation, recreation, agri-
55 culture, forestry and other purposes as will tend:

56 1. To create conditions favorable to health, safety, trans-
57 portation, prosperity, civic activities and recreational, edu-
58 cational and cultural opportunities;

59 2. To reduce the wastes of physical, financial or human
60 resources which result from either excessive congestion
61 or excessive scattering of population; and

62 3. Toward the efficient and economic utilization, con-
63 servation and production of the supply of food and water
64 and of drainage, sanitary and other facilities and re-
65 sources.

Sec. 17. *Comprehensive Plan; Contents.*—A compre-
2 hensive plan may include a study of the following:

3 1. Careful and comprehensive surveys and studies of
4 existing conditions and the probable future growth of the
5 city and its environs or of the county.

6 2. Maps, plats, charts and descriptive material present-

7 ing basic information, locations, extent and character of

8 any of the following:

9 a. History, population and physical site conditions.

10 b. Land use, including the height, area, bulk, location

11 and use of private and public structures and premises.

12 c. Population densities.

13 d. Community centers and neighborhood units.

14 e. Blighted and slum areas.

15 f. Streets and highways, including bridges, viaducts,

16 subways, parkways, alleys and other public ways and

17 places.

18 g. Sewers, sanitation and drainage, including handling,

19 treatment and disposal of excess drainage waters, sewage,

20 garbage, refuse and other wastes.

21 h. Stream pollution.

22 i. Flood control and prevention.

23 j. Public and private utilities, including water, light,

24 heat, communication and other services.

25 k. Transportation, including rail, bus, truck, air and

26 water transport and their terminal facilities.

27 l. Local mass transit, including motor and trolley bus;
28 street, elevated or underground railways and taxicabs.

29 m. Parks and recreation, including parks, playgrounds,
30 reservations, forests, wild life refuges and other public
31 grounds, spaces and facilities of a recreational nature.

32 n. Public buildings and institutions, including govern-
33 mental administration and service buildings, hospitals, in-
34 firmaries, clinics, penal and correctional institutions and
35 other civic and social service buildings.

36 o. Education, including location and extent of schools,
37 colleges and universities.

38 p. Land utilization, including residence, industry, agri-
39 culture, forests, and other uses.

40 q. Conservation of water, soil, agricultural and mineral
41 resources.

42 r. Any other factors which are a part of the physical,
43 economic or social situation within the city or county.

44 3. Reports, maps, charts and recommendations setting
45 forth plans for the development, redevelopment, improve-
46 ment, extension and revision of the subjects and physical
47 situations of the city or county set out in part two of this

48 section so as to substantially accomplish the object of this
49 legislation as set out in section one of this article.

50 4. A long-range development program of public works
51 projects, based on the recommended plans of the commis-
52 sion, for the purpose of eliminating unplanned, unsightly,
53 untimely and extravagant projects and with a view to
54 stabilizing industry and employment, and the keeping of
55 such program up to date by yearly revisions.

56 5. A long-range financial program of governmental ex-
57 penditures in order that such development program may
58 be carried out, and the keeping of such program up to date,
59 for all separate taxing units within the city or county,
60 respectively, for the purpose of assuring efficient and eco-
61 nomic use of public funds.

Sec. 18. *Comprehensive Plan; Public Hearing.*—Prior
2 to the adoption of a comprehensive plan, the commission
3 shall give notice and hold a public hearing on the plan
4 and a proposed ordinance for its enforcement.

5 At least thirty days prior to the date set for hearing, the
6 commission shall publish in a newspaper of general circu-

7 lation in the city or county a notice of the time and place
8 of the hearing.

Sec. 19. *Comprehensive Plan; Adoption.*—After a public
2 hearing has been held, the commission may by resolution
3 adopt the comprehensive plan and recommend the ordi-
4 nance to the governing body of the city or the county
5 court.

Sec. 20. *Comprehensive Plan; Certification.*—Upon
2 adoption of the comprehensive plan and the recommenda-
3 tion of the ordinance, the secretary shall certify a copy
4 of the plan to the governing body of the city or the
5 county court.

6 At the first meeting of the governing body of a city or
7 the county court after adoption of the plan, the secretary
8 or a member of the commission shall present the plan and
9 ordinance to the governing body or the county court.

Sec. 21. *Comprehensive Plan; Approval.*—After certifi-
2 cation of the plan and ordinance to the governing body
3 of a city or the county court, the governing body of the
4 city or the county court shall proceed to a consideration

5 of the plan and ordinance and shall either amend, approve
6 or reject the same. If the ordinance adopting the compre-
7 hensive plan is required by law to be published, said pub-
8 lication shall be sufficient if the plan is incorporated by
9 reference in said ordinance, and it shall not be necessary
10 to publish the full text of said plan in the ordinance.

Sec. 22. Comprehensive Plan; Rejection or Amendment.

2 —If the governing body of the city or the county court
3 rejects the plan and ordinance or amends it, then it shall
4 be returned to the commission for its consideration, with
5 a written statement of the reasons for its rejection or
6 amendment.

