

Laws of Planning and the Organisation of Planning

by Friedrich Halstenberg

Laws of planning and the organisation of planning are the administrative contributions to solve the material tasks of planning. The tasks set for local, regional, and state planning conform greatly with the problems of in the other densely populated industrial countries.

Summarising, it may be said that the aims are decisive measures against irregular and scattered settlements by achieving the complete covering with buildings, grouped and dispersed, according to specific functions. At the same time consideration must be given to the requirements of houses with attached gardens as well as healthy family-size flats either by developing new building sites or by the re-building on out-dates ones. The irregular growth of sites and areas in congested districts must be resisted, and the growth of industries must be directed towards appropriate centres of medium and minor importance, capable of further development. To reach this aim, the economic, technical, social, and cultural conditions as well as general living conditions should be improved by suitable measures open to the planning authorities. At the same time, the noticeable process of an exodus from industrially underdeveloped areas, must be reversed.

The difficulties in realising these ambitious aims are to be found in the fundamental and essential rights of personal and professional freedom, the absolutely free choice of industrial location and an extremely strong protection of individual property on the one hand. On the other hand, they are also connected with the decentralization and division of administrative and legislative competence characteristic of our system, as well as the incongruity between the tradition of regional administrative and the areas for planning and development, the latter being based geographically upon the principle of social-economic units.

These difficulties are reflected in our legislation which, although remarkable attempts in the right direction have been made, is still inconsistent and incomplete.

I. The Planning Law

Legislation for town and country planning and regional planning in the various fields, such as directives for the development study, state (provincial) planning and Federal planning has not been uniform.

(1) Federal Law Regulation Overall Planning

The extent of legislative competence in the field of overall planning by the Federal Government is controversial. This is one of the reasons for a law regulating this matter not yet having been enforced. So far, only an administrative agreement has been reached regulating the process for the co-operation of the Federal Government with the state governments (Länder) on rather broad lines.

(2) State Planning Law

State planning laws exist so far in Northrhine-Westfalia (1951) and Bavaria (1957). These laws regulate the regional-planning-organisations (see Para II) as well as some outlines for the drawing-up of plans and the right to veto them.

There are administrative regulations for the planning-organisation in the remaining states. State planning laws are being prepared in some of these states.

(3) Law Regulating Local Planning

It is to be expected that the town planning and building laws, so far scattered over a number of Federal and state laws, will in 1960 be embraced in one uniform Federal law. This law will regulate the following subjects:

a) the municipal development plans:

plans for the utilization of land and the building, drawing up of plans, contents, effects.

b) Injunction to ban all alterations:

a temporary ban for building and alterations may be imposed during the preparation of a new plan.

c) Transfer of property will be subject to authorization in order to control those real estate transactions that are important to safeguard a careful planning.

d) Municipal priority right enabling the municipal authorities to purchase certain types of building sites notwithstanding private contracts.

e) Right of transferring building sites:

in order to carry-out plans for unsuitable building sites, these may be re-drafted and after the necessary adjustments for opening-up the area to traffic etc., such sites may be returned to the former owners.

f) To utilize a building site in accordance with the requirements of the municipal plans or to prepare such utilization expropriation will be permissible, in the event of negotiations failing.

g) Contribution to the betterment of new building areas: the owners of building sites will have to pay certain contributions towards the costs of roads and development.

h) The value of building sites will be determined by means of estimates made for public authorities as well as private potential buyers.

i) Special tax for building sites: a progressively increasing ground tax will be levied in unbuilt sites.

These subject matters essentially cover the legislative competence of the Federal Government. The remaining laws for the building activity, chiefly by the "Bauordnungsrecht" (Law regulating building matters) fall under state legislation. Mainly, this law contains the regulations necessary for the safety of, and procedure with, individual buildings. A unification of these regulations will be effected by the drafting of a general pattern, worked out by a committee of experts.

