

GOVERNMENT LAW CENTER OF ALBANY LAW SCHOOL  
**GOVERNMENT LAW ONLINE**

---

**THE OFFICIAL MAP**

**MAY/JUNE 2005**



80 New Scotland Avenue  
Albany, NY 12208  
[www.als.edu](http://www.als.edu)

GOVERNMENT LAW ONLINE publications are available at [www.governmentlaw.org](http://www.governmentlaw.org)

*Reprinted from the New York Zoning Law and Practice Report, Volume 5, No. 6 (May/June 2005) with permission of Thomson/West. For more information about this publication, please visit [www.west.thomson.com](http://www.west.thomson.com).*

# **THE OFFICIAL MAP**

**Allyson Phillips '06**

**MAY/JUNE 2005**

These materials are copyright by Albany Law School (ALS) on behalf of its Government Law Center or ALS licensors and may not be reproduced in whole or in part in or on any media or used for any purpose without the express, prior written permission of Albany Law School or the licensor. Neither Albany Law School, the Government Law Center or any licensor is engaged in providing legal advice by making these materials available and the materials should, therefore, not be taken as providing legal advice.

All readers or users of these materials are further advised that the statutes, regulations and case law discussed or referred to in these materials are subject to and can change at any time and that these materials may not, in any event, be applicable to a specific situation under consideration. The information provided in these materials is for informational purposes only and is not intended to be, nor should it be considered to be, a substitute for legal advice rendered by a competent licensed attorney or other qualified professional. If you have any questions regarding the application of any information provided in these materials to a particular situation, you should consult a qualified attorney or seek advice from the government entity or agency responsible for administering the law applicable to the particular situation in question.

# NEW YORK ZONING LAW AND PRACTICE REPORT



May/June 2005

Vol. 5, No. 6

## In This Issue

■ The Official Map ..... 1

### Editor-in-Chief

Patricia E. Salkin, Esq.

### Managing Editor

Oliver Hahn, Esq.

### Electronic Composition

Specialty Composition/Rochester DTP

Published six times a year by West

Editorial Offices: 50 Broad Street East,  
Rochester, NY 14694

Tel.: 585-546-5530 Fax: 585-258-3768

Customer Service: 610 Opperman Drive,  
Eagan, MN 55123

Tel.: 800-328-4880 Fax: 612-340-9378

Thomson/West have created this publication to provide you with accurate and authoritative information concerning the subject matter covered. However, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. Thomson/West are not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

## THE OFFICIAL MAP

Allyson