7 The commission shall have forty-five days in which to
8 consider the rejection or amendment and report to the
9 governing body of a city or the county court. If the com-
10 mission approves the amendment, the ordinance shall
11 stand as passed by the governing body of a city or the
12 county court as of the date of the filing of the commis-
13 sion's report with the governing body of a city or the
14 county court. If the commission disapproves the amend-

15 ment or rejection, it shall state its reasons in the report,
16 and the governing body of a city or the county court shall
17 again consider said plan and ordinance, and its action in
18 amending or rejecting said plan and ordinance, after such
19 consideration, shall be final.

20 In case the commission does not file a report with the
21 governing body of a city or the county court within forty-
22 five days, the action in amending or rejecting the ordi-
23 nance shall become final.

Sec. 23. *Comprehensive Plan and Ordinance; Amend-*
2 *ment.*—After the adoption of a comprehensive plan and
3 ordinance, all amendments to it shall be adopted accord-
4 ing to the procedure set forth in sections eighteen through
5 twenty-two, except that, if the governing body of a city
6 or the county court desires an amendment it may direct
7 the planning commission to prepare an amendment and
8 submit it to public hearing within sixty days after formal
9 written request by the governing body of a city or the
10 county court.

Sec. 24. *Comprehensive Plan; Validation of Prior Ac-*
2 *tion.*—The adoption of a comprehensive plan or any gen-

3 eral development plans by a planning commission under
4 the authority of prior acts is hereby validated and shall
5 continue in effect until amended under the authority of
6 this act.

Sec. 25. *Comprehensive Plan; Intergovernmental Co-*
2 *operation.*—Whenever the commission undertakes the
3 preparation of a comprehensive plan, the departments
4 and officials of state, city, county and separate taxing units
5 operating within lands under the jurisdiction of the com-
6 mission, shall make available, upon the request of the
7 commission, such information, documents, and plans as
8 have been prepared or upon the request of the commission
9 shall provide such information as relates to the commis-
10 sion's activity.

Sec. 26. *Comprehensive Plan; Territorial Jurisdiction.*—
2 A city planning commission shall adopt a comprehensive
3 plan for the development of the city, but the authority of
4 such city planning commission shall not extend beyond
5 the corporate limits of the city.

Sec. 27. *Cooperation Between Planning Commissions.*—
2 In the exercise of the powers covered by this article, the

3 planning commission of any county or city may cooperate
4 with the planning commissions or legislative and admin-
5 istrative bodies and officials of other counties and of cities
6 and towns within or without such county, with a view
7 to coordinating and integrating the planning and zoning
8 of such county or city with the plans of such other coun-
9 ties and of such cities and towns, and may appoint such
10 committee or committees and may adopt such rules as
11 may be thought proper to effect such cooperation. Such
12 planning commissions and legislative and administrative
13 bodies and officials of other counties and of cities and
14 towns are hereby authorized to cooperate with such
15 county or city planning commissions for the purposes of
16 such co-ordination and integration. Similarly, such county
17 or city planning commissions may cooperate with the
18 conservation commission of West Virginia and make use
19 of advice and information furnished by such commission
20 and by other appropriate state and federal officials, de-
21 partments and agencies and all state departments and
22 agencies having information, maps, and data pertinent to

23 the planning and zoning of such county or city may make
24 such available for the use of such planning commission.

Sec. 28. *Approval of Plats.*—After a comprehensive plan
2 and an ordinance, containing provisions for subdivision
3 control and the approval of plats and re-plats, have been
4 adopted and a certified copy of the ordinance has been
5 filed with the county clerk, a plat of a subdivision shall
6 not be recorded by the county clerk unless it has first been
7 approved by the planning commission having jurisdiction
8 over the area.

Sec. 29. *Application For Approval.*—A person desiring
2 the approval of a plat shall submit a written application
3 for a certificate together with a copy of the proposed plat
4 to the planning commission having jurisdiction.

5 Upon receipt of the application, the commission, if it
6 tentatively approves the application, shall set a date for
7 a hearing, notify the applicant in writing, and notify by
8 general publication or otherwise any person or govern-
9 mental unit having a probable interest in the proposed
10 plat.

Sec. 30. *Approval of Plats; Basis for Commission's Ac-*
2 *tion.*—In determining whether an application for approval
3 shall be granted, the commission shall determine if the
4 plat provides for:

5 1. Coordination of subdivision streets with existing and
6 planned streets or highways.

7 2. Coordination with and extension of facilities included
8 in the comprehensive plan.

9 3. Establishment of minimum width, depth, and area
10 of lots within the projected subdivision.

11 4. Distribution of population and traffic in a manner
12 tending to create conditions favorable to health, safety,
13 convenience, and the harmonious development of the city
14 or county.

15 5. Fair allocations of areas for streets, parks, schools,
16 public and semi-public buildings, homes, utilities, busi-
17 ness and industry.