(4) Inter-communal Planning Law

Legislation towards an inter-communal planning co-ordination is still in the beginning, although more and more importance is attached to such legislation. Two different legal procedures are being developed; on the one hand a general legislation setting certain models of co-operation processes or organizations for local authorities, and, on the other hand, a special legislation to regulate particular cases.

a) General regulations are made up of the Association Law and the previous regulations laid down in the reconstruction laws for the planning associations, which, in practice, have been exercised with great restraint. A new Federal law will bring more advanced regulations.

- b) The Planning Association of the Ruhr-District (Siedlungsverband Ruhrkohlenbezirk) is an outstanding example for an intercommunal, regional Planning Association established by special legislation in 1920. In 1950 a similar organisation to work out plans for the Rhine Brown Coal District, the so-called Brown Coal Committee, was set up. Attempts are being made to establish similar planning associations by special legislation for several urban areas.

II. Planning Organisation

(1) Organs of Federal Planning

- a) The minister responsible for regional planning is the Secretary of the Interior, as far as the Federal Government is concerned. The advisory organ is the Inter-ministerial Committee for Regional Planning (IMARO) in which the different Federal ministries are represented. The Federal Government instituted an Expert Committee for Regional Planning (SARO) as an independent body of experts to work out the overall plan for the development of the Federal Republic as well as the practicabilities of such an overall plan.
- b) The administrative agreement concluded in 1957 to establish a co-operation in regional planning between the Federal Government and state governments instituted the Conference for Overall Planning, which discusses the principles of supra-regional planning.

(2) State Planning Organs:

- a) All Federal states have a Supreme State Planning Authority. In the self-governing city-states of Berlin, Hamburg and Bremen as well as in Baden-Württemberg, in Hesse and the Saar this authority is assigned to the ministry responsible for building matters, in Northrhine-Westphalia and Rhineland-Palatinate these authorities are subordinate to the Prime Minister of the state; in Bavaria to the Minister of Economics.
- b) The "Regierungspräsidenten" (presidents of smaller administrative units within a Land) and the heads of the department for state planning, the so-called "District Planning Authorities", are subordinate authorities of state planning.

Such kinds of authorities do not exist in the self-governing city-states or in the smaller states like the Saar and Schleswig-Holstein, where there is a one-tier organisation of state planning.

- c) In Northrhine-Westphalia a special type of state planning organisation was set up. In accordance with the state planning law of 1950 the three planning associations (Westphalia, Rhineland, and Ruhr-Coal-District) constitute the chief regional planning authorities.

Each of the three regional planning associations has its own planning staff. The associations of Westphalia and Rhineland maintain branch offices within their territory; here the planning personal of the planning association employed is supervised by the heads of the district governments who exercise dual functions. The Ruhr-Coal-District does not have these regional branch offices.

The planning associations are organs of selfgovernment in planning. Compulsory members are: the "Landschaftsverband", the urban and rural districts, the presidents of the administrative areas and, finally, the Federal and state authorities (planning authorities) concerned.

There are also voluntary members of the planning associations: the chambers of agriculture, the chambers of trade and commerce, the trade unions and employers' associations, the building societies, the industrial associations, the associations for traffic, mining, water supply as well as scientific institutions and others.

(3) Organisations to work out guiding-plans for housebuilding

- a) According to the right of communal self-government, the municipalities are responsible for the working out of guiding plans for housebuilding. The municipal constitution stipulates that all formal resolutions and important decisions in planning are left to the local assemblies.

The majority of the larger and medium size towns have planning offices to prepare and supervise the planning. As a rule these offices will not be found in the smaller towns and rural districts. The extent to which independent planners are entrusted to work out plans differs. In several

states the Kreisverwaltungen (county administrations) and in others the areal administrations, are assigned to give technical aid in planning to such municipalities that have no satisfactory institutions themselves.

- b) The plans decided on by the communal representations have to be approved of by the states authorities before they become effective. The following authorities are empowered to give such approval:
 - a) The presidents of the administrative areas in those states where the branch offices for town planning are subordinate to the president.
 - b) in the states of the Saar and Schleswig-Holstein, where no branch offices in the administrative areas exist, the ministries responsible for housing.

