Land Use Law in the Massachusetts Bay Colony: Selected Statues Enacted by the General Court 1630-1783

THE UNIVERSITY OF MASSACHUSETTS

LAND USE LAW IN THE MASSACHUSETTS BAY COLONY: SELECTED STATUES ENACTED BY THE GENERAL COURT 1630-1783

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BY
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ABSTRACT

Statutes enacted by the General Court of the Massachusetts Bay Colony precurse much modern land-use legislation. This is illustrated by an examination of colonial laws relating to town and county empowerment, the separation of crops and livestock, fire, nuisance, and roads.

Most land-use regulatory activity occurred at the local level. The power for the towns to regulate land-use originated with General Court statutes which enabled the towns to make laws and select persons to administer these laws. Counties were also empowered to make land-use decisions in such regional matters as highway construction and were authorized to hear appeals resulting from local land-use actions.

Much early General Court legislation relating to land-use issues dealt with the separation of crops and livestock, often through the regulation of fences. The legislation, which attempted to control conflicting uses, may be seen as a precedent for zoning and other land-use regulation.

Urban fire regulations began to appear at the General Court level around 1680. These fire regulations ultimately included controls of building materials, sizes, and locations, as well as provisions for planning the reconstruction of burned-over urban areas. These regulations represent important steps in the development of legislative power to control urban spatial organization.

General Court nuisance regulations also began appearing around 1680. Nuisance activities were eventually regulated to specific areas of cities, a separation of undesirable uses that is similar to zoning.

Bay Colony road laws included primitive planning provisions, road construction standards, subdivision regulations, and other elements that bear comparison to modern legislation.

Most of the General Court laws examined were altered over the years to improve their efficiency or to suit changing conditions. A process of evolution is apparent in the Bay Colony laws that may be assumed to have continued to the present.

Similarities of colonial to current laws exist both in the reasons for their enactment and in many of the regulatory techniques employed. Modern legislation differs in being more complex and comprehensive. These differences are due in part to increases in land-use conflicts stemming from technological changes associated with the industrial revolution.

The laws described are the seeds from which many later Massachusetts regulations grew. As such they represent an important legal legacy that still influences the way land-use regulation is practiced in the Commonwealth.

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CHAPTER I

INTRODUCTION

This paper examines ways in which an American colonial government, that of the Massachusetts Bay Colony, regulated the use of land. A large amount of what now would be termed 'land-use law' was enacted by the General Court of Massachusetts before the American Revolution. The legacy of these colonial land-use laws continues to influence Massachusetts state and local regulations.

The goal of this paper is to describe and analyze selected types of General Court legislation that influenced spatial organization by controlling uses, density, location, and construction materials. This legislation will also be compared to modern land-use legislation.

Research for this paper has revealed that a massive amount of Bay Colony legislation had land-use implications. No attempt has been made to provide a comprehensive examination of this legislation, which could easily fill many volumes. Many areas important to land-use, such as legislation affecting land ownership, have been omitted. A

number of topics which where examined and rejected as beyond the scope of this project are listed under the heading "Suggestions for Further Research" following the concluding chapter. This paper should be considered a general survey using a sampling of General Court laws which the author felt to be particularly pertinent to the history of land-use regulation.

The statutes examined include town empowerment to enact land-use controls, laws to prevent destruction of crops by livestock, laws to prevent fires, nuisance laws, and laws relating to roads. In addition, background material on the Bay Colony has been included so that the laws examined may be seen in historic context.

Current legal texts concerning U.S. land-use law cite at most one or two examples of American colonial legislation in their discussions of the history of American land-use.[1] Although many books and articles have been written about colonial America, very little secondary material exists that deals specifically with the ways land-use was regulated prior to the Revolutionary War.

American planning histories frequently begin with the World's Columbian Exposition of 1893 in Chicago. The legal roots of American planning go back much farther and can be seen in Massachusetts Bay Colony statutes of the seventeenth and eighteenth centuries. These statutes represent a legacy that planning historians have too often ignored. It is hoped that this study will in some small way expand our knowledge

of that legacy.

Methodology

Research began with a review of all known General Court legislation enacted between 1630 and 1780. The classes of laws selected for inclusion were those which appeared to have similarities to modern land-use legislation and which were found to have involved a substantial amount of legislative activity over the years.

Once the statutes were selected, primary and secondary sources were researched in order to gain a knowledge of the problems that prompted the legislation as well as the historic context in which the laws were enacted. English precedents were identified in some cases. Town records for the period, primarily for Boston, were consulted for information on local actions related to the selected statutes.

The statutes described were compared to current Massachusetts legislation The Zoning Act (M.G.L. Chapter 40A) and The Subdivision Control Law (M.G.L. Chapter 41, Sections 81K-81GG) as well as to various local and regional regulatory planning practices.

Note

1. As in Callies and Freilich, Cases and Materials on Land Use.

CHAPTER II

BACKGROUND

The Puritans and the Bay Colony

Two major groups colonized Massachusetts in the early seventeenth century, the Pilgrims and the Puritans. Massachusetts first permanent European settlement was established by the Pilgrims at Plymouth in 1620. Although significant by virtue of precedent, there has been a tendency to overemphasize the influence of Plymouth in the history of the political development of the region. In its early years, Plymouth's success could be charitably described as marginal, often consisting of simple survival. The Pilgrims lived, but they did not thrive for many years.[1]

With the arrival of the Puritans in the Boston area in 1630, an immediate shift of regional political power occurred. The Bay Colony, supported by larger populations and better funding than the Pilgrims, became almost immediately the dominant power in the area. Beginning with the approximately 700 Bay Colonists who arrived in the

'Great Migration' of 1630, the colony grew in its first 15 years to a population of between 14 and 16 thousand persons, making it by far the largest English colony in America.[2]

By the 1690's, The Bay Colony had absorbed the Plymouth Colony as well as others within the current bounds of the state and had extended its control as far as the territory of Maine, which remained part of Massachusetts until the 1820's.[3] Much of the reason for the Bay Colony's success may be attributed to its ability and willingness to make governmental decisions free from English controls.

Puritan Self-Government

Before leaving England, the future colonists had insured that they would maintain a great deal of control over their own affairs. In most colonies, the proprietary charter containing the royal grant of land and establishing guidelines for colonial government remained in England to be administered by company officers there. John Winthrop, Massachusetts' first governor, insisted that the Bay Company Charter be transferred to America and persuaded Charles I to agree to allow this. Charles soon changed his mind and in the mid 1630's requested the return of the Charter to England; the Puritans responded by ignoring him. The Charter was written in such a way as to guarantee an extraordinary amount of freedom from royal controls. How these things were managed is still a matter of dispute among historians, but the presence at court of influential persons sympathetic to

the Puritans probably helped.[4]

The Charter of the Massachusetts Bay Company contained a number of elements relevant to later land-use activities. First, it granted the Company land to use, 40° to 48° latitude from Atlantic to Pacific.[5] This grant was, of course, much modified later. The company was empowered to buy and sell land within its grant. In addition, the Company was empowered to create a Great and General Court to make such laws as were deemed necessary to run the colony, including, presumably, laws regulating the use of land.[6]

Among the migrants were "men of means who had qualities of leadership".[7] Many of these men were well educated. It has been estimated that by 1646 around 130 Cambridge and Oxford educated men resided in the Bay Colony. This means that there was one university man in every 40 or 50 families: a higher rate than that of England during the period.[8]

These men were eminently capable of self-government. They soon began to establish a system of law to guide the development of the new colony. Although English precedents were important, Bay Colony lawmakers molded English legal techniques to fit Massachusetts conditions and did not hesitate to invent their own laws when they considered these necessary.

Although the Puritans were not really an "out-group" as were the Pilgrims, their allegiance to England and their willingness to submit to English control was limited. In

addition, England's ability to exercise control over the Bay Colony was, at first, constrained by events at home. A significant element in the early tendency towards independence from England was the fact that at the same time the Bay Colony was being established the political situation in England was becoming extremely destabilized. Just 6 days after approving the Charter, Charles dissolved Parliament, an action which contributed to the growing unrest in England that eventually led to Civil War and Charles' own execution. Parliament and Crown were for many years more concerned with internal conflicts than the administration of overseas colonies. The eventual victory of Cromwell, a Puritan who may be assumed to have been sympathetic to the desires of the Bay Colony leaders, further contributed to the lack of external control.[9] By the time England, its monarchy restored, was able to exert its authority in the 1680's, the tradition of independent government in Massachusetts was well established and, although English power waxed and waned in later years, the colony had acquired a distinctly American character that was reflected in many of the actions of its government.

This trend toward independent self-government influenced colonial land-use law. Physical conditions in America, then perceived as a limitless wilderness, differed greatly from those in England and sometimes required new types of laws. Massachusetts laws, although owing a great debt to English roots, are not simply English laws transferred overseas.

They evolved in a self-governing society that had the freedom and the will to solve land-use problems in ways appropriate to its particular situation.

Economy

Economic conditions in Massachusetts also contributed to the nature of land-use regulation there. Although the colony was mainly agricultural during the period under review, the evolution of multiple economic activities was much more rapid in Massachusetts than elsewhere in English America.[10] One consequence of this was that in addition to the small villages and farms characteristic of an agricultural society, trading and other activities gave rise to a city, Boston.

As Massachusetts Bay Colony towns developed into urban centers, they experienced the normal differentiation of labor found in cities. Boston, in particular, experienced rapid economic development after English exports declined in the 1640's due to the English Civil War. Without English products, Boston reacted by increasing and diversifying her own production, as did other towns to a lesser extent.[11]

Boston became the largest English town in America soon after it was founded, and remained so until surpassed by Philadelphia in the 1750's.[12] The relatively large population soon included a variety of merchants, shopkeepers and tradesmen. Other towns, such as Salem and Charlestown, also displayed urban characteristics during the seventeenth

century.[13] With the development of cities came the emergence of urban problems.

The existence of a diverse economy, which resulted in diverse uses of land, exacerbated the need for laws to deal with problems arising from differing uses. The laws that evolved often were locational in nature, and by the 1640's the tradition of state control of land-use was well grounded. The instrument of this control was the General Court.

The General Court

The main legislative body in colonial Massachusetts, as in the Commonwealth today, was the General Court. Initially the General Court was composed of a small group of influential colony leaders: the Governor, Deputy Governor and the Assistants. This was essentially "an aristocratic oligarchy" which governed the colony in an authoritarian fashion and in violation of Charter provisions which allowed the establishment of a representative General Court.[14]

An examination of the Charter by Town representatives in 1634 led to successful demands for inclusion of local representation. By 1644, a bicameral General Court had evolved consisting of the House of Assistants and the House of Deputies, analogous to today's Senate and House of Representatives.[15]

One of the first priorities of the General Court was the production of formal system of laws to replace the often arbitrary decisions that had earlier characterized the

governing of the colony.[16] In its legislative capacity, the General Court created a body of statute law that served as the backbone for the legal functioning of the colony.

Prior to 1690, most statutes were codified as The Book of General Laws and Liberties Concerning the Inhabitants of the Massachusetts (hereafter referred to as the Laws and Liberties).[17] The Laws and Liberties, first published in 1648 (see Figure 1), can be viewed as the grandfather of current state statute law; as such it has passed on significant traits to its descendants. Revisions of the Laws and Liberties were published in 1660 and 1672. Later laws were compiled in the many volumes of the Acts and Resolves of the General Court of Massachusetts, a series begun in 1691 that continues to the present.[18]

Land-use considerations were conspicuous in the Laws and Liberties of 1648. The rural character of the colony at that time is pointed up by the fact that the most extensive land-use regulations relate to agricultural concerns such as separating livestock and crops, defining responsibilities in common fields, and the like. Other sections, however, were less agricultural and dealt with road construction, public access to land, and provision of various public facilities.

After 1650, a slow but steady increase of General Court acts relating to urban land-use problems can be observed. Much of the later legislation was directed at Boston and the other larger towns of the Commonwealth. This is especially notable in the emergence of laws concerning nuisances and

THE
BOOK OF THE GENERAL

LAUUES AND LIBERTYES

CONCERNING THE INHABITANTS OF THE MASSACHUSETS

COLLECTED OUT OF THE RECORDS OF THE GENERAL COURT FOR THE SEVERAL YEARS WHERIN THEY WERE MADE AND ESTABLISHED,

And now reviſed by the ſame Court and diſpoſed into an Alphabetical order and publiſhed by the ſame Authoritie in the General Court held at *Boſton* the fourteenth of the firſt month *Anno* 1647.

Whoſoever therefore reſiſteth the power, reſiſteth the ordinance of God, and they that reſiſt receive to themſelves damnation. Romanes 13.2.

CAMBRIDGE.
Printed according to order of the *GENERAL COURT.*
1648.

And are to be ſolde at the ſhop of *Hezekiah Uſher* in *Boſton.*

Figure 1. Title page of the Laws and Liberties, 1648.

fire prevention in the late seventeenth century.

England, under William and Mary, began to attempt to exercise tighter control over the colony around 1690, sending Governors appointed by the Crown and a new Charter for what was now the Province of Massachusetts.[19] The reorganization of the colony's government was followed by the revision of many laws relating to land-use between 1691-1699. This appears to have been an attempt to clarify and, where needed, expand existing statutes. As such, it seems to have been successful: Most eighteenth century General Court land-use statutes represented fairly modest revisions to the seventeenth century laws rather than new, general statutes. All the major laws examined for this study were on the books in some form prior to 1700.

Even following the Revolution, little change can be seen in early Federal Period land-use law in the State. The Acts and Resolves for the period between 1784 and 1800 reveal few changes to existing land-use legislation. These laws dealt with the practical internal ordering of the Commonwealth, and appear to have been little influenced by the political changes associated with founding a new nation.