18 As a condition of approval of a plat the commission may
19 specify:

20 1. The manner in which streets shall be laid out, graded
21 and improved.

22 2. Provisions for water, sewage, and other utility serv-

23 ices.

24 3. Provision for schools.

25 4. Provision for essential municipal services.

26 5. Provision for recreational facilities.

Sec. 31. *Approval of Plats; Commission Action.*—After
2 hearing and within a reasonable time after application for
3 approval of the plat, the commission shall approve or dis-
4 approve it. If the commission approves, it shall affix the
5 commission's seal upon the plat. If it disapproves, it shall
6 set forth its reasons in its own records and provide the
7 applicant with a copy.

Sec. 32. *Approval Fees.*—The commission may establish
2 a uniform schedule of fees proportioned to the cost of
3 checking and verifying the proposed plats. An applicant
4 shall pay the specified fee at the time of filing his applica-
5 tion.

Sec. 33. *Plats Filed Without Approval.*—After a com-
2 prehensive plan and an ordinance containing provisions
3 for subdivision control and the approval of plats and re-
4 plats have been adopted and a certified copy of the ordi-

5 nance has been filed with the county clerk, the filing and
6 recording of a plat involving the subdivision of lands cov-
7 ered by such comprehensive plan and ordinance shall be
8 without legal effect unless approved by the commission:
9 *Provided, however,* That failure to comply with this sec-
10 tion shall not invalidate or affect the title to any land
11 within the area of such plat: *And provided further,* That
12 if such plat shall bear the seal of the commission it shall
13 be presumed to have been approved thereby.

Sec. 34. *Plats; Conditional Approval.*—The commission
2 may approve a plat for a subdivision in which the im-
3 provements and installations have not been completed as
4 required by the ordinance for the approval of plats if the
5 applicant provides a bond which shall:

- 6 1. Run to the city or county which established the com-
7 mission.
- 8 2. Be in an amount determined by the commission to be
9 sufficient to complete the improvements and installations
10 in compliance with the ordinance.
- 11 3. Be with surety satisfactory to the commission.

12 4. Specify the time for the completion of the improve-
13 ments and installations.

14 Any funds received from these bonds shall be used by
15 the legally constituted body charged with making public
16 improvements for the city or county only for completion
17 of the improvements and installations for which they were
18 provided, and without prior appropriation. The city or
19 county is authorized to make these improvements and in-
20 stallations.

Sec. 35. *Plat Control; Jurisdiction.*—After a compre-
2 hensive plan and an ordinance containing provisions for
3 subdivision control and the approval of plats and re-plats
4 have been adopted and a certified copy of the ordinance
5 has been filed with the county clerk, the city planning
6 commission shall have exclusive control over the ap-
7 proval of all plats involving incorporated land covered by
8 the comprehensive plan and ordinance. The city planning
9 commission shall have exclusive control over the approval
10 of plats involving unincorporated land within its jurisdic-
11 tion, unless a county court has adopted a comprehensive
12 plan and ordinance, providing for subdivision control and

13 approval of plats and re-plats covering such lands, in
14 which case the county planning commission shall have ex-
15 clusive control over the approval.

16 All control over plats granted by other statutes, so far
17 as they are in harmony with the provisions of this act,
18 shall be transferred to the commission having jurisdiction
19 over the land involved. Existing provisions for platting
20 control, so far as they are inconsistent with the provisions
21 of this act, are hereby repealed.

Sec. 36. *Improvement Location Permits.*—Within the
2 corporate limits of a city, a structure shall not be located
3 and an improvement location permit for a structure on
4 platted or unplatted lands shall not be issued unless the
5 structure and its location conform to the comprehensive
6 plan and ordinance. A structure shall not be located and
7 an improvement location permit shall not be issued for a
8 structure on unincorporated lands within the jurisdiction
9 of the commission unless the structure and its location
10 conform to the comprehensive plan and ordinance, except
11 that, if the lands lie within a county which has adopted a
12 comprehensive plan and ordinance, then the city compre-

13 hensive plan and ordinance shall not apply and the struc-
14 ture must conform to the county comprehensive plan and
15 ordinance.

Sec. 37. *Improvement Location Permits; Authority to*
2 *Control.*—The ordinance may designate the official or em-
3 ployee of the city or county who shall have authority to
4 issue improvement location permits within the jurisdic-
5 tion of the commission and in conformance with the com-
6 prehensive plan and ordinance.

7 Power is granted by this act, to any city having adopted
8 a comprehensive plan and ordinance, for the issuance and
9 control of improvement location permits on unincor-
10 porated areas within the jurisdiction of its commission if
11 the lands lie within a county not having adopted a com-
12 prehensive plan and ordinance.

Sec. 38. *Certiorari Procedure.*—A decision of the com-
2 mission may be reviewed by certiorari procedure the same
3 as that provided for the appeal of zoning cases from the
4 decision of the board of zoning appeals.

5 A petition for certiorari shall specify the grounds upon
6 which the petition alleges the illegality of the commis-

7 sion's action. Such petition must be filed in the circuit
8 court of the county in which the land is located within
9 thirty days after the date of such decision.