The self-governing city states of Berlin, Hamburg and Bremen have communal as well as state competences. Therefore, a special authority for control is not required. Supreme authorities of control for guiding plans for house-building are the ministries responsible for housing and housing legislation.

- c) The Federal Government exercises no administrative power in the field of guiding-plans for house-building. The tasks of the Federal Housing Ministry are restricted to the preparation of such laws as fall within the range of Federal competence. Otherwise, this ministry has only advisory and recommending functions.

(4) Organisations for Inter-communal Planning

For a long time inter-communal planning co-operation lagged behind, but it is now gaining wider influence in practise. There are three types of communal organisations of far as administrative and planning activities are concerned:

- a) Within the communal study groups, representing the loosest form of co-operation, the respective municipalities are bound to discuss all common matters together, without, however, any obligation for any one of the participating members. At present eleven study groups of this type exist in the Federal Republic.

- b) **Second is the inter-communal planning association, a strong organisation for co-operation in the field of inter-communal planning. These organisations, founded on a voluntary basis, work out common plans. These plans, however, are not binding for the municipalities belonging to this organisation. At present there are thirteen such inter-communal planning associations in the Federal Republic.**
- c) **Genuine planning associations that are authorized to work out binding plans have not yet been founded. Northrhine-Westphalia being an exception. Preliminary work is under way for a legislation to establish this kind of genuine planning associations.**

III. Types of Planning

Planning procedure is a three-tier set-up:

- a) **Development plans for large areas issued by state and regional planning authorities;**
- b) **Preparatory guiding plans for house-building issued by local planning authorities (plans for utilization of ground);**
- c) **Binding guiding plans for house-building issued by local planning authorities (building plans).**

In common, all three endeavour to integrate the different technical aspects super-imposed on the work of the individual departments, thus achieving a complete range of influence on all subjects of planning. Distinguishing criteria are the period of time and the size of area as well as the details of planning. While a municipal house building plan is restricted to small areas of the municipality that will be built-on at once or during a period of no longer than five years for which all necessary decisions can be taken, the utilization plan covers the entire area of the municipality and tries to lay down the main features of municipal development in a long-term plan.

The development plan and regional plans worked out by the state or regional planning authorities include larger districts and are restricted even more to the fundamentals of a desired development over a longer period of time. Mapping the prospective development of the Federal area, however, is hardly to be expected. In this case a more general development programme will take the place of a mapped plan.

The plans worked out by the state or regional planning authorities are not legally effective. They form a basis for continuous co-ordination by the state planning authorities and constitute directions for all planning authorities.

A more advanced stage is reached when the plans can be enforced. Regional development plans can only be enforced in defiance of the state and municipal authorities if and when a declaration of obligation was given, which so far has only been the case in Northrhine-Westphalia and Bavaria. Generally, all municipal utilization plans are binding for all authorities that have agreed to these plans once they have been drawn-up. The municipal building plans, however, are directly binding for every authority or private person concerned.

Outlook on the Future Legal Development

The advancement of housing construction and home building has been finally settled by the laws of 1950 and 1956 regulation housing construction. The Federal Building Law, expected to be forthcoming in the near future, will settle the town planning law. The "Baurecht" (Law regulating building matters) whose contents have been prepared by a Model Building Order is expected to be revised under the state laws. Another important task of legislation will be to create effective state planning laws and useful legal reforms for inter-communal and regional planning. Even today, there is a trend towards a new instrument for co-operation with communal self-government and management taking active parts in sharing the responsibility for planning work.

After a period of reluctance on behalf of influential political and industrial groups, the necessity for long term planning for large areas in the Federal Republic has now been widely realised. It is to be expected, therefore, that the pioneer work carried out in full responsibility by a small group of experts will become "common property" of the population as well as the political and administrative staffs, so that, in the long run, outlets, both legally necessary and practically suitable are the disposal of the state and regional planning authorities.