Notes

1. Rowse, 1963, p. 172.
2. Rutman, p. 179.
3. Dexter, p. 94.
4. Dalton, p. 5.
5. Charter, p. 1.
6. Ibid., pp. 10-12.
7. Rowse, 1963, p. 96.
8. Rowse, 1959, p. 155.
9. Dalton, p. 5.
10. Bridenbaugh, pp. 30-31. Bridenbaugh's Cities in the Wilderness is an excellent secondary source on colonial urban problems and has been used extensively for this study.
11. Bridenbaugh, p. 30.
12. Whitehill, p. 37.
13. Pomfret, p. 207.
14. Dalton, p. 5.
15. Ibid., pp. 9-16.
16 Pomfret, p. 180.
17. The Laws and Liberties (1648) are known now from a single copy discovered in 1909 and are considered by some sources to be the first attempt at a codification of existing law since the time of Justinian (Cushing, p. XXI). Page numbers cited are from the edition of 1672 unless otherwise specified. The statutes during this period were issued without the formal system of chronological identification that was implemented later and are generally identified by title and/or date, for example "Prisoners, Prison, House of Correction" (1646).
18. These laws are identified by year and chapter, for example "1691-2 Chapter 2".
19. Works Progress Administration (hereafter WPA), pp. 62-63.

CHAPTER III

TOWN AND COUNTY EMPOWERMENT

Land-use Regulation in the Towns

The towns engaged in much land-use regulation. The earliest Boston town records date from 1634. Of 13 recorded actions taken by the selectmen in that year, 9 relate to the use of land. These actions range from establishing fines for leaving fish and garbage near a bridge to ordering a division of town owned land among Boston inhabitants.[1] A random examination of other Boston selectmen's records prior to 1800 indicates land-use issues as being among the most common dealt with by the town fathers.

The regulations promulgated could often be taken from contemporary zoning and subdivision regulations:

> Not above one dwelling house shalbe built upon any one lott without the consent of the Townes overseers. (Boston, Dec. 10, 1636)[2]

This can be compared to Section 810 of the current

state Subdivision Control Law:

> The rules and regulations may . . . provide that not more than one building . . . for dwelling purpose shall be erected on any lot in a subdivision . . .

Many early local regulations were sweeping and show a surprising awareness of land-use problems. The following is from the Boston selectmen's records, dated October 8, 1636:

> It is agreed and ordered that from this day there shall be noe house at all be built neere unto any of the streets or laynes therein, but with the advise and consent of the overseers of the towns Occaisions for the avoyding of disorderly building to the inconvenience of streets and laynes and for the more comely and Commodious ordering of them upon the forfeyture for every house built contrarie to this order, of such sume as the overseers shall see fitting, under the sume of X *pounds*.[3]

This law is proactive and demonstrates a concern for spatial order that is similar to much modern planning regulation. It also appears to be an ancestor of set-back requirements.

Rulings directed at individual property owners read like modern planning or appeals board decisions:

> At a metting of all the Seleckt men, Richard Waite is granted liberty to set up a porch befor his now dwelling house, three foot into the streeat, and 6 foot broad...[4]

Town records contain countless examples of regulations and judgements similar to those cited above. The power for the towns to take these actions devolved from the General Court of the Commonwealth. Then, as now, towns were

"creatures of the state"[5] and exercised power as the state empowered them to do so.

Town Empowerment

The colony's government became involved in town affairs at a very early stage. The General Court, through powers spelled out in the Bay Colony's Charter, granted lands to groups of settlers wishing to "plant" towns. Site selection was more or less left up to the settlers, assuming that no conflicting European land clams existed in the selected area. The General Court often arranged the necessary treaties (or military operations) to eliminate Indian land claims.[6] The size of town grants varied; most were around 40 square miles, but some grants, such as Dedham's, exceeded 200 square miles.[7] These variations may have depended on the quantity of settlers, the physical characteristics of the area to be settled, and the amount of political leverage exerted by the settlers.

In the 1630's, the General Court "legislated on all local as well as general affairs",[8] as well as judging individual cases from the towns. By the 1640's the practicality of allowing towns to do much of their own regulation was understood and formal town empowerment had been established. There were English precedents: the development of provincial trade centers in the sixteenth century had resulted in the Crown allowing increased local legislation by British town governments.[9]

In 1660, the General Court stated one reason for town empowerment:

> Particular towns have particular things which concerne onely themselves and the Ordering of their own affaires and desposing of business in their own town.[10]

Most town business was of only local importance and lacked the regional impacts that would have attracted General Court attention. Michael Zuckerman has illustrated the insularity of New England towns during the eighteenth century. In a sampling of town records between 1700 and the Revolution, he estimates that town business reflected province level matters in only 1 of 15 or 20 selectman's actions, and that inter-town items accounted for less than 1 in 30 actions.[11]

A number of other reasons for town empowerment are likely. First, as the colony grew and more townships were planted (see Figure 2), the amount of legislative work required from the General Court would have grown too. The sheer quantity of this would have proved daunting: It was possible for the General Court to manage the affairs of 10 or 15 towns, but as the numbers increased (to 239 towns by 1780[12]) it would have been obvious that some matters were more efficiently handled by local government. In addition, the distance of many inland settlements from the seat of government in Boston combined with the primitive transportation and communication of the period would have made it difficult to govern these places effectively from Boston.

Town empowerment included the power to regulate land-

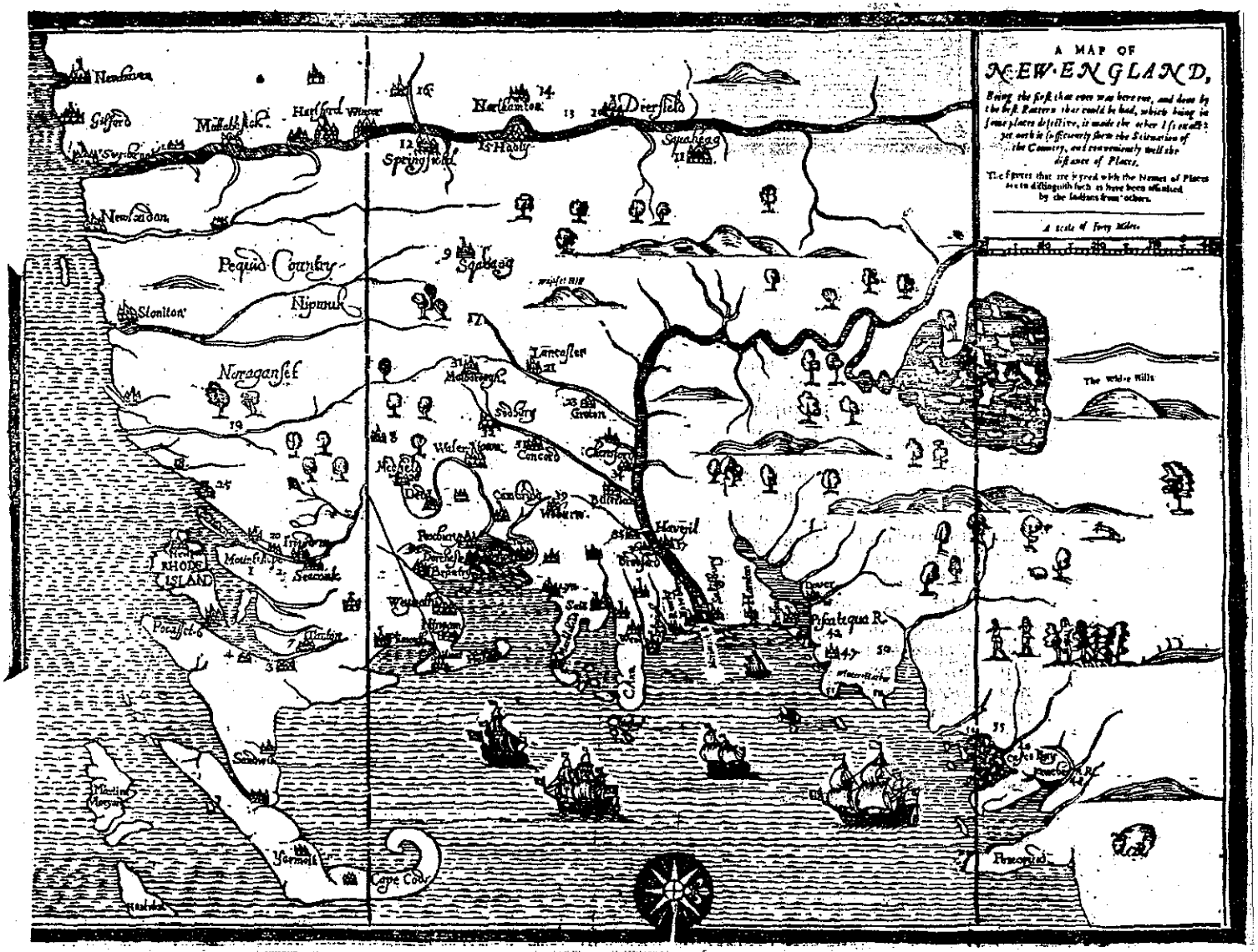

Figure 2. 1677 map of New England by John Foster, showing Bay Colony towns.

use. To some extent, the tendency of the General Court to allow local control of land-use can be attributed to the differing land-use patterns in the towns. This was particularly evident in the case of field ownership, which followed patterns occurring in the English areas of origin of town settlers. Rowley and Sudbury, for example, practiced open field farming on common lands; Ipswitch and Scituate, on the other hand, had no common fields, with all land held privately.[13] Other land-use practices in the towns also followed local English peculiarities, making it difficult for the General Court to enact legislation that would be acceptable to all localities.

Broad powers were delegated to the towns. The Laws and Liberties of 1648 compiled the township powers expressly granted by the General Court up to that year. Two of these are of particular importance to land-use issues. First, towns were permitted to make non-criminal "laws and constitutions as may concern the welfare of their town" and to levy fines for infractions of less than 20 shillings per offence. Second, permission was given to choose less than 9 men per town (selectmen) to order town affairs.[14] The permission to make laws and elect officials to administer them set the stage for the powerful town governments that still characterize the Commonwealth. Since most Massachusetts land-use actions were taken at the local level as a result of these powers granted them by the General Court, the laws granting these powers may have been the most

significant enacted by the General Court during the colonial period.

The General Court, however, did not leave all land-use decisions to the towns. Although the implied powers over land-use noted above allowed much local discretion, the court often enacted more specific land-use regulations to be enforced by the towns.

There were a multitude of such laws, some of which had the potential for significant local impacts. In 1660, for example, townships were granted indirect powers over residential construction:

> It is Ordered; That herafter no Cottage or Dwelling place shall be admitted to the previledge of Commonage for Wood, Timber and Herbage, or any other of the Priviledges that lye in Common in any Town . . . but such as already are in being, or shall be herafter be Erected by the consent of the Town.[15]

This law encompasses a penalty for failing to obtain town consent for construction, incorporates a concept of grandfathering ("such as already are in being") and indicates a notion of infrastructure limitations in that one of the purposes of the law seems to be the prevention of overuse of Commons. It is also a method by which 'undesirables' could be discouraged from moving to a town. For better or for worse, these are all elements which could be found in a modern statute.

The General Court continued to legislate for towns on matters of importance frequently during the rest of the colonial period. Later chapters will examine in detail

several categories of General Court statutes directed at the towns.

Regional Concerns

The General Court recognized that some land-use issues were not limited to single towns and that guidelines were necessary to prevent inter-town disputes. The General Court often asserted its power over subordinate levels of government when conflicts arose. One example of this was the establishment of rules for the determination of town boundaries.

The Laws and Liberties includes a statute dated 1641 designed to prevent what it describes as "trouble in towns and encumbrances in courts" from boundary disputes. In the future, towns were ordered to 'set out' their boundaries within 12 months of their incorporation. Annually three townsmen were to arrange with each neighboring town to "go to the bounds betwixt their said towns and renew their marks; which marks shall be a great heap of stones, or a trench six feet long and two feet broad." Anticipating arguments about which towns would initiate this perambulation, the "most ancient" town was empowered to choose times and places...[16] Compliance with this law was poor at first: Dorchester, for example, failed to "go the bounds" until 1651, and afterwards did so only once every two or three years-despite being embroiled in several boundary disputes with its neighbors.[17]

Despite the legislation, town boundary disputes were almost universal during the rest of the colonial period. These were often handled in the courts. Hadley, Hatfield, and Northampton, for example, were in litigation from 1709 to 1733 over the ownership of lands around what is now the Mill River in Hatfield.[18]

The only major revision to the statute occurred in 1734, when a £15 fine was specified for failure to perambulate the town boundaries.[19] This is one of many cases in which the General Court was compelled to provide or increase fines in order to encourage town compliance with its orders.

Along with the "heaps of stones" still visible along some town borders (Yarmouth and Barnstable are a case in point) the boundary rules left a legacy in that they served to help establish a precedent for state action to resolve regional laand-use problems. Other actions demonstrating the recognition of regional problems are apparent in General Court records, including the limited empowerment of counties.

County Powers

A tradition of town political power evolved early in Massachusetts which persists to the present. This was not typical elsewhere:

> In every colony outside of New England the county was the unit of representation; east of the Hudson that unit was the town.[20]

Although the towns were powerful enough to have merited the description of "miniature republics"[21] , the General Court did allow some county empowerment as it realized that some intermediate level of government was needed between the town and the Commonwealth.

County powers were very limited. In seventeenth century Massachusetts, as in twentieth century Massachusetts, the primary institutions of county governments were the county courts. The major land-use powers of the county courts were exerted in two areas: the development of infrastructure and hearing appeals of town land-use decisions. Details of these functions will be found in later chapters.

County infrastructure actions generally related to the construction of roads and bridges. In 1639, the counties were empowered in an administrative capacity to arrange the construction and maintenance of common highways[22] and in 1648 were made responsible for bridges.[23] Over the years, other infrastructure was made the responsibility of the counties, such as houses of correction in 1655.[24]

Appeals of local land-use actions were allowed to be heard in the county courts from 1639 on, beginning with disputes over damage payments to private landowners stemming from road construction.[25] The county courts still perform this function in hearing appeals of local Planning and Appeals Board actions under Massachusetts General Laws Chapter 41, Section 81BB and Chapter 40A, Section 17.

County land-use powers were increased somewhat with the

inception of the Province in the 1690's, with additional responsibilities spelled out for highways and other regional infrastructure as well as increased power to overturn local decisions. This indicates that the General Court was becoming increasingly aware of regional problems. The funding of county governments also increased during this period.[26]

Nonetheless, county power remained mostly latent. Though the counties asserted their power sparingly, their potential to control town affairs was large:

> Though county government made no attempt to supplant the towns as the primary unit of local administration, and though the justices themselves generally exercised restraint, it is clear that they did not hesitate to interfere when they felt it was necessary.[27]

In land-use matters, however, the counties continued to exercise restraint for three centuries. Empowerment of the Cape Cod Commission and the Barnstable Legislature in 1990 probably represent the first major increase in county land-use powers since the colonial era. The heritage of county inaction in these matters will in the future, hopefully, be relegated to its proper place as an historic artifact.