Sec. 39. *Zoning Authority.*—As an integral part of the
2 planning of areas so that adequate light, air, convenience
3 of access, and safety from fire, flood and other danger may
4 be secured; that congestion in the public streets may be
5 lessened or avoided; that the public health, safety, com-
6 fort, morals, convenience and general public welfare may
7 be promoted; and that the object of this legislation, as set
8 out in section one of this article, may be further accom-
9 plished, the governing body of a city or the county court
10 shall have the following powers:

- 11 1. To classify, regulate and limit the height, area, bulk
12 and use of buildings hereafter to be erected.
- 13 2. To regulate and determine the area of front, rear,
14 and side yards, courts and other open spaces about such
15 buildings.
- 16 3. To regulate and determine the use and intensity of
17 use of land and lot areas.
- 18 4. To classify, regulate and restrict the location of

19 trades, callings, industries, commercial enterprises and
20 the location of buildings designed for specified uses.

21 5. To classify and designate the rural lands among agri-
22 cultural, industrial, commercial, residential, and other
23 uses and purposes.

24 6. To divide the city or county into districts of such kind,
25 character, number, shape and area as may be deemed ne-
26 cessary to carry out the purposes of this section.

Sec. 40. *Zoning Districts.*—The various kinds of districts
2 created and designated as use, height, area, volume or
3 bulk districts, as well as districts created for any other
4 purpose necessary to carry out the purposes of section
5 thirty-nine need not necessarily cover or include the same
6 territory, and may overlap or coincide. The districts cre-
7 ated shall also be subject to the following:

8 1. Regulations as to height, area, bulk and use of build-
9 ings and as to the area of all yards, courts and open spaces
10 shall be uniform for each class of buildings throughout
11 each district.

12 2. For each district designated for the location of trades,
13 callings, industries, commercial enterprises or buildings

14 designated for specified uses, regulations may be enforced
15 specifying uses that shall be excluded or subjected to rea-
16 sonable requirements of a special nature and designating
17 the use for which buildings may not be erected, altered
18 or used.

19 3. The regulations in one or more districts of the same
20 kind or character may differ from those in other like dis-
21 tricts but shall be uniform for each district.

22 4. Several parts of the city or county may be classified
23 within a single district although not contiguous.

Sec. 41. *Zoning Districts; Preliminary Study.*—In estab-
2 lishing such districts and regulations the governing body
3 of a city or the county court shall pay reasonable regard
4 to existing conditions, the character of buildings erected
5 in each district, the most desirable use for which the land
6 in each district may be adapted and the conservation of
7 property values throughout the city or county.

Sec. 42. *Zoning District; Tentative Report.*—Recom-
2 mendations as to the boundaries of districts and the regu-
3 lations and restrictions to be enforced therein shall be
4 prepared by the planning commission. The commission

5 may prepare the tentative report on its own initiative or
6 the governing body of a city or the county court may re-
7 quire its preparation.

8 The commission shall hold public preliminary hearings
9 and conferences, at such times and places and upon such
10 notice as it may determine to be necessary to inform and
11 aid itself in the preparation of the tentative report.

12 The tentative report, which shall include the proposed
13 zoning ordinance with explanatory maps, shall be made
14 to the governing board of a city or the county court by the
15 planning commission.

Sec. 43. Tentative Report; Action by Legislative Body.—

2 The governing body of a city or the county court shall con-
3 sider the tentative report of the planning commission and
4 shall return it, with any suggestions and recommenda-
5 tions, to the planning commission for its final report.

6 No ordinance under authority of this act shall be passed
7 until after the final report of the planning commission has
8 been received by the governing body of a city or the
9 county court.

Sec. 44. *Final Report; Action.*—After the final report
2 has been submitted by the planning commission the gov-
3 erning body of a city or the county court shall afford all
4 interested persons an opportunity to be heard with refer-
5 ence to it at public hearings convenient for all persons
6 affected to be held at times and places to be specified in
7 notices to be published in a daily newspaper of general
8 circulation in the city or county. The notices shall state
9 the time and places of the hearings, that the report con-
10 tains a comprehensive zoning ordinance for the city or
11 county, that written objections to the final report filed
12 with the clerk of the governing body of a city or with the
13 county clerk at or before the hearings will be heard and
14 that the hearings will be continued from time to time as
15 may be found necessary. The notice shall be published at
16 least twice within ten days before the time set for the
17 hearings, during which time the final report shall be on
18 file in the office of the planning commission for public
19 examination. Upon completion of the public hearings, the
20 governing body of a city or the county court shall proceed
21 to the consideration of the ordinance.

Sec. 45. *Supplemental and Amending Ordinances.*—The
2 governing body of a city or the county court may, from
3 time to time, amend, supplement or change the regula-
4 tions and districts fixed by ordinance pursuant to this
5 article.