Notes

1. Boston Record Commissioners (hereafter BRC), v. 2, pp. 1-3.
2. Ibid., p. 14. Original spelling, wording, and punctuation of source material will be quoted exactly throughout this paper. Although certain words and phrases may be obscure, the overall meaning of the passages is generally clear.
3. Ibid., p. 12.
4. Ibid., p. 111, May 26, 1652.
5. Wright, p. 40.
6. Jennings, passim.
7. Labaree, pp. 48-49.
8. Goodell, p. 328.
9. Thomas, passim.
10. Laws and Liberties, p. 147.
11. Zuckerman, p. 34.
12. WPA, p. 59.
13. Cronan, p. 74.
14. Laws and Liberties, p. 50.
15. Ibid.
16. Ibid., p. 4.
17. BRC, v. 4, passim.
18. Benes, p. 30.
19. 1734-35, Chapter 7.
20. Zuckerman, p. 24.
21. WPA, p. 58.
22. Laws and Liberties, p. 64.
23. Ibid., p. 12.
24. Ibid., p. 126.
25. Ibid., p, 64.
26. Dufour, p. 113.
27. Ibid., p. 115.

CHAPTER IV

FENCING AND LIVESTOCK LAWS

Plants and Animals

A large amount of General Court land-use legislation was enacted because of the fact that livestock, given the opportunity, will eat and trample crops. The problem of crop destruction by pigs, cattle, sheep, and goats is profoundly locational in that it illustrates a very basic need for a separation of uses (grazing and crop cultivation) on the land. Crop destruction by livestock can be viewed as food competition, and as a threat to human food supplies is a basic public welfare concern.[1]

This was a problem that had been recognized in England and elsewhere in Europe, where laws against loose livestock were common by the fifteenth or sixteenth centuries. In Coventry, for example, pigs were prohibited within the city walls prior to 1600.[2]

New England Prospect, written in 1634, states that the Bay Colony at that time contained 1500 cattle, 4000 goats, and "swyne innumerable" along with about 4000 humans.[3]

Livestock were not purely for local consumption. The potential for wealth based on ownership of grazing animals in an area of apparently limitless forage was not lost on Massachusetts settlers and an economy very favorable to the production of livestock evolved. The export trade in livestock was extensive by 1660.[4]

Pigs, in particular, flourished in the Bay Colony, reproducing so efficiently in common grazing areas and forests that parts of the colony were overrun with them by the mid 1650's. The dietary opportunism of pigs and their ability to fight off indigenous predators enabled them to be released into woodlands to feed and reproduce, and then to be rounded up for slaughter as needed.[5] This contrasted with English practices of the period, which involved more control over the movement of livestock.[6]

The economic value of livestock in general was so high in comparison to crops that regulations often put the onus of protecting crops on farmers rather than on livestock owners, particularly in rural areas. With livestock allowed to graze freely, fencing of fields rapidly became the norm, in part because unfenced or poorly fenced croplands were not fully legally protected from destruction by livestock.

Town Actions

Livestock problems were not confined to the more rural farming areas. In Boston and the other larger towns pigs and other food animals were a common sight. Householders of any

occupation might have an animal or two for personal consumption, and these were often allowed to roam freely about, either by intent or negligence on the part of their owners. It was soon recognized that livestock wandering about the streets and yards of the towns were a nuisance.

The problem of loose livestock was a common topic of town regulation. The free grazing allowed in the countryside was inappropriate in the towns. Wandering livestock were "a subject of continuous legislation in every town record generation after generation."[7] The following selectmen's order, from the Boston Town Records for 1643, is typical:

> It's Ordered that all swine whatsoever that remaine in this necke of Boston, shall be kept up in yeards or howses so that they may not goe abroade to trespasse on men's corne or gardens.[8]

The abundance of similar town orders in the records through the 1770's indicate that this problem was never really solved, although a variety of techniques were employed.

One action taken by colonial towns was the hiring of goat and cow herds by local governments. These collected village livestock from individual homes and took them to grazing areas daily.[9] Town pounds and pound-keepers were found in most Bay Colony towns. Numerous other local governmental activities involved the control of livestock. Swine ringing and yoking was a particular matter of concern:

Wm. Spowell and David Hichbone are authorized to warne

> the inhabitants of the towne to yoake and ring all the swine in this towne by the 4th of the next mo., else the foresayed persons may impound such swine so found unyoked and unrung . . .[10]

It seems likely that town problems with stray food animals persisted well into the present century, and only recently have been supplanted by the concerns for dogs and cats that now characterize local animal control departments.

General Court Legislation

The colonial government had a substantial body of law relating to the conflict between food animals and crops by the time of the publication of the Laws and Liberties in 1648. An examination of the index to this code reveals chapters entitled "Cattle, Cornfields, Fences", "Drovers", "Pound", and "Swyne" all of which relate in some way to the issue of crop protection from loose animals. "Cattel, Cornfields, Fences" alone merits 2 full pages of regulations; this makes it longer than the chapter that enables the colony's court system.

The seven sections of "Cattle, Cornfields, Fences" illustrate just how complex the reaction to livestock and crop conflicts had become. This law defined responsibilities for fencing common crop fields, required town brands for cattle allowed on common grazing lands, specified damages to be paid to field owners for crop destruction by animals (goat owners paid double), and required towns to appoint fence-viewers.

The General Court attempted in its laws to balance the interests of livestock owners and the interests of crop-growers. There was a concern for proper fencing that reflects the physical conditions which allowed the practice of free grazing discussed earlier. Section 6 of "Cattle, Cornfields, Fences" illustrates this:

> *6. For the better preserving of Corn from damage, by all kinde of Cattle, and that all Fences of Corn-fields, may from time to time be sufficiently upheld and maintained;*
>
> It is Ordered by this Court, That the Select men of all Towns, shall make wholsome Orders, for the repairing of all Fences both general and particular, within their several Townships . . . , and have the power to impose fines upon all Delinquents, not exceeding *twenty shillings* for one offence; and if any Select men shall neglect to make Orders as aforesaid, they shall forfeit *five Pounds* to the use of the Town, and so for every Months default from time to time; and the said Select men of every Town shall appoint, from year to year, two or more (if need require) of the Inhabitants thereof, to view the Common fences, of all their Corn-fields, to the end, to take due notice of the real defects and insufficiency thereof, who shall forthwith acquaint the owners thereof with the same; and if the said Owners do not within six dayes time or otherwise as the Select men shall appoint, sufficiently repair their said defective fences; then the said two or more inhabitants appointed as aforesaid, shall forthwith repair or reniew them, and shall have double recompence for all their labour, care, cost and trouble, to be paid by the Owners of the said insufficient Fence or Fences, and shall have warrant from the said Select men, directed to the Constable to levy the same, either upon the corn or other estate of the Delinquent: Provided the defect of the Fence or Fences be sufficiently proved by two or three witnesses.

The primary responsibility of fence-viewers was to ensure that local fences were sufficient to prevent livestock breach. This job rapidly became one of the most common in town government. In Sudbury, for example, 25 of 38 town officials in 1655 were fence-viewers.[11]

If fences were not adequate, crop owners were not allowed to collect damages:

> This Court doth Order and Enact, That where any Cattle shall Trespass on any propriety, not appearing to be sufficiently Fenced, against Swine sufficiently yoaked and ringed, or Cowes and such Cattle as will be restrained by a sufficient Fence, in the judgement of the viewers of the Fences, in all such cases the Owners of the Fence, of the Land, shall bear all such damages, as to them thereby sustained, any thing in the said Order, or any other Law, Custome or Usage to the contrary notwithstanding.[12]

Interestingly, the General Court expressly exempted Indian fields from fencing requirements, perhaps out of respect for the open field traditions of the native Americans. Damages to Indian crops by livestock were to be paid even if the Indian fields were unfenced.[13]

A drive or walk through many rural parts of Massachusetts will reveal ancient stone fences in places that would not be remotely appropriate to agriculture today, such as the steep and rocky slopes of the Berkshires. This is indicative of the extent and importance of agriculture in the past. Before the development of barbed wire in the mid-nineteenth century, stone fences were an efficient way to protect crops and, more importantly, represent a physical means of segregating conflicting land uses that was regulated by Commonwealth and local governments.

A public facility, the town pound, was mandated for confinement of stray animals. The Laws and Liberties of 1648 required:

> That there shall be one sufficient pound, or more made and maintained in everie Town and Village within this Jurisdiction, for the impounding of all such swine and cattle as shall be found in any corn field or other enclosure.[14]

This law invited town noncompliance by failing to specify a fine, a problem which was not addressed until eighty years later. In 1728-29 Chapter 5, all towns were ordered to construct pounds within 3 months or be subjected to a £10 fine. Then as now, General Court actions which required town financed public facilities tended to be resisted.

Town pounds were often of stone construction and, as a result, are the only colonial public facilities still extant in some towns. A recent source cites 15 current examples of colonial town pounds in Massachusetts and notes that one of these is still being used as a pig pen.[15]

Additions, revisions, and restatements of regulations concerning livestock and fences were made frequently before 1783: this area was one of the most actively legislated by the General Court. Details of these laws make for dull reading and are not particularly enlightening in the context of modern land-use practices. For example, 1740-41 Chapter 19 goes into great detail setting standards by which brooks, rivers, ponds and creeks can be considered large enough to eliminate the need for fencing between adjacent properties. This chapter also sets standards for fence placement when these water bodies are deemed insufficient: noting when fences should be placed on one or both sides of a stream or in a stream, and allotting the amount of financial

responsibilities of each landowner in specific situations. Needless to say, there is little to be gained by a comprehensive description of laws like this. The importance of these laws is in their recognition of the need for a separation of uses rather than in their details.

The Legacy of Fencing and Livestock Laws

The vast quantity of colonial livestock and fencing laws today assume the appearance of quaint relics of a vastly different economy. Although fence laws remain on the books, the chances of a cow or pig wandering into the garden of most Massachusetts residents today are slim.

Other relics of these colonial agricultural concerns include the existence of fence-viewers in many towns. This post is largely ceremonial today, except in the rare community, like Hadley, where farming is still important.

The land-use legacy of these laws is more significant. They represent one of the earliest and most thorough colonial attempts to deal with problems of conflicting uses. The need to protect the food supply was a clear-cut public welfare issue and it is easy to see why a legislative response was deemed necessary. The separation of uses encouraged by the statutes has primitive conceptual similarities to current zoning laws and was followed by other types of regulations, such as those controlling nuisances, that can be seen as an evolutionary steps between fence laws and zoning.

Notes

1. Aside from its land-use implications it is interesting to note that stray pigs are cited by some sources as being significant in the evolution of state government. In 1633, John Winthrop noted that the problem of hogs trampling corn was so widespread that harvest levels were significantly reduced in that year (Winthrop, v. 2, p. 128). The General Court, in response, enacted a law that permitted the killing of stray hogs by farmers who discovered them in their corn fields. The General Court at that time consisted of a limited number of magistrates and it was rumored that this particular law had been promoted by a magistrate who had shot some pigs he had found in his own fields and feared legal action. There was general public disapproval of this action and a delegate assembly was called of town representatives. After verifying the legality of local representation in the General Court by examining the Charter, these delegates joined the General Court, rescinded the law, and stayed to eventually form (1648) what is now the House of Representatives (Washburn and Moen, pp. 3-4). Thus, representative government in Massachusetts may owe a debt of gratitude to loose swine.
2. Thomas, p. 55.
3. Wood, p. 69.
4. Hawke, pp. 39-40.
5. Cronan, p. 129.
6. Hawke, p. 34.
7. Russell p. 103
8. BRC, v. 2, p. 73.
9. Russell, p. 19.
10. BRC, v. 2, p. 128.
11. Powell, p. 128.
12. Laws and Liberties, p. 20.
13. Ibid., pp. 28-29.
14. Ibid., p. 44.
15. Robinson, p. 194.

CHAPTER V

FIRE

Early Fire Regulation

The earliest locational control of an activity in colonial America involved the production and storage of gunpowder. This was banned from populated areas almost immediately after settlement.[1] Fear of fire also prompted early building codes. In Boston, for example, a massive fire in 1679 resulted in the enactment of laws mandating local construction of brick or stone.[2] Fire is an obvious threat to public safety, and as such inspired much regulation in the Bay Colony. A number of the regulations enacted had land-use implications.

English municipalities had evolved fairly extensive fire regulations prior to the seventeenth century. In London as early as 1212 thatched roofs were ordered whitewashed in order to make them more fire resistant.[3] Along with such typical requirements as those mandating the acquisition and maintenance of fire fighting equipment, English regulations restricted the location of fire-prone enterprises. Northamton, England, for example, had rules controlling the

siting of kilns prior to 1600. Building materials were also controlled; in some English towns thatched roofs were prohibited, brick chimneys were mandated, and so forth.[4] These regulations likely served as models for lawmakers in the English colonies in America.

Colonial Fires

Colonial buildings were often firetraps, with open hearths, wooden chimneys, and thatched roofs. House fires were extremely common. Samuel Sewall's Diary, which covers the period between 1675 and 1729, contains numerous entries describing residential fires both in Sewall's home and in the homes of his neighbors. Two entries from January, 1691 are typical:

> Sabbath, Jan. 11th. At night the House of Joshua Gardener, at Muddy-River, is burnt, and two of his Children; the Lord help us to repent that we do not likewise perish.
>
> Jan. 21, 1691. A cry of fire was made which much disturbed us in the middle of Sermon; It proved to be Mr. Pole's Chimney, which made a great light. Snow on the houses which prevented danger.[5]

Fires in colonial Massachusetts were potentially far more serious than modern fires. This is largely due to the vast technological improvements in fire prevention and fire fighting over the past two or three centuries. Often, the only way to deal with a fire in the seventeenth and eighteenth centuries was to allow it to burn out. Rural

fires, with their destruction of fields and forests, were bad enough. Major urban fires, such as those experienced by colonial Boston, were horrendous.

Currently, the Paul Revere House of 1680 is the only known 17th Century structure in Boston.[6] One of the reasons that no other buildings from this period exist, other than normal processes of decay and replacement, is that a large number of them burned down over the years. The Bonner Map of 1769 (Figure 3) includes a list of "Great Fires" in Boston: These occurred in 1653, 1676, 1679, 1683, 1690, 1691, 1702, 1711, 1759, and 1760.[7] The threat to public safety and property obviously required government action.

Local Actions

Most early attempts at fire prevention were local. As early as 1643, cisterns had been constructed in Boston to hold water to be used in fire fighting. In 1670, every household in the city was ordered to have a container of water available in case of fire.[8] Boston selectmen's records contain scores of entries ordering repairs to defective chimneys and correction of other fire hazards. Accidental fires were not the only concern in Boston; in 1673, the selectmen ordered the construction of a wall "on the flatts before the towne" to protect the city from fire-ships.[9]

Fire regulation in Boston and in the colony as a whole tended to be reactive. It is possible to date major Boston fires by examining the selectmen's records for orders

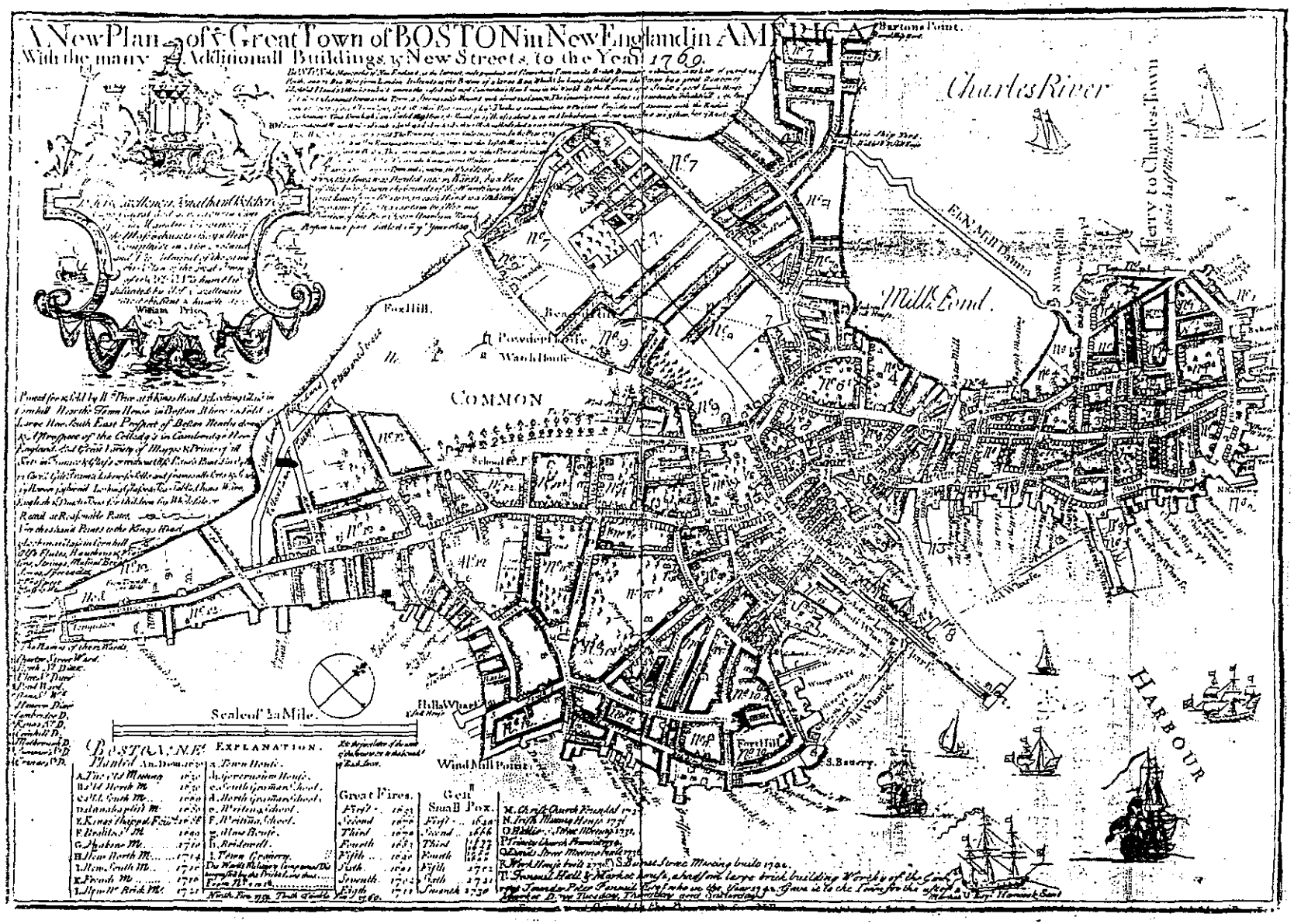

Figure 3. 1769 map of Boston by John Bonner.

relating to fire prevention: the periods in which large groups of these orders are noted almost always indicate a large fire in the preceding month. The habit of attempting to legally prevent things that have already happened is not uncommon today.

Two major Boston fires of the 1670's triggered a great deal of local and General Court legislative activity. The first of these fires, in November, 1676, burned 50 homes and caused enough alarm that in the following year an English fire engine was imported and local men were trained to operate it.[10]

The 1676 fire was followed by the Great Fire of August, 1679 which destroyed the entire commercial area around the town dock (near where Fanuiel Hall now stands). 50 homes and 70 warehouses were destroyed.[11] Boston and the General Court both reacted with significant legislation.

On August 18, 1679, a committee was formed by the Boston selectmen "to consider of and propose to the towne what may be expedient for the safetie of the towne in preuentinge of fire..."[12] One result of this was the acquisition of horses, ladders, buckets, and more engines and the organization of fire companies by the early 1680's.[13]

In addition, the town authorized certain individuals to take such actions as were needed to prevent the spread of fire, as in the case of those persons allowed to "order the blowinge up or pulling downe of houses" where it was deemed necessary to create firebreaks.[14] This was apparently a

common practice, because later fires were always followed by claims against the town by individuals whose homes had been demolished in the course of fire-fighting.

General Court Actions

The first General Court Legislation involving fire appears in the Laws and Liberties of 1648. This act had an agricultural focus, reflecting the rural state of the colony at that time. It prohibited fires in woods or common fields except in March and April, with exceptions on private lands. In 1652, an anti-arson provision was added.[15]

Following the Boston Fire of 1679, the General Court began to legislate for the prevention of urban fires. In October, 1679, the Court published a law that included elements of a building code as well as giving Boston selectmen additional rights in controlling the location of building. The 1679 act required that all future dwellings in Boston be constructed of stone or brick, with slate or tile roofs. Exceptions to this rule could be allowed by the selectmen and a limited number of other officials in an early version of later Appeals Board functions. In addition, the selectmen were to "hear and determine all Controversies about properties, and requests of any person to build on the Land wherein now lately the housing hath been burned down."[16] This section implies official control over location of rebuilding and is thus as the first statutory example of this

kind of power being granted to a Massachusetts town.

The 1679 law is notable for many other reasons, not the least of which being that it is proactive and general. It also establishes the right of the government to control building materials and techniques in the interests of safety, still the primary concern of the Massachusetts Building Code.

The building code, originally intended to be effective immediately, posed a hardship for those persons whose homes had been destroyed in the 1679 fire. Following petitions from some of those who could not afford to rebuild with brick, this part of the act was suspended form 1680 to 1683, when the law was reinstated.

In the reinstatement of the law, the building material requirements were extended to cover warehouses, shops, barns, stables and other buildings. A £100 fine was specified for noncompliance.[17] The size of this fine, which was huge for the period, is an indication of how seriously the General Court took the threat of fire.

The 1683 revision appears to have been much too comprehensive. The following year saw exemptions allowed for small buildings (less than 8 feet square), thus, no doubt, eliminating the need to construct the proverbial brick outhouse.

In 1692, the General Court enacted a comprehensive law that incorporated previous legislation and added new elements. This law merits close examination.

Province Laws. 1692-3.
Chapter 13.

AN ACT FOR BUILDING WITH STONE AND BRICK IN THE TOWN OF BOSTON, AND PREVENTING FIRE

Whereas great desolations and ruines have sundry times happened by fire breaking out in the town of Boston, principally occasioned by reason of the joyning and nearness of the buildings, being mostly of timber and covered with shingle; for the better preventing of such accidents in the future, and damage and loss thereby,-

Be it ordained and enacted by the Governour, Council and Representatives, convened in General Court or Assembly, and it is enacted by the authority of the same,

[Sect.1.] That henceforth no dwelling-house, shop, warehouse, barn, stable or any other housing of more than eight feet in length or breadth, and seven feet in heighth, shall be erected and set up in Boston, but of stone or brick, and covered with slate or tyle, unless in particular cases where necessity requires,-being so judged and signified in writing under the hands of the justices and selectmen of the said town, or major part of both,-the governour, with the advice and consent of the council shall see cause to grant licence unto any person to build with timber or cover with shingle. And if any person shall presume to erect or cause to be erected, any frame or building contrary hereto, upon conviction thereof before two justices of the peace, such building shall be deemed a common nusance; and the owner of such frame or building shall enter into a recognizance to demolish the same, and, in default of entering into such a recognizance, shall be committed to prison until he do cause the same to be demolished, or else such building shall be demolished by order of the quarter sessions of the justice of the peace within the said county, and the charge thereof to be levied by distress and sale of such offender's goods, by warrant from the court of quarter sessions.

A number of new requirements were specified in this Act. In Section 1, timber buildings over a certain size were required to be licensed by the governor (on recommendation of Boston's selectmen and justices), and non-licensed wooden buildings constructed after that year were to be declared

common nuisances and demolished when located by the authorities.

The new act also allowed local officials new powers over burned-over and unbuilt areas, including an early version of urban renewal:

> *And it is further ordered and enacted,*
> [Sect. 2.] That in all void and unbuilt places which shall hereafter be improved for building, or when at any time any total consumption or desolation shall happen in any street or lane within the said town, it shall be in the power of the justices of the peace of said town then in being, together with the selectmen, or the better part of both, to state and lay out such streets, ways, and passages as may be most for the conveniency and accommodation of the place; as also where any destruction has happened, to regulate and enlarge other narrow and crocked lanes or passages. And where any particular persons shall have their land taken away or lessened thereby, a jury of twelve men shall be appointed by two justices of the peace, and sworn to ascertain the value thereof, to be paid by the person to whose land the same shall be added, or by the neighbourhood or town, in proportion to the benefit or conveniency any shall have thereby.

It is apparent from Section 2 that colonial leaders understood the value of planning, at least in respect to street patterns. The provision allowing the selectmen and justices to lay out streets in unbuilt areas would have given them great control over development patterns. Also, the opportunity to improve the design of a city that had evolved haphazardly was not to be missed when areas were burned out. Notable, too, is the provision which arranges compensation for property takings pursuant to the Law, including the use of a jury rather than determinations of value by, say, the selectmen.[18]

The third section of 1692-3 Chapter 13 required the covering of existing buildings with slate or tile, ordering:

> [Sect.3.] That every owner of such house or building so set up contrary to such law, shall cause the same to be covered with slate or tyle; or otherwise such houses or buildings shall be deemed a common nuisance and the owner thereof proceeded against accordingly.

This provision, when added to Section 1's actions regulating new construction, made the statute very comprehensive. The General Court was obviously trying to plug all the potential loopholes.

Section 4 gave General Court approval for the local policy of allowing the destruction of buildings to prevent the spread of fire and arranged compensation: The owners of destroyed homes were to be compensated "by the rest of the inhabitants whose houses shall not be burnt", providing that the destruction of the home actually stopped the progress of the fire. If, however, the house where a fire started was destroyed by order of town officials, no compensation was required.

Once again, the law had gone too far in some directions. In 1699-1700 Chapter 24, the General Court decided that ordering the demolition of illegal timber buildings "would probably be thought over great severity" and reduced the punishment for infractions to a £50 fine to be applied for the support of the poor (in a colonial version of linkage payments).

In other areas, the law had apparently not gone far

enough. The 1699-1700 law also authorized the Suffolk County grand jury to locate illegal timber buildings and report these to the authorities. In addition, the Governor's power to license timber buildings was expanded to include imposing "such conditions, limitations, and restrictions for the enclosing and covering thereof as [he] shall see fit."[19] This is a level of discretion that modern Planning and Appeals Boards might envy. The Governor was, however, reluctant to issue permits for timber structures in any case, with only 17 allowed between 1720 and 1744.[20]

Restatements of the Boston fire laws were made periodically by the General Court up to the time of independence. Minor alterations and additions were made, of which a few deserve mention. In 1759-60 Chapter 30, Boston selectmen were specifically authorized to approve the size of structures rebuilt following fires, another important 'first' that may be seen as a precedent for modern regulation of height and density.

1760-61 Chapter 9 permitted wooden warehouses, shops and workhouses on wharfs, given the foundation stresses resulting from brick or stone construction. Just the same, wharf buildings were required to be covered with plaster or slate and to have slate or tile roofs. The Court was acknowledging that different types of construction were appropriate in different places. It may be assumed that 'accidents' in the harbor area were responsible for this bit of insight on the Court's part, given its reactive approach to disasters.

Legacy of Fire Laws

By 1722 there were 3000 houses in Boston, of which it has been estimated that 1000 were of brick.[21] The fact that a number of 18th Century buildings still exist, such as the Old Corner Book Store, Old North Church, Fanuiel Hall, and the Old State House, can be at least in part attributed to the building requirements imposed by the General Court.

The legacy of the Boston Fire Laws also includes the current state Building Code. Perhaps more important in terms of modern planning was the establishment of laws controlling locations and sizes of buildings and encompassing primitive concepts of urban renewal. These actions represent a significant step in the use of legislative power to control the physical nature of urban areas.

Notes

1. Solberg, p. 2.
2. Seaburg, p. 124.
3. Mumford, p. 283.
4. Thomas, pp. 100-105.
5. Sewall, p. 101.
6. Whitehill, p. 13.
7. Map reproduced in Whitehill, p. 45.
8. Bridenbaugh, p. 62.
9. BRC, v. 7, p. 79.
10. Bridenbaugh, p. 59.
11. Ibid.
12. BRC, v. 7, p. 130.
13. Ibid., passim.
14. Ibid., p. 132.
15. Laws and Liberties, p. 52.
16. Cushing (1976), p. 547.
17. Ibid., p. 595.
18. Urban renewal following disasters was also known in Europe during this period, as following the Lisbon earthquake of 1755 (Mullin, 1987).
19. 1699-1700 Chapter 24.
20. Bridenbaugh, p. 369.
21. Whitehill, p. 37.