Sec. 46. *Petitions for Change of Zoning Regulations.*—
2 Petitions, duly signed, may be presented to the clerk of
3 the city or the county requesting an amendment, supple-
4 ment or change of the regulations of the zoning ordinance
5 by:

- 6 1. The planning commission.
- 7 2. By the owners of fifty percentum or more of the area
8 involved in the petition.

Sec. 47. *Proposed Changes; Action.*—Amendments, sup-
2 plements or changes of the regulations of the zoning
3 ordinance shall be considered as amendments to the com-
4 prehensive plan. Any proposed ordinance for the amend-
5 ment, supplement, change or repeal of the zoning ordi-
6 nance not originating from petition of the planning com-
7 mission shall be referred to the planning commission for

8 consideration and report before any final action is taken
9 by the governing body of a city or the county court.

10 Prior to the submission to the governing body of a city
11 or the county court of a planning commission petition or a
12 report on a proposed ordinance referred to it for an
13 amendment, supplement, change or repeal of the zoning
14 ordinance, the planning commission shall give notice and
15 hold a public hearing in the manner prescribed for adop-
16 tion of a comprehensive plan in section eighteen of this
17 article.

Sec. 48. *Election; Procedure.*—If within sixty days fol-
2 lowing the approval of the zoning ordinance by the county
3 court or the governing body of the city a petition is filed
4 with the county clerk praying for the submission of such
5 zoning ordinance for approval or rejection to the electors
6 residing in the area within the jurisdiction of the city or
7 county planning commission, such ordinance shall not
8 take effect until the same shall have been approved by a
9 majority of the electors voting in said election at any
10 regular or special election called for that purpose. The
11 petition provided herein may be in any number of coun-

12 terparts and must be signed by a number of registered
13 voters residing in the area affected by the proposed zon-
14 ing equal to not less than fifteen per cent of the total votes
15 cast in the affected area for all candidates for governor
16 at the last preceding general election at which a governor
17 was elected. Only registered voters residing in the area
18 affected by the proposed ordinance shall be eligible to
19 vote in said election.

20 Upon the ballots cast at such election there shall be
21 written or printed the following:

22 For zoning.

23 Against zoning.

24 If a majority of the votes cast upon the question be for
25 zoning, the provisions of said zoning ordinance shall, upon
26 the day the results of such an election are declared, be
27 effective. If a majority of the votes cast be against zoning,
28 the question may again be submitted to a vote at any reg-
29 ular election or election for officers in the manner herein
30 provided.

31 Elections for the purpose of voting upon the question
32 of zoning may be held at any general, primary or special

33 election which the governing body of a city or the county
34 court in its order submitting the same to a vote may desig-
35 nate.

36 Notice of all zoning elections shall be given by publica-
37 tion of the order calling such election at least once each
38 week for four successive weeks prior to the day of the
39 election in two newspapers of different politics, if there
40 be such, of general circulation in the area in which the
41 election is to be held. If only one newspaper be of general
42 circulation in such area, the notice shall be published as
43 aforesaid therein.

44 Elections shall be held at the voting precincts estab-
45 lished for holding general elections. All the provisions of
46 the general election laws of this state concerning general,
47 primary or special elections, when not in conflict with
48 provisions of this article, shall apply to elections here-
49 under, insofar as practicable.

Sec. 49. *Validation of Existing Ordinances.*—All zoning
2 ordinances, and all amendments, supplements and changes
3 thereto legally adopted under any prior enabling acts, and
4 all actions taken under the authority of any such ordi-

5 nances, are hereby validated and continued in effect, until
6 amended or repealed by action of the governing body of
7 such city taken under authority of this act. These ordi-
8 nances shall have the same effect as though previously
9 adopted as a comprehensive plan of land use or parts
10 thereof.

Sec. 50. *Existing Uses Safeguarded.*—Such ordinance or
2 ordinances shall not prohibit the continuance of the use of
3 any land, building or structure for the purpose for which
4 such land, building or structure is used at the time such
5 ordinance or ordinances take effect, but any addition to
6 any existing building for the purpose of carrying on any
7 use prohibited under the zoning regulations applicable to
8 the district may be prohibited: *Provided, however,* That
9 no such prohibition shall apply to alterations, additions
10 to, replacement of structures, or to the acquisition or use
11 of land presently owned by any firm or industry but not
12 used for agricultural or industrial purposes or to the use
13 or acquisition of additional land which may be required
14 for the protection, continuing development or expansion
15 of any agricultural, industrial or manufacturing operation
16 or any present or future satellite agricultural, industrial

17 or manufacturing use. If a non-conforming use has been
18 abandoned, any future use of such land, building or struc-
19 ture shall be in conformity with the provisions of the
20 ordinance regulating the use in the district in which
21 such land, building or structures may be located: *Pro-*
22 *vided, however,* That abandonment of any particular
23 agricultural or manufacturing process shall not be con-
24 strued as abandonment of agricultural or manufacturing
25 use.