CHAPTER VI

NUISANCE REGULATIONS

Definition of Nuisance

A major category of activities which were subjected to placement restrictions in the Colonies were nuisances. A modern law dictionary defines nuisance as follows:

> Public Nuisance: an unreasonable interference with a right common to the general public; behavior that unreasonably interferes with the health, safety, peace, comfort or convenience of the community.[1]

Another source puts it more bluntly:

> The term "nuisance" is usually applied to those developments which are offensive in the most crude and obvious way, in which cause and effect are not only quite obvious to the naked ear or nose, but are also not far apart in either space or time.[2]

In colonial Massachusetts, industries involving the production of goods from animal corpses frequently fit the definition of nuisance, as did activities associated with fire and smoke. An examination of Massachusetts Acts and Resolves issued by the General Court between 1684 and 1741 reveals that slaughterhouses, stills, tallow chandleries,

tanneries and kilns were all regulated by class as nuisances.* Stills and kilns were potential fire hazards; slaughterhouses, tanneries and tallow chandleries produced goods from dead animals and created foul odors.

Health Concerns

The regulation of nuisances was not enacted simply because the trades regulated produced odors or fumes which caused discomfort to neighbors. Considering that in colonial towns bathing was uncommon and there was an abundance of outdoor toilet facilities, to note just two examples, unpleasant odors were no doubt the rule rather than the exception. Some noxious fumes, however, were considered to be particularly menacing because of disease concerns.

Seventeenth Century ideas of disease were primitive, a mix of outright superstition and crude scientific notions. In Puritan Massachusetts, disease was often considered a punishment from God. The causes of disease were actions or attitudes which inspired God's anger, such as "pride, covetousness, animosities, personal neglecte of gosppelizing our youth, & of gosppelizing of the indians, drinking houses multiplied, not lessend, quakers openly tolerated."* To prevent disease, prayer and fasting were common.

A somewhat more realistic belief about the causes of disease, although also incorrect, was that some diseases were associated with noxious fumes, and that sanitary techniques could help prevent these:

> According to ancient belief, putrid exhalations from rotting animal matter were a prominent source of infectious fevers and fluxes, and on this basis the people of Massachusetts, following English precedents that go back to the Middle Ages, had developed their sanitary measures . . .[5]

One method of preventing disease by improving sanitation was with nuisance controls. The science may have been faulty, but the results were positive. As Carl Bridenbaugh observed:

> The sanitary regulations passed by some of the village authorities constitute an interesting aspect of seventeenth century urban development. In enacting these ordinances villagers probably thought most of eliminating obvious public nuisances, yet the current belief in the dangers to health from malignant vapors might upon occasion, quite as much as the germ theory of disease, lead to the better disposal of garbage or cleaning up of dumps, and therefore to the safeguarding of the public health.[6]

Nuisance regulations were no doubt more effective than such actions as preaching to the Indians or not tolerating Quakers in preventing disease.

Local Legislation

Colonial nuisance regulation had its basis in English statutes dating back to around 1350. There are many examples of English sanitary regulation during the period prior to American colonization. The operation of slaughterhouses, for example, had been forbidden in urban areas by Henry VII for reasons of public health.[7]

The first record of a sanitary ordinance in Boston dates from 1634. The population was instructed not to leave dead fish and other garbage on the town dock. A fine of 5 shillings was set as a penalty for violation of this ordinance.[8] Other sanitary ordinances were enacted throughout the colonial period. Many of these were not nuisance laws but rather regulations controlling construction of such things as drains, wells, and privies.

Real nuisance regulation in Boston began with actions against individual tradesmen. Twelve years after Boston's founding, the following entry was made in the town records:

> August 31, 1642
> It's ordered that the Constable shall give speedy notice to Robt. Nash, Butcher, that with all speed he remove the Stinking garbage out of his yard, nere the street, and provide some other remote place for slaughter of Beasts, that such loathsome smells might be avoyded, which are of great annoyance unto the neighbours, and to strangers.[9]

A brief examination of this entry is of interest in the context of later laws. Nash's garbage, which results from his occupation, stinks. The neighbors understandably don't like the smell, so he is told to conduct his business elsewhere. There is a nonconforming use and an order to move. In this ancient record, it is possible to perceive one of the most distant American ancestors of current local zoning.

Boston town records for the next few decades have sporadic, similar entries. Nash was apparently a bit of a

scofflaw because he was cited again later in town records for the same offense, and in general the record indicates that the town butchers were consistently careless with their refuse.[10] During this period, nuisance activities were dealt with on an individual basis.

General Court Legislation

In 1684, a significant change occurred when the major legal body in the colony, the General Court, enacted a law (Figure 4) which regulated butchers as a class:

> There being Complaint made of great inconvenience by reason of Filth and Dirt cast into the Streets of Boston and other Towns, and of the neglect of Butchers to cleanse their Slaughterhouses and Yards of Blood and other Filth; although such Houses and Yards are scituate near Streets and Lanes much frequented: This Court doth Order and Enact, that all Persons so offending shall forfeit twenty shillings to the use of the Town except such Annoyance removed within twelve hours after Complaint thereof made to lawful Authority.[11]

The fact that butchers were set aside as a group prone to create a nuisance indicates that legislators were beginning to think in a larger frame about this no doubt growing problem. This law set the stage for the most comprehensive colonial Massachusetts law regulating nuisances, which was adopted 9 years later.

In the spring of 1693, the General Court enacted a law (1692-3 Chapter 23) to control the location of certain types of nuisances. In Boston, Salem, Charlestown, and "other

SEVERAL

LAWS and ORDERS

Made by the

General Court,

Held at *Boſton* the *7th* of *May*, 1684.

Impoſts on Wine & ſtrong Liquors in force till *June* 10. 1685

IT is Ordered by this Court and the Authority thereof, that the Laws *title* Impoſts, and Impoſt on Wine and ſtrong Liquors, with the Explanations and Additions made alſo thereunto, ſhall be and remain in full force from the tenth day of *June* next inſuing, until the tenth day of *June*, which will be in the year one thouſand ſix hundred eighty and five.

Nuſances to be removed within twelve hours on penalty.

THere being Complaint made of great inconvenience by reaſon of Filth and Dirt caſt into the Streets of Boſton *and other Towns, and of the neglect of Butchers to cleanſe their Slaughter-houſes and Yards of Blood and other Filth; although ſuch Houſes and Yards are ſcituate near Streets and Lanes much frequented:*

This Court doth Order and Enact, that all Perſons ſo offending ſhall forfeit twenty ſhillings to the uſe of the Town except ſuch Annoyance be removed within twelve hours after Complaint thereof made to lawful Authority.

Figure 4. The earliest General Court nuisance law, 1684.

market towns" justices of the peace and selectmen were ordered to:

> assign some certain places in each of said towns (where it may be least offensive) for the erecting or setting up of slaughter-houses for the killing of all meat, still-houses, and houses for trying of tallow and currying of leather . . .[12]

These places alone were to be used for the trades listed. Fines were specified for non-compliance with the law. In 1692-3 Chapter 23, it can be seen that certain uses are regulated by location, a clear similarity to later zoning and a major precedent for later laws.

Boston town records for 1693 confirm the prompt compliance of that town with the new law. Local justices and selectmen on March 30 specified 4 locations for slaughterhouses. It is worth noting that 3 of these locations were on wharfs, indicating that the present condition of Boston Harbor has a long genealogy. Stills, chandleries and curriers were relocated beginning on June 6. On July 18, Boston went so far as to regulate the size of most slaughterhouses thus exceeding the state regulations.[13]

As the years went by, 1692-3 Chapter 23 was occasionally modified as necessary, although the basic law remained the same. Some clarification and strengthening were needed.

Apparently, the law did not ensure compliance. In 1696, distillers and tallow-chandlers who continued to operate in illegal locations were ordered jailed until their stills and furnaces were demolished or removed. [14] Another amendment in

1708-9 defined 'leather dressers' as curriers and regulated them.[15] This would indicate that there had been some attempt to evade the law through euphemizing the names of certain activities.

By 1710, the growth of Massachusetts towns had begun to reach the areas previously set aside for nuisances. The original act, being basically reactive, had failed to allow for future changes in these locations "which then so assigned are become inconvenient for the use so intended and by ill stenches tend to breed infection."[16] Following another addition to the law, the selectmen and justices were allowed in the future to select new locations as they deemed them needed and to close old ones. The definitions were once again tightened:

> That the proof of any dead beast or beasts hanging up in any out-house, or the lying or carrying out the entrails, garbage of beasts, or blood of creatures, in or out of such house, shall be sufficient conviction in law that such house is used for a slaughter-house, within the intent of the law against common nuisances.[17]

This broad definition of slaughterhouse no doubt improved enforcement of the law.

The 1710 amendment must have closed most of the loopholes, because there were no further changes in the law for the 31 years. The next amendment, in 1741, added potter's kilns to the list of nuisances, citing fire concerns as the reason.[18]

The final pre-revolutionary General Court nuisance

legislation was enacted in 1742 to create a monopoly. All kilns manufacturing stoneware in the Province, with the exception of thosee belonging to Thomas Symmes, were declared nuisances and ordered destroyed.[19] Misuse of this kind of law is not an entirely recent phenomenon.

1692-93 Chapter 23 and the later additions continued unchanged from 1742 through the Revolution. In 1785, the new Commonwealth of Massachusetts enacted nuisance regulations which copied almost word for word the language of the colonial laws.

Public Houses

Similar to nuisance laws were some of the laws directed at public houses. Because these laws sometimes restricted quantity and location they merit a brief discussion.

The public house, usually a combination inn, restaurant, and tavern that was a necessity for travelers in colonial New England. These also served important local functions:

> Until the village general store come of age, the tavern was a place of congregation second only to the church . . . ;[it] was the dance hall, theater, convention auditorium, the lecture and concert hall. In many a village it was the courtroom, and a few taverns even had a strong room used as a jail.[20]

Largely because of the problems associated with the use of alcohol, public houses merited extensive legislation by the General Court. The 1672 edition of the Laws and

Liberties contains over six pages of regulations under the heading "In-keepers, Ordinaries. Tippling, Drunkeness." A section on "rude singing in Taverns" is typical:

> *This Court being sensible of the great increase of prophaness among us especially among the younger sort, taking their oportunity of meeting together in places of public Entertainment, to currupt one another by their uncivil and wanton carriage, rudely singing and making a noise, to the disturbance of the Family and other Guests if any be in the House;*
>
> This Court do therefore Order and hereby Enact, That no person on persons whatsoever, do presume either in Word or Deed to carry it uncivilly, or wantonly, singing rudely or making a noise to the disturbance of the Family, or any other Guests in any place of public entertainment, on penalty of paying *five shillings* for every offence against this law . . .
>
> And if any person allowed to keep a house of publick Entertainment shall suffer such carriages by any person or persons, and not legally prosecute the same before Authority, on legal conviction thereof, before the County Court of whom they had their License, they shall be debarred of any further renewal thereof.[21]

Then as now, places where alcohol was consumed could become nuisances. Eventually the General Court attempted to restrict them by means that had land-use implications.

In 1698, the General Court enacted legislation to control the location and number of taverns. County justices were ordered not to license more public houses than were "necessary for the receiving and refrishment of travaillers and strangers, and to serve the public occasions of such town or precinct..." In addition, it was ordered that "all Public Houses shall be on or near the high streets roads and places of great resort."[22]

This law was apparently not specific enough, and was followed in 1710 by a requirement that no town have more than one pub, except maritime towns.[23] The exemption of maritime communities is interesting considering the reputed drinking habits of sailors. In actuality, this exemption probably represents a recognition of the need for maritime towns to house and feed larger numbers of transients than would have been found in inland towns. As such it would signify a legislative recognition of differing community characters.

From a land-use perspective, an attempt to find a suitable location for a possible nuisance is again apparent. In addition, the attempt to control the quantity of public houses in the towns is notable. It was (and still is) unusual for a law to specify the exact quantity of a given use to be allowed. The record is unclear, but it seems unlikely that these limits on the numbers of public houses were observed.

Similarity to Zoning

It would be an exaggeration to claim that nuisance regulations are zoning. Current zoning for land-use is far broader in its background and applications. The major difference lies in the fact that nuisance regulations are limited and reactive, while zoning is, or should be, comprehensive and proactive. Nuisance laws have little use in controlling growth, for example. Just the same, there are some similarities between the colonial laws discussed,

later nuisance laws, and modern zoning.

These similarities were noticed and utilized in the legal implementation of 20th Century zoning. In Euclid v. Ambler Realty, the Supreme Court drew comparisons between nuisance controls and zoning in order to justify its decision for Euclid. The Court maintained that non-conforming uses were like nuisances: "A nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard."[24] This interpretation of zoning as a logical extension of the law of nuisance is one of the reasons zoning was held to be constitutional.

Colonial Massachusetts nuisance regulations have been described as "almost in the nature of zoning acts."[25] Both zoning and nuisance regulation are done for the same basic reason: the health, safety and comfort of the general population. Both involve the regulation of the placement of types of activities and the recognition that some types of activities don't mix. Nuisance regulations such as those used in colonial Massachusetts may not be the progenitors of current zoning, but they at least have an avuncular relationship to modern zoning practice.

Notes

1. Giftis, p. 299.
2. Bettman, p. 836.
3. Cushing (1984), pp. 338-362.
4. Blake, p. 24.
5. Ibid., p. 99.
6. Bridenbaugh, p. 65.
7. Thomas, pp. 48-64.
8. BRC, II, pp. 1-2.
9. Ibid., p. 18.
10. Ibid., pp. 60-61, 80, 91, 97.
11. 1684 Ch. 16.
12. Ibid., 1693 Ch. 23.
13. BRC, VII, pp. 214-217.
14. 1696 Ch. 13.
15. 1708-9 Ch. 4.
16. 1710-11 Ch. 8.
17. Ibid.
18. 1741-42 Ch. 21.
19. 1742-43 Ch. 23.
20. Holbrook, p. 70.
21. Laws and Liberties, p. 84.
22. 1698 Chapter 10.
23. 1710-11 Chapter 11.
24. Euclid v. Ambler Realty, 272 U.S. 375 (1926).
25. Baird, p. 253.

CHAPTER VII

ROADS AND HIGHWAYS

General

A key concern in modern planning activities is the location and design of public and private roads. Road location and design are important elements in determining future development patterns and have merited extensive legislative controls. Massachusetts General Laws Chapter 41, which guides municipal planning and subdivision regulation, contains many examples of road controls and is a primary modern legal tool for controlling development.

Roads were also a key concern in the past. General planning histories, such as Scott's American City Planning, stress the importance of roads to city planning throughout American history. Automobiles have complicated the issue, but the concern for adequate roads greatly predates their development.

Scott cites an action of the Pennsylvania legislature in 1721 which enabled Philadelphia to appoint officials to

"establish streets and building lines".[1] In Massachusetts, the earliest actions regulating roads occurred around 80 years prior to this and reflect English practices that go back further.

Prior to the settlement of America, English lawmakers had developed fairly extensive controls over highways and roads. Although most English roads were dirt cart tracks, paved and drained roads were not unknown before 1600. Many localities had taken steps to insure the proper construction and maintenance of their roads. Regulations establishing legal responsibility for construction and repair, prohibiting obstructions, and even requiring the cleaning of roads were used in British towns.[2] The colonists of New England brought the knowledge of these governmental controls to America with them.

Initially, water transportation was the major method of moving people and goods in Massachusetts. The first towns in the colony all had seaside locations for this reason. Throughout the colonial period, the Atlantic Ocean and the few large rivers in the area constituted the major highway for trade goods in the region. As back country was brought into cultivation and new towns were planted in the interior, land transportation routes evolved.[3] Early roads were crude and speed of travel was slow, the main advantage of overland roads over water travel being that goods and people did not sink beneath them and disappear very often.

Local Actions

Early town roads were often located in a haphazard fashion, many portions having evolved from animal paths and Indian trails.[4] Indeed, many towns today in Massachusetts owe some of the origins of their road layouts to these sources. In some places of English habitation, such as Hadley, planned roads were set out prior to settlement;[5] in many other places, as Bridenbaugh notes, "Paths appeared from house to house as they were needed, and an occasional road pushed to a nearby settlement."[6]

It soon became clear that town government, rather than private interests, needed to regulate much road construction, layout, and repair. Boston town records, in particular, provide a comprehensive history of local road actions. Other towns took similar actions, but on a smaller scale.

Boston's selectmen began to take control of local roads in 1636, when they appointed highway surveyors and laid out the first official town streets.[7] The selectmen later responded to improvements in construction techniques: The first paved road in Boston was constructed in 1652; although this road was privately built, the selectmen obviously understood its value because the voted a 40 shilling contribution to assist in financing it.[8] Local roads soon became one of the most common items dealt with by the selectmen: Boston Town Records for the years 1660-1701 contain approximately 240 index entries under the heading

"ways".[9]

Boston is notorious today for its confusing and apparently random road grid. Contrary to rumor, this grid was not determined entirely by caw paths (see Figure 5). The town fathers exercised much control over the location and design of new roads, as can be seen from the following record, dated May 9, 1673:

> It is Ordered that a high way runn from Thomas Rawlins corner-close to his pale or fence to the corner of the hous of Nath'l Bishop known by the name of the blew bell to be 16 1/2 foot at the s^d^ Rawlins corner & 15 foote from the s^d^ corner of the blew bell to Jonathan Shrimptons warehouse, in the bredth thereof, and that the said way runn from the said corner of the blew bell to the bridge 15 foote broad.[10]

The historic record thus demonstrates that there was fairly extensive planning of roads, even if the results sometimes indicate that it was bad planning.

Local and regional officials organizing road work were frequently guided by statutes of the General Court, which provided extensive legislation in this area.

General Court Legislation: Highways

The General Court began highway legislation in the mid-1630s, responding in part to complaints of private citizens about road conditions.[11] By 1648, legislation is found in the Laws and Liberties to provide for "easie and safe" regional roads:

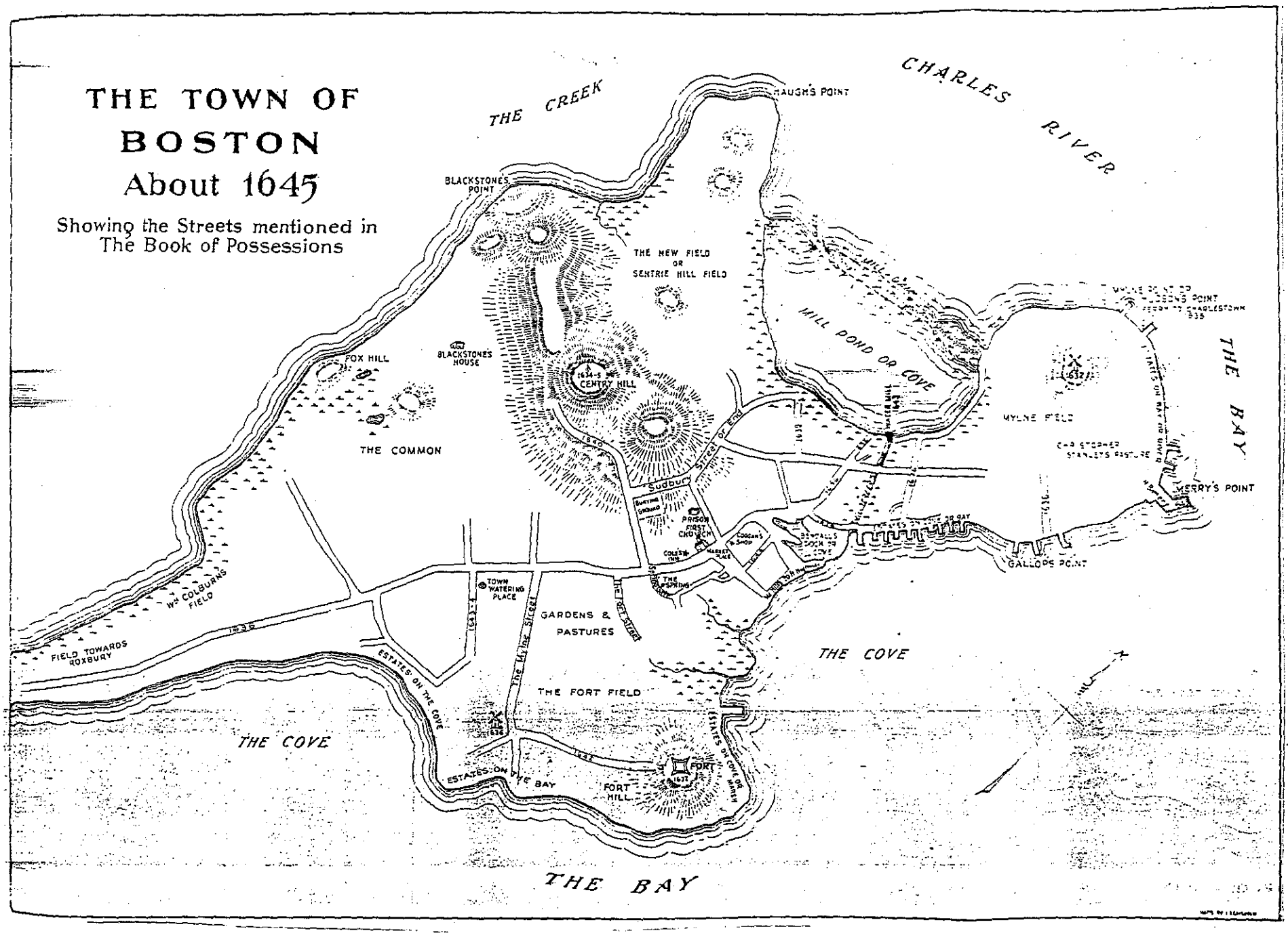

Figure 5. Map of Boston in 1645, showing road grid.

HIGHWAYES.

To the end there may be convenient High-wayes for Travelers.

It is Ordered by the Authority of this Court, That all Country Highwayes shall be such as may be most easie and safe for Travellers, to which purpose the Court of that County where such Highwayes is to be made and laid out, shall upon complaint appoint two or three men of each next town, whose Inhabitants have most occasion thereof, upon view to lay out such High wayes according to Order, given them by that Court, and make return of what they do therein to the next Court, Provided alwayes it occasion not the pulling down of any Mans House, or laying open any Garden or Orchard, and in Common Grounds, or where the Soyle is wet, myrie or very rocky, shall lay out such High-wayes the wider, *viz. six, eight, ten* or more Rods.

Provided, that if any Man be thereby damaged in his improved Ground, the Town shall make him reasonable satisfaction, by estimation of those that laid out the same: and if those deputed cannot agree, it shall be referred unto the County Court of the Shire, who shall have power to hear and determine the Case; And if any person finde himself justly grieved with any act or thing, done by the persons deputed aforesaid, he may Appeal to the County Court aforesaid, but if he be found to complain without cause, he shall surely pay all charges of the parties, and Court, during that Action and also be fined to the County as the Court shall adjudge.[12]

There are a number of points of interest in the "Highwayes" statute when it is considered in the light of modern planning practice. Regional concerns, a recognition of the need for planners, and respect for the interests of private landowners are apparent.

First, the construction of highways between towns was to be arranged by representatives of the towns concerned under the guidance of the county. The General Court clearly

understood the need for regional organization of infrastructure, in this case roads, by a governmental body (the county courts) capable of superseding local interests. This is regional planning, of a limited sort.

The provisions for the appointment of persons to lay out highways may represent the Commonwealth's earliest statutory recognition of the need for planners: the Court required that individuals be assigned to make decisions about where and how roads are to be built. Although somewhat vague and limited to roads, the provision is significant to later planning legislation. Modern Massachusetts Planning Boards and planning professionals might well trace their origins to this statute.

Private property rights were also an interest of the lawmakers. Conflicts between private and public uses were unavoidable when roads were to be built. The concern that prompted the legislators to require that "reasonable satisfaction" be made to anyone "damaged in his improved Ground" is the same concern driving court decisions in modern "takings" cases. The 5th Amendment to the Constitution ("nor shall private property be taken for public use without just compensation") thus has American antecedents going back to the 1640s.

The General Court restated and revised its highway laws in General Laws 1693-4 Chapter 6. In addition to restating many of the requirements of earlier legislation, the Act authorized the appointment of local highway surveyors to

arrange for repair of highways, bridges, and causeways. These surveyors were also permitted to remove obstructions from the roads (see "encroachments", below). The position of highway surveyor may have been an unpopular one, because the General Court specified a fine for persons refusing to serve in that capacity. Town liabilities for injuries resulting from unrepaired roads and bridges were spelled out.

The General Court also empowered the counties to assume additional responsibilities for certain roads: where highways or common roads were needed, or "old ways may with more conveniency be turned or altered" county justices were allowed to appoint a committee to evaluate the need, and order the roads to be laid out or altered. Again, people are being appointed do planning under the provisions of this statute.

A few later statutes should be noted. In 1756-7 Chapter 18, county justices were instructed to appoint five "disinterested, sufficient freeholders in the same county to view and lay out" new roads. The fact that the Court specified 'disinterested' persons may indicate that conflicts of interest had become a problem. After work was completed, report to Court was to be made so that the road could be "allowed and recorded, and after known for a publick highway." In 1764-65 Chapter 6 the county courts were allowed to discontinue roads, it apparently having been realized that sometimes it is almost as important to be able to get rid of unwanted roads as to build new ones.

General Court Legislation: Local Roads

Along with establishing a legal structure to provide roads of regional importance, the Court also guided local regulation of what were called 'private ways'. The definition of 'private way' has shifted somewhat over the years. In the 1600's, these were all roads which were not major highways but only served a local purpose. Legislation on these types of roads was found in Section 2 of the "Highwayes" Statute in the 1648 Laws and Liberties:

> 2. It is Ordered and Declared by this Court, That the Select Townsmen of every Town, have power to lay out (by themselves or others) particular and private wayes concerning their own Town, only so as no damage be done to any man without due recompence to be given by the judgement of the said Select men, and one or two chosen by the said Select men, and one or two chosen by the party; and if any person shall finde himself justly grieved, he may Appeal to the next County Court of that Shire, who shall do justice therein as in other Cases.

This section allowed the towns to exercise the same kinds of controls over local roads that counties were given over the common highways in Section 1 of the Act. Again, there are provisions for planning (by selectmen or their appointees) and a concern for fairness to private land-owners damaged by public actions.

Later legislation provided more detail about town powers and responsibilities over local roads. Many of the elements of these laws still exist.

Then as now, construction of roads by the towns incurred a financial burden that the towns were not always willing to

accept. Often, individuals or small groups of persons residing the towns were not being served by town roads. In 1713-14 Chapter 6 selectmen were empowered to lay out private ways:

> between any of the inhabitants . . . within their respective towns, as shall be thought necessary, to or from any original lot laid out, or to be laid out . . .

Realizing that authorizing the construction of these ways was not enough, the General Court then went on to insure the construction of certain roads:

> And whereas it hath been (and may yet be) found by experience that the selectmen of many towns within this province, through relation or other interest, have so very much delayed and at other times absolutely refused to lay out or cause to be laid out particular and private wayes, for or within the several towns, when the same have been really necessary; which hath been to the very great damage and grievance of persons concerned, *Be it further enacted by the authority aforesaid,* That when and so often as the selectmen of any of the towns within this province, shall unreasonably delay or refuse to lay out, or cause top be laid out, any such particular or private ways as aforesaid . . . , her majestie's justices of the peace within the several counties of this province . . . are hereby impowered to lay out, or cause to be laid out, such particular or private wayes . . .

The county justices could then charge the town for the work. The General Court was insuring that if town officials failed to exercise their responsibilities, a higher level of government would assume those responsibilities.

1727 Chapter 1 included a number of provisions which made the process of making local road decisions more democratic: Notice at March town meeting was to be made of new private ways and all private ways were to be approved at

town meeting. Town meeting could also vote to alter or discontinue private ways. These powers, for better or worse, are still held by town meeting voters.