26 Nothing in this article shall be deemed to authorize an
27 ordinance, rule, or regulation which would prevent, out-
28 side of urban areas, the complete use and alienation of
29 any timber and any and all minerals, including coal, oil
30 and gas, by the owner or alienee thereof. For the purpose
31 of this section, urban area shall include all lands or lots
32 within the jurisdiction of a city planning commission as
33 defined in this article.

Sec. 51. *Board of Zoning Appeals; Creation; Member-*
2 *ship; Terms; Vacancies.*—As a part of the zoning ordi-
3 nance, the governing body of a city or the county court
4 shall create a board of zoning appeals consisting of five

5 members to be appointed by the governing body of a city
6 or the county court.

7 The members of the board of zoning appeals shall be
8 freeholders and residents of the city or county and three-
9 fifths of such members shall have been residents of the
10 city or county, as the case may be, for at least ten years
11 preceding the time of their appointment. No member of
12 the board of zoning appeals shall be a member of the
13 planning commission nor shall any member hold other
14 elective or appointive office in the city or county govern-
15 ment. Members of the board shall serve without compen-
16 sation, but shall be reimbursed for actual expenses in-
17 curred in the performance of their official duties.

18 Upon the creation of a board of zoning appeals, the
19 members shall be appointed for the following terms: One
20 for a term of one year; two for a term of two years; two
21 for a term of three years. The terms shall expire on the
22 first day of January of the first, second or third year, re-
23 spectively, following their appointment. Thereafter, as
24 their terms expire, each new appointment shall be for a
25 term of three years.

26 If a vacancy occurs, by resignation or otherwise, among
27 the members of the board of zoning appeals, the govern-
28 ing body of a city or the county court shall appoint a mem-
29 ber for the unexpired term.

Sec. 52. *Officers; Quorum; Employees.*—At the first
2 meeting of each year, the board of zoning appeals shall
3 elect a chairman and vice chairman from its members.
4 The vice chairman shall have authority to act as chairman
5 during the absence or disability of the chairman.

6 A majority of members of a board of zoning appeals
7 shall constitute a quorum. No action of the board is offi-
8 cial, however, unless authorized by a majority of the
9 board.

10 The board of zoning appeals may appoint and fix the
11 compensation of a secretary and such employees as are
12 necessary for the discharge of its duties all in conformity
13 to and compliance with salaries and compensations there-
14 fore fixed by the city or county.

Sec. 53. *Offices; Appropriation.*—The county court in the
2 case of the county board of zoning appeals, and the gov-
3 erning body of the city in the case of city board of zoning

4 appeals shall provide the board with suitable offices for
5 the holding of meetings and the preservation of plans,
6 maps, documents and accounts, and shall provide by ap-
7 propriation a sum sufficient to defray the reasonable ex-
8 penses of the board.

Sec. 54. *Rules and Procedures.*—The board of zoning ap-
2 peals shall adopt such rules concerning the filing of ap-
3 peals and applications for variances and exceptions, giv-
4 ing of notice and conduct of hearings as shall be necessary
5 to carry out their duties under the terms of this act.

6 The board shall keep minutes of its proceedings, keep
7 records of its examinations and other official actions and
8 shall record the vote on all actions taken. All minutes and
9 records shall be filed in the office of the board and shall
10 be a public record.

Sec. 55. *Powers and Duties.*—The board of zoning ap-
2 peals shall:

3 1. Hear and determine appeals from and review any
4 order, requirement, decision or determination made by an
5 administrative official or board charged with the enforce-

6 ment of any ordinance or regulation adopted pursuant to
7 sections thirty-nine through forty-nine of this article.

8 2. Permit and authorize exceptions to the district regu-
9 lations only in the classes of cases or in particular situa-
10 tions as specified in the ordinance.

11 3. Hear and decide special exceptions to the terms of the
12 ordinance upon which the board is required to act under
13 the ordinance.

14 4. Authorize upon appeal in specific cases such variance
15 from the terms of the ordinance as will not be contrary
16 to the public interest, where, owing to special conditions,
17 a literal enforcement of the provisions of the ordinance
18 will result in unnecessary hardship, and so that the spirit
19 of the ordinance shall be observed and substantial justice
20 done.

21 In exercising its powers, the board of zoning appeals
22 may reverse or affirm, wholly or partly, or may modify
23 the order, requirement, decision or determination ap-
24 pealed from as in its opinion ought to be done in the
25 premises, and to that end shall have all the powers of the
26 officer or board from whom the appeal is taken.

Sec. 56. *Appeal from Decision of Administrative Official or Board.*—An appeal taken from the requirement, decision or the determination made by an administrative official or board charged with the enforcement of any ordinance pursuant to sections thirty-nine through forty-nine of this article shall be filed with the board of zoning appeals.

The appeal shall specify the grounds thereof and shall be filed within such time and in such form as may be prescribed by the board by general rule.

The administrative official or board from whom the appeal is taken shall, upon request of the board of zoning appeals, transmit to it all documents, plans and papers constituting the record of the action from which an appeal was taken.

Sec. 57. *Hearing of Appeal.*—The board of zoning appeals shall fix a reasonable time for the hearing of an appeal. Public notice shall be given of the hearing and due notice shall be given additionally to the interested parties.

The board of zoning appeals may require the party tak-

6 ing the appeal to assume the cost of public notice and due
7 notice to interested parties.

8 Upon the hearing, any party may appear in person, by
9 agent or by attorney.

Sec. 58. *Staying of Work on Premises.*—When an ap-
2 peal from the decision of any official or board has been
3 taken and filed with the board of zoning appeals, all pro-
4 ceedings and work on the premises concerning which the
5 decision was made shall be stayed unless the official or
6 board from whom the appeal was taken shall certify to the
7 board of zoning appeals that, by reason of facts stated in
8 the certificate, a stay would cause imminent peril to life
9 or property. In such case, proceedings or work shall not
10 be stayed except by a restraining order which may be
11 granted by the circuit court of the county in which the
12 premises affected are situated, on application, on notice to
13 the officer or board from whom the appeal is taken and the
14 owner of the premises affected and on due cause shown.

Sec. 59. *Petition for Writ of Certiorari from Decision.*—
2 Every decision of the board of zoning appeals shall be sub-
3 ject to review by certiorari.

4 Any person or persons, firm or corporation jointly or
5 severally aggrieved by any decision of the board of zon-
6 ing appeals, may present to the circuit court of the county
7 in which the premises affected are located a petition duly
8 verified, setting forth that such decision is illegal in whole
9 or in part, and specifying the grounds of the illegality.
10 The petition shall be presented to the court within thirty
11 days after the date of the decision and the order of the
12 boards of zoning appeals complained of.

Sec. 60. *Notice to Adverse Parties.*—On filing a petition
2 for a writ of certiorari with the clerk of the circuit court
3 of the county in which the premises affected are situated,
4 the petitioner shall cause a notice to be issued and served
5 by the sheriff of the county upon the adverse party or
6 parties, if any, as shown by the record of the appeal in the
7 office of the board of zoning appeals.

8 The adverse party or parties shall be any property owner
9 whom the record of the board of zoning appeals shows to
10 have appeared at the hearing before the board in opposi-
11 tion to the petitioner. If the record shows a written
12 remonstrance or other document opposing the request of

13 petitioner containing more than three names, the peti-
14 tioner shall be required to cause notice to be issued and
15 served upon the three property owners whose names first
16 appear upon the remonstrance or document. Notice to the
17 other parties named shall not be required.

18 The notice shall state that a petition for a writ of certi-
19 orari has been filed in the circuit court of the county, ask-
20 ing for a review of the decision of the board of zoning
21 appeals, designating the premises affected and the date of
22 the decision and the time fixed for the return of the writ
23 of certiorari by the board of zoning appeals.

24 The service of the writ of certiorari by the sheriff on the
25 chairman or secretary of the board of zoning appeals shall
26 constitute notice to the board and to the city or any of-
27 ficial or board thereof charged with the enforcement of
28 the zoning ordinance, and no further summons or notice
29 with reference to the filing of such petition shall be nec-
30 essary.

Sec. 61. *Action of Court on Petition.*—Upon presenta-
2 tion of a petition for a writ of certiorari, the circuit court
3 of the county in which the premises affected are situated,

4 or a judge thereof in vacation shall direct the board of
5 zoning appeals within twenty days from the date of such
6 citation, to show cause why a writ of certiorari should not
7 issue. If such board fails to show the satisfaction of the
8 court that a writ should not issue then the court may al-
9 low a writ of certiorari directed to the board of zoning
10 appeals. The writ shall prescribe the time in which a re-
11 turn shall be made to it. This time shall not be less than
12 ten days from the date of issuance of the writ and may be
13 extended by the court or judge thereof.

Sec. 62. *Stay of Work on Allowance of Writ.*—The al-
2 lowance of the writ of certiorari shall not stay proceedings
3 or work on the premises affected under the decision to be
4 brought up for review. The court may, however, on ap-
5 plication and on notice to all parties to the decision and on
6 due cause shown grant such relief as the circumstances of
7 the case may require, including an order staying the work
8 until final determination of the case by the court.

9 Such staying order may be issued by the court without
10 requiring the petitioner to enter into a written undertak-

11 ing to the adverse party affected thereby for the payment
12 of damages by reason of such staying order.

Sec. 63. *Return to Writ by Board of Zoning Appeals.*—

2 The return to the writ of certiorari by the board of zoning
3 appeals must concisely set forth such facts and data as
4 may be pertinent and present material to show the
5 grounds of the decision appealed from.

6 The return must be verified by the secretary of the
7 board.

8 The board shall not be required to return the original
9 papers acted upon by it. It shall be sufficient to return
10 certified copies of all or such portion of the papers as may
11 be called for by the writ.

Sec. 64. *Action by the Court.*—The court may decide
2 and determine the sufficiency of the statements of illegal-
3 ity contained in the petition without further pleadings and
4 may make its determination and render its judgment with
5 reference to the legality of the decision of the board of
6 zoning appeals on the facts set out in the return to the
7 writ of certiorari.

8 If it shall appear to the court that testimony is necessary

9 for the proper disposition of the matter, it may take evi-
10 dence to supplement the evidence and facts disclosed by
11 the return to the writ of certiorari, but no such review
12 shall be by trial *de novo*.

13 In passing upon the legality of the decision of the board
14 of zoning appeals, the court may reverse or affirm, wholly
15 or in part, or may modify the decision of the board of zon-
16 ing appeals brought for review.

Sec. 65. *Appeals from Court Judgment.*—An appeal
2 may be taken to the supreme court of appeals of West Vir-
3 ginia from the final judgment of the court reversing, af-
4 firming or modifying the decision of the board of zoning
5 appeals in the same manner, and upon the same terms,
6 conditions and limitations as appeals in other civil actions.

Sec. 66. *Enforcement.*—The governing body of a city or
2 the county court may provide penalties as set out in sec-
3 tion sixty-eight of this act for failure to comply with the
4 provisions of any ordinance adopted pursuant to this act
5 and may declare that the buildings erected, raised or con-
6 verted or land or premises used in violation of any pro-
7 vision of any ordinance or regulation made under the au-

8 thority of sections thirty-nine through sixty-five of this
9 article to be common nuisances and the owner of the
10 building, land or premises shall be liable for maintaining
11 a common nuisance.

Sec. 67. *Injunction.*—The planning commission, the
2 board of zoning appeals or any designated enforcement
3 official may institute a suit for injunction in the circuit
4 court of the county to restrain an individual or a govern-
5 mental unit from violating the provisions of this article
6 or of an ordinance enacted pursuant to its terms. The
7 planning commission or the board of zoning appeals may
8 also institute a suit for a mandatory injunction directing
9 an individual or a governmental unit to remove a structure
10 erected in violation of the provisions of this article or of an
11 ordinance enacted pursuant to its terms. If the planning
12 commission or the board of zoning appeals is successful
13 in its suit, the respondent shall bear the costs of the action.

Sec. 68. *Penalty.*—A person who violates any provision
2 of this article shall be guilty of a misdemeanor and, upon
3 conviction, shall be fined not less than ten dollars and not
4 more than three hundred dollars.

Sec. 69. *Provisions Supplemental.*—The provisions of
2 this article are supplemental to and do not abrogate the
3 powers extended to agencies, bureaus, departments, com-
4 missions, divisions or officials of the state government by
5 other state statute and these powers shall remain in full
6 force and effect. Powers of supervision and regulation by
7 such divisions of the state government over city, town,
8 county and other local governmental units, individuals,
9 firms or corporations also are not abrogated and shall
10 continue in full effect: *Provided, however,* That if the
11 county court of Monongalia county shall not create a
12 county planning commission as contemplated herein, the
13 county court of said county is hereby authorized to enact
14 an ordinance for the zoning of any unincorporated ter-
15 ritory in said county within one-half mile of the campus
16 of any state-supported institution of higher education.
17 With respect to the zoning of such territory the county
18 court shall have the same authority as is conferred upon
19 municipalities as provided herein.

Sec. 70. *Conflict with Other Laws.*—Wherever the reg-
2 ulations made under authority of this article require a

3 greater width or size of yards, courts, or other open spaces,
4 or require a lower height of building or less number of
5 stories, or require a greater percentage of lot to be left
6 unoccupied, or impose other higher standards than are re-
7 quired in any other statute or local ordinance or regula-
8 tion, the provisions of the regulations made under author-
9 ity of this article shall govern. Whenever the provisions
10 of any other statute or local ordinance or regulation re-
11 quire a greater width or size of yards, courts, or other open
12 spaces, or require a lower height of building or a less num-
13 ber of stories, or require a greater percentage of lot to be
14 left unoccupied, or impose other higher standards than are
15 required by the regulations made under authority of this
16 article, the provision of such statute or local ordinance or
17 regulation shall govern.

Sec. 71. *General Repealer.*—All acts or parts of acts in-
2 consistent with the provisions of this act are, to the extent
3 of their inconsistency, repealed, except as provided in sec-
4 tion seventy. Any town, as herein defined, presently hav-
5 ing a zoning ordinance is hereby excepted from the pro-

6 visions of this section, and such town may continue to
7 enforce said zoning ordinance.

Sec. 72. *Severability Clause.*—The provisions of this
2 act are considered severable, and if any provision is found
3 to be unconstitutional, it is the intention of the Legislature
4 that the remainder have full force and effect.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

W. N. Jasper Jr.
Chairman Senate Committee

Eudora Andrews
Chairman House Committee

Originated in the Senate.

Takes effect 90 days from passage.

Howard Myers
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Ralph Bean
President of the Senate

H. R. Pauley
Speaker House of Delegates

The within approved this the 20th
day of March, 1959.

W. H. Underwood
Governor