1746-47 Chapter 10 appears to be a key precedent for later subdivision control laws. Selectmen were allowed to order construction of private ways "to or for any tract of land not an original lot". Presumably, this refers to subdivisions. The law reflects the same concern for access to new lots which governs many planning board actions today.

These statutes defining town powers over local roads gave the towns great potential control over development patterns and represented a significant tool for localities to use in structuring their physical evolution. The basic physical organization of many Massachusetts towns today probably stems in large part from decisions made under these statutes by Bay Colony town officials and citizens.

Encumbrances

Also closely related to current land-use issues were those laws concerning road encumbrances or obstructions. Once again, clear conflicts between land uses are seen: a building and a road, for example, cannot conveniently occupy the same space.

Town regulations dealing with encumbrances were in place early. In Winthrop's Boston, Rutman has described conditions in the city before 1650:

> When the townsmen developed a penchant for digging their cellar entrances out into thoroughfares to the hazard of passers-by, or when they used the public highways as mines for clay to daub on their chimneys, the town guarded society's interest with cease and desist orders and fines; when a saw out was dug in the middle of the marketplace the town ordered it filled in and the scrap timber littering the street removed.[13]

In 1636, the selectmen ordered that no buildings be constructed in the town streets.[14] Town records throughout the period are filled with entries documenting actions against encumbrances, such as the following:

> Whereas Joseph Rock hath sett a fence into the streete betweene his dwelling house and Mr. Lyndes house, itt is ordered that hee shall remoove the said fence within a weeke, on poenalty of twenty shillings, and so on from weeke to weeke until remooved . . .[15]

Local officials sometimes allowed construction in the streets for a fee. In August of 1652, for a fee of 2 shillings 6 pence per year, "Sarjt. Robert Turner is allowed have his new house to set out farther into the street (than his old house now standeth)".[16]

The Laws and Liberties of 1648 include one section on road encumbrances in the chapter on "Highways": "Upon information that divers high-wayes are much annoyed and incumbered by gates and rayls erected upon them" the General Court ordered that, upon complaint, county courts could appoint "a committee of discreet and indifferent men to view such incumbrance, and to order the reformation therof."[17]

This law is notable for its limits in that it refers

specifically to "common highways", those roads which connected towns and were thus of extra-local importance. The law also limits the types of encumbrance to gates and rails.

By 1693, the law had been considerably expanded. 1693-4 Chapter 6 allowed town highway surveyors "to cut down, dig up, or remove . . . trees, bushes, stones, fences, rayles, gates, inclosures, or other thing or things, as anywayes streighten, hurt, hinder, or incommode" highways, bridges, private ways, and causeways.

In addition to allowing the highway surveyors these rights, the General Court went even further, stating that "it shall be lawfull for any person or persons to pull down and remove [rails, gates or fences] upon or across any highway or country road". The exceptions to this rule were those obstructions that had been approved by the county courts: How the general public, busily pulling down these rails, gates, and fences, were supposed to know whether or not they were approved by the courts is not explained. The law also gave towns the ability to form committees to remove encumbrances from private ways.

This sweeping law had the disadvantage of being reactive by providing for the removal of encumbrances, not their prevention. This problem was rectified in 1698 Chapter 2, "An Act to Prevent Encroachments upon Highways, Streets, &c.", in which provides that "henceforth" things cannot be built in the streets. The entire Act is of interest:

Forasmuch as divers incumbrances and incroachments have been made in and upon the common roads, highways, and streets heretofore laid out in several towns within this province; for redress whereof,—

Be it enacted by the Lieutenant-Governour, Council and Representatives in General Court assembled, and by the authority of the same,

That henceforth no edifice, building or fence whatsoever shall be raised erected, built or set up in, upon, or over any of the said roads, highways, streets, lanes or alleys, in any town within this province, or any part of any of them, whereby to streighten the passage, or any ways lessen the full breadth of any such roads, highways, streets, lanes or alleys; and if any edifice, building or fence whatsoever shall be raised, erected, built, or set up, upon, in or over any such road, highway, street or alley, contrary hereunto, every such edifice, building or fence shall be deemed and held to be a common nuisance; and the court of general sessions of the peace for the county in which such town doth lye, upon complaint, and making out the same before them, are hereby impowred to order and cause such edifice, building or fence to be taken down, demolished and removed, and also to cause to be removed all such incroachments or incumbrances as heretofore have been made, upon, in or over any common road, highway or street as aforesaid, and the charge thereof to be answered and paid by disposing of so much of the materials as shall be necessary to satisfy the same: *provided, nevertheless,* that this act shall not be intended or construed to intend the prohibiting of the setting up of any conduit, watch-house, cage or stocks, for publick use in or upon any highway or street within any town.

Illegal obstructions were to be removed by order of the county court and costs paid by the sale of the materials removed. Conduits, watch houses, cages and stocks were exempted from the law; confinement in the latter two on public roads were standard punishments of the period.

In 1709-10 Chapter 5 improvements in sanitary techniques resulted in a new addition to the laws: No one was to dig up a highway for the purpose of laying or repairing a drain

unless they received permission from the selectmen. A 20 shilling fine was specified.

1734-35 Chapter 2 contained more additions and changes. Builders were to pay the cost of removal of obstructions (apparently sale of the material from these was not covering the bill in some cases). Existing fences were to be assumed to be the boundaries of streets unless the fence owners could prove otherwise. If a fence was moved closer to a street or highway, selectmen were to be notified and to determine if an encroachment had been created.

These regulations restricting encumbrances are highly locational and are forerunners of later density requirements. Land-use conflicts are obvious; travel along roads becomes inconvenient or impossible when things are built in those roads. The prohibiting of construction in the streets is not a far cry from requirements that construction be set back from the streets, and has a distant connection with such contemporary regulations as those requiring limits on the percentage of a lot that can be built.[18]

Notes

1. Scott, p. 5.
2. Thomas, pp. 39-57.
3. Hawke pp. 149-150.
4. Descriptions of the origins of Massachusetts place names, such as Green and Sachse's Names on the Land, frequently cite these origins.
5. Lacy, pg. 9.
6. Bridenbaugh, p. 13.
7. Ibid., p. 13.
8. Ibid., p. 17.
9. BRC, v. 7, pp. 268-269.
10. Ibid., p. 77.
11. Bridenbaugh, p. 13.
12. Laws and Liberties, 1648, p. 24-25.
13. Rutman, p. 203.
14. BRC, v. 2, p. 60.
15. Ibid., p. 130.
16. Ibid., p. 112.
17. Laws and Liberties, 1648, p. 25.
18. An interesting corollary to the encumbrance laws involves the enactment of a law concerning street lamps. In 1773-74 Chapter 12, selectmen in Boston were authorized to set up street lamps where these were deemed beneficial. The selectmen were also permitted to "take down or remove any post, or sign thereon, or that now or hereafter may be fixed..." if they decided that the post or sign "tends to intercept or any ways lessen the light" from the lamps.
    This is a rare example of the General Court responding to a technological advance with a new law. It may also be the first example of the General Court legislating for adequate light, still an objective of the Zoning Act. The notion that not only Roads but also light could be encumbered seems very sophisticated for the 1700s.

CHAPTER VIII

CONCLUSION

Summary

The General Court of the Massachusetts Bay Colony began enacting laws that related to land-use in the 1630's and continued to do so throughout the colonial period. Although influenced by English law, the General Court was also willing and able to adapt its laws to American conditions.

The land-use laws enacted paralleled the economic development of the olony. Early legislation tended to have an agricultural focus. As parts of the colony became more urban, land regulation developed a more urban focus as evidenced by the appearance of the Boston Building Code and the first General Court nuisance regulation in the 1680's.

Perhaps the most far-reaching legislation stemmed from the empowerment of towns to order many of their own affairs, which resulted in many and varied local controls over land-use. The General Courts also granted limited empowerment to counties over land-use issues of regional importance and as a check on town decisions affecting local property owners.

Some of the earliest statutes relating to land-use involved the separation of cropland and grazing land. The legal attempts to encourage spatial segregation of these uses bears a primitive conceptual similarity to zoning.

Later, the General Court enacted a number of laws designed to deal with the threat of fire. These laws included a building code as well as locational controls over rebuilding that can be seen as a form of urban renewal for burned-over areas.

Nuisance laws were enacted in which classes of businesses were segregated from other uses. Again, this has some similarity to zoning. In the case of taverns, controls of not only location but also quantity were legislated.

Road laws contained a number of elements closely related to modern land-use planning. Regional concerns were an issue in highway construction. Road planning was authorized at the county and local levels. Concerns over property takings were addressed in the laws. Laws regulating local roads included early subdivision controls. Laws preventing obstructions in the roads encouraged spatial separation and presage modern set-back requirements.

The colonial legislation described in the previous sections represents the beginnings of an American tradition of land-use that has continued to evolve to the present. The debt that American planning owes to 19th Century European practices has frequently been cited by historians, but there is also a domestic heritage that has not been sufficiently

examined. Indeed, many elements found in modern zoning, subdivision, and other land-use controls existed in Massachusetts over 300 years ago.

It is clear that General Court lawmakers had an understanding of the need for locational controls that characterize much later land-use regulation. From the agricultural concerns that prompted fence and livestock laws to the more sophisticated urban worries that were behind the implementation of nuisance laws, the General Court knew that there are 'right ' and 'wrong' places for certain land uses.

Evolution of Regulations

Town and General Court records indicate a pattern in the evolution of the laws. As a general rule, actions in individual cases are found in the earliest town records, such as those ordering specific butchers to dispose of their refuse properly. As individual cases became more and more common, the selectmen often reacted with a general order regulating a group or type of activity. If a problem appeared often enough in the towns and was considered to be sufficiently important, the General Court would eventually enact legislation.

Often the new General Court statutes were found to be unworkable for some reason and were subjected to a series of modifications until they proved practical. Several types of modifications were typically made to the statutes.

The establishment or increase of penalties for non-

compliance was common. The laws were found to be worthless if they did not contain an effective element of coercion.

The laws were frequently changed to include potential problems as well as existing ones. This is illustrated by the laws concerning road obstructions, which were originally aimed only at existing structures but were later amended to prohibit future obstructions. Reactive laws were thus made proactive.

Laws which were too broad were limited. The Boston building code, for example, at first tried to encompass every building in the city, but was later amended to exempt smaller buildings and to allow different standards for buildings on wharfs. Rules without exceptions were found to be impractical and unfair.

Other examples could be cited. The main point is that a process of legal evolution occurred in which Bay Colony land-use laws were enacted in response to emerging problems and altered to more effectively solve those problems. The laws were not static, and the process of their evolution has continued to the present.

Comparisons to Modern Regulation

A number of similarities exist between modern and colonial Massachusetts legislation. These are apparent both in the reasons the laws were enacted and in the techniques employed in the laws.

The reasons for implementation of these colonial land-

use controls resemble their modern counterparts. The introduction to the current Massachusetts Zoning Act includes the following purposes and objectives:

> -to lesson congestion in the streets;
> -to conserve health;
> -to secure safety from fire . . .[1]

The concerns for health, safety, and public welfare that motivate state land-use actions today are not new: these concerns are frequently stated as motivating factors in colonial statutes.

The basic reasons most of the regulations were enacted are fairly simple. In almost every case examined there existed some clear or implied physical threat to persons or property. Fencing regulations were mainly enacted to prevent crop destruction, fire regulations obviously relate to the protection of persons and property, health concerns were a major consideration in nuisance law, and road encumbrances represented a safety problem (as well as a general inconvenience) to travelers.

In addition, some of the colonial statutes were clearly intended to encourage orderly development. The provisions for local and regional road planning and the 'urban renewal' provisions in the fire laws are obvious examples. Concerns for efficient spatial organization thus were motivating factors for some Bay Colony laws. These considerations are also, of course, behind much modern regulation.

The techniques used to achieve locational controls were

also similar to modern planning techniques. Setback requirements, construction materials laws, street layout standards, and many other techniques exist in some form in the colonial statutes. Ancestors of such supposedly recent developments as linkage payments are found in some laws.

Other elements of modern land-use regulation reflect colonial practices. The use of fines to compel compliance, the authorization of local citizens to hear appeals and make land-use decisions, the power of appeal to the county courts, and the inclusion of legal protection for private property rights (such as grandfathering and compensation requirements) are among the many elements of the colonial laws still extant.

There are, however, major differences in the scope of colonial and modern land-use legislation. Although much colonial law may be classified as 'land-use' law, there is little indication that the colonial lawmakers had a notion of land-use as a general concept.

On the whole the General Court was reacting to the more obvious public welfare concerns associated with inappropriate land-use. Colonial laws usually represent specific reactions to specific problems; pigs in the corn, for example. The piecemeal approach taken to these problems was limited and basically reactive.

Current regulations, such as the state Zoning Act, are designed to address a broad range of problems and to be proactive. The problems addressed in individual colonial

statutes: fire, nuisance, road encroachments, etc., are all addressed to some extent in the Zoning Act. There is focus in modern legislation on future development that is much more sophisticated than the often vague and limited planning elements of colonial legislation. The 'big picture' is missing in colonial laws. Colonial laws, even those which are fairly broad like the provisions for rebuilding burned-over areas, are not comprehensive. No legislative attempt was made to view land-use as a whole.

Some of the reasons for the limitations of colonial land-use legislation relate to technology. Colonial Massachusetts was pre-industrial, with no factories in the modern sense, no automobiles, and no railroads. Existing uses tended to be compatible, so the scope of regulation was low in comparison to modern legislation. The lawmakers of early Massachusetts would probably not have perceived a need for truly comprehensive land-use laws or planning, even if there had been a notion of these things.

Modern technology has greatly increased the potential for conflict between land uses; modern science has increased the understanding of those conflicts. There is a vast qualitative difference between a pig in the garden and a factory in a residential area. Modern regulatory planning can be seen as having been driven, to a certain extent, by the industrial revolution. The land-use problems stemming from technological/industrial development have prompted complex and comprehensive regulatory solutions.

Past and Future

Massachusetts land-use law has evolved considerably from the relatively simple locational controls found in the Bay Colony statutes. Modern land-use regulation has relied heavily on zoning for controlling spatial organization. Recent trends are changing the picture. There is a shift back to more compatible uses as heavy industry leaves the country and service industries increase, and as new technologies enable the reduction of conflicts between existing uses. Traditional zoning has come under attack as inappropriate for current conditions. Regulatory techniques allowing mixed uses and increased densities are becoming more popular. Locational controls will no doubt continue, but in subtler forms than traditional zoning. Increasing reliance on such techniques as performance standards rather than the strict separation of uses produced by zoning may result in the land-use patterns of the twenty-first century bearing more similarities to the patterns of the 1760s than to the patterns of the 1960s.

Whatever the future brings for Massachusetts land-use, it will involve extensive regulatory guidance: General Court actions will have much to do with shaping that future. The regulatory techniques employed will represent a continued evolution of Massachusetts legal traditions that began in the sixteenth and seventeenth centuries.

Note

1. Massachusetts General Laws, Chapter 40A, p. ii.

SUGGESTIONS FOR FURTHER RESEARCH

The examination of colonial General Court records reveals many potential areas of research in the history of Massachusetts land-use regulation. This study has merely scratched the surface of some of the more obvious areas. Listed below are four general topics which were rejected as beyond the scope of this study but which would surely provide valuable material for further research.

Public Access. The well-known "Great Pond Act" of 1641[1] which allows public access to hunting and fishing areas across and on private land continues to influence Massachusetts property rights. Victor Frankel's Law of Seashore, Water, and Water Courses provides an excellent starting point for the study of the Great Pond Act. Frankel places particular emphasis on the three and a half centuries of case law that have attempted clarify the Act's details (listing, for example, 35 Supreme Judicial Court cases that investigated the definition of high and low tide in the context of the Act). In addition to the Great Pond Act, many other colonial laws deal with access to public and private land for such purposes as gathering wood or grazing livestock. A examination of the history of public access regulation in Massachusetts might be of interest.

Public Facilities. Throughout the colonial period, the General Court mandated and regulated the construction of such things as schools, meetinghouses, bridges, animal pounds,

prisons, and poorhouses in the towns and counties. This was often done in the face of local resistance due to financial concerns or the "not in my backyard" attitudes that frequently crop up today. A study comparing colonial and modern approaches to siting and funding public facilities would be of value.

Property Ownership. Real estate laws in the Bay Colony were extensive and complex. Volumes could be written on the relationship of these laws to land-use practices. The relationship of colonial land inheritance laws to development patterns, for example, would merit major research.

Environmental Legislation. Much General Court legislation had an environmental slant prior to the Revolution. To cite just one area of interest, the General Court often enacted legislation to prevent erosion in Coastal areas as when it restricted grazing in the area of Sesuit Harbor (now in Dennis) in 1761.[2] A detailed description of these early environmental actions would be a useful addition to the history of Massachusetts environmental controls.

These four areas of research are only a small portion of those possible. Any examination of the Bay Colony laws will reveal many more. For those who believe the study of the history of land-use regulation to be of value, the colonial records provide a wealth of research topics.

Notes

1. Laws and Liberties, p. 35.
2. 1761-62 Chapter 31.

CHRONOLOGY OF GENERAL COURT LEGISLATION DESCRIBED IN TEXT

I. Laws and Liberties. Note: Dates and statute names as found in Cushing, The Laws and Liberties of Massachusetts, 1641-1691.

1636

"Town-ships." Towns empowered to choose selectmen, order their own affairs.

1639

"Courts." County courts established.

"Highwayes." County courts ordered to lay out common highways, settle damage claims.

1641

"Bounds of Towns and Persons." Towns required to determine boundaries annually.

1642

"Highwayes." Towns ordered to lay out local roads.

1643

"Cattle. Cornfields. Fences." Earliest fence laws.

1645

"In-keepers, Tipling, Drunkenness." Public houses regulated.

1647

"Highwayes." County Courts ordered to arrange removal of obstructions in common highways.

"Indians." Indian fields exempted from fencing requirements.

1648

"Bridges." Counties allowed to arrange construction, maintenance of bridges.

"Cattle. Cornfields. Fences.", "Drovers.", "Pound.", "Swine.", others. Animal control and fencing regulations.

"Fire." Rural fires prohibited in certain months.

1652

"Fire." Arson outlawed.

1655

"Houses of Correction." Counties ordered to build houses of correction.

1660

"Townships." New local residential construction required to be approved by selectmen or rights of common forfeit.

1672

"In-keepers, Ordinaries. Tipling, Drunkenness." Expanded regulation of public houses and their patrons.

1679

"New Buildings." First Boston building code. New buildings ordered to be of brick or stone.

1680

"New Buildings." Boston building requirements suspended for three years.

1683

"New Buildings." Boston building requirements reinstated.

1684

"Nuisances." Butchers ordered not to throw waste in streets.

II. Acts and Resolves.

1692-93 Chapter 13. "An Act for Building with Stone or Brick in the Town of Boston, and Preventing Fire." Boston building code expanded. Provisions for rebuilding unbuilt and burned-over areas. Some timber buildings permitted by license.

1692-93 Chapter 23. "An Act for Prevention of Common Nuisances. . ." Locations of slaughterhouses, tanneries, and stills regulated.

1693-94 Chapter 6. "An Act for Highways." Highway laws expanded. County powers over highways increased. Surveyors (and everyone else) allowed to remove local road obstructions.

1696 Chapter 13. "An Act in Addition to the Act for Preventing of Common Nuisances." Jail terms specified for failure to comply with nuisance regulations.

1698 Chapter 2. "An Act to Prevent Incroachments upon Highways, Streets, &c." Future road obstructions prohibited.

1698 Chapter 10. "An Act for the Inspecting and Suppressing of Disorders in Licensed Houses &c." Locations of public houses regulated.

1699-1700 Chapter 24. "An Act in Addition to the Act for Building with Stone or Brick in the Town of Boston. . ." Building regulations amended. Reduction of some penalties, increased licensing power given to governor.

1708-09 Chapter 4. "An Act in Addition to and Explanation of the Act for Prevention of Common Nuisances." Leather dressers defined as curriers for nuisance purposes.

1709-10 Chapter 5. "An Act for Regulation of Drains and Common Shores." Drain construction regulated in roads.

1710-11 Chapter 8. "An Act For Explaining and Enlarging of the Act for Prevention of Common Nuisances. . ." Definition of nuisance activities expanded and clarified. Locations of nuisance activities allowed to be changed as needed by towns.

1710-11 Chapter 11. "An Act for Granting unto Her Majesty an Excise upon Wines, Liquors and Other Strong Drinks, sold by Retaile." Set limit of one public house per town in non-maritime towns.

1713-14 Chapter 6. "An Addition to the Law of This Province, Entitled 'An Act for Highways.'" Counties allowed to require towns to construct private ways.

1727 Chapter 1. "An Act in Addition to an Act Entitled 'An Act for Highways.'" Town meeting empowered to approve private ways.

1728-29 Chapter 5. "An Act in Addition to an Act Entitled 'An Act for Providing of Pounds. . .'" £10 fine specified if towns fail to build pounds.

1734-35 Chapter 2. "An Act in Addition to the Several Acts Relating to, and for Preventing of, Encroachments. . ." Builders ordered to pay costs of removal of road obstructions. Existing fences defined as street boundaries.

1734-35 Chapter 7. "An Act in Explanation of and in Further Addition to an Act Entitled "An Act for the Regulating of Townships. . .'" Fines set for towns that fail to go the bounds.

1740-41 Chapter 19. "An Act in Further Addition to an Act for Regulating of Fences &c." Description of which water bodies are sufficient to eliminate the need for fences.

1741-42 Chapter 21. "An Act in Addition to the Several Acts Heretofore Made Relating to Common Nuisances." Potter's kilns regulated as nuisances.

1742-43 Chapter 23. "An Act for Granting to Thomas Symmes . . . the Sole Privilege of Making Stone-Ware." Monopoly of kilns established through use of nuisance law.

1746-47 Chapter 10. "An Act in Further Addition to an Act Entitled 'An Act for Highways.'" Towns permitted to regulate construction of roads to non-original lots.

1756-57 Chapter 18. "An Act in Addition to an Act Entitled 'An Act for Highways.'" Disinterested freeholders specified for county road committees.

1759-60 Chapter 30. "An Act for the Prevention of Danger and Inconvenience in Rebuilding that Part of the Town of Boston that Was Lately Consumed by Fire." Sizes of buildings regulated under Boston building code.

1760-61 Chapter 9. "An Act for Rebuilding that Part of the Town of Boston which Was Laid Waste by the Late Fire and for Preventing Fire in that Town in the Future." Wooden structures allowed on Boston wharfs.

1773-74 Chapter 12. "An Act for Regulating Lamps. . ." Regulation of signs that obstruct light from street lamps.

BIBLIOGRAPHY

Baird, E.G. "Business Regulation in Colonial Massachusetts," III Dakota Law Review, February, 1931.

Bettman, Alfred. "The Constitutionality of Zoning," 37 Harvard Law Review, 1923.

Blake, John. Public Health in the Town of Boston 1630-1822. Cambridge: Harvard, 1959.

Barck, Oscar T. and Hugh T. Lefler. Colonial America. New York: Macmillan, 1965.

Benes, Peter. New England Prospect: A Loan Exhibition of Maps at The Currier Gallery of Art. Exhibition catalogue. Boston: Boston University Scholarly Publications, 1981.

Bonner, John. "A New Plan of ye Great Town of Boston in New England." Map dated 1769. Original in New York Public Library.

Bridenbaugh, Carl. Cities in the Wilderness. N.Y.: Knopf, 1968.

Callies, David and Freilich, Robert. Cases and Materials on Land Use. St. Paul: West, 1986.

Chisholm, A. "The Town of Boston About 1645". Map. In Thwing, Anne Haven, The Crooked and Narrow Steets of Boston 1630-1822. Detroit: Singing Tree Press, 1970.

Cronan, William. Changes in the Land: Indians, Colonists, and the Ecology of New England. New York: Hill and Wang, 1983.

Cushing, John. A Bibliography of the Laws and Resolves of the Massachusetts Bay 1642-1780. Wilmington, Del.: Glazier, 1984.

Cushing, John D. The Laws and Liberties of Massachusetts 1641-1691. 3 volumes. Wilmington, Delaware: Scholarly Resources, Inc., 1976.

Dafour, Ronald P. "Modernization in Colonial Massachusetts." Ph.D. Dissertation. College of William and Mary, 1982.

Dalton, Cornelius, John Wirrala, and Anne Thomas. Leading the Way: A History of the General Court 1629-1980. Boston: Office of the Massachusetts Secretary of State, 1984.

Dexter, Lincoln A. Maps of Early Massachusetts: Pre-history Through the Seventeenth Century. Brookfield, Ma.: Lincoln A. Dexter, 1985.

Federal Writer's Project. The WPA Guide to Massachusetts. New York: Pantheon, 1937. Reprint 1983.

Foster, John. "A Map of New England." Boston and London, 1677. Original in Library of the Boston Athenaeum.

Frankel, Moses M. Law of Seashore Water and Water Courses: Maine and Massachusetts. Forge Village, Massachusetts: Murray, 1969.

Giftis, Steven. Barron's Dictionary of Legal Terms. N.Y.: Barron's, 1983.

Goodell, Abner. "The Origin of Towns in Massachusetts." Massachusetts Historical Society Proceedings, 2nd Series, 5 (1889-90).

Green, Eugene and William Sachse. Names on the Land. Chester, Connecticutt: Globe Pequot Press, 1983.

Hawke, David Freeman. Everyday Life in Colonial America. New York: Harper and Row, 1988.

Holbrook, Stewart H. The Old Post Road. New York: McGraw-Hill, 1962.

Jennings, Francis. The Invasion of America: Indians, Colonialism, and the Cant of Conquest. New York: W. W. Norton and Company, 1976.

Labaree, Benjamin W. Colonial Massachusetts: A History. Millwood, New York: KTO Press, 1979.

Lacy, Jeff. "New Town Planning in the Seventeenth Century: Hadley, Massachusetts." Unpublished paper. 1988.

Massachusetts General Court. The Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay. Boston, various dates.

Mullin, John R. The Reconstruction of Lisbon Following the Earthquake of 1755: A Study in Despotic Planning. 1987.

Mumford, Louis. The City in History. New York: Harcourt, Brace, and World, 1961.

Pomfret, John E. with Floyd M. Shumway. Founding the American Colonies. New York: Harper and Row, 1971.

Scott, Mel. American City Planning. Berkeley and Los Angeles: University of California Press, 1971.

Powell, Sumner Chilton. Puritan Village: The Formation of a New England Town. Garden City, New York: Doubleday, 1965.

A Report of the Record Commissioners of the City of Boston. 39 Volumes. Boston, 1901-1928.

Robinson, William F. Abandoned New England. Boston: New York Graphic Society, 1987.

Rowse, A. L. The Elizabethans and America. New York: Harper and Brothers, 1959.

Rowse, A. L. "The Pilgram and Puritan Fathers." In The American Heritage New Illustrated History of the United States, pp. 171-178. New York: Dell, 1976.

Russell, Howard S. A Long Deep Furrow: Three Centuries of Farming in New England. Hanover and London: University Press of New England, 1982.

Rutman, Darrett B. Winthrop's Boston: Portrait of a Puritan Town 1630-1649. Chapel Hill: University of North Carolina Press, 1965.

Seaburg, Carl. Boston Observed. Boston: Beacon Press, 1971.

Scott, Mel. American City Planning. Berkeley: University of California Press, 1969.

Sewall, Samuel. Samuel Sewall's Diary. Ed. Mark van Doren. Macy-Marsius, 1927.

Solberg, Erling. "Rural Zoning in the U.S.," Agricultural Information Bulletin #59. Washington: U.S.D.A., 1952.

Thomas, J. H. Town Government in the Sixteenth Century. London: George Allen and Utwin, Ltd., 1933.

Whitehill, Walter Muir. Boston: A Topographical History. Cambridge: Belknap Press, 1968.

Winthrop, John. The History of New England from 1630-1649. Ed. James K. Hosmer. New York, 1908.

Washburn and Moen Manufacturing Company. A Manual of the Fence. Worcester: Noyes, Snow and Company, 1881.

Wood, William. New England's Prospect. Ed. Alden T. Vaughan. Amherst: University of Massachusetts Press, 1977.

Wright, Deil S. Understanding Intergovernmental Relations. Pacific Grove, California: Brooks/Cole, 1980.

Zuckerman, Michael. Peacable Kingdoms: New England Towns in the Eighteenth Century. New York, 1970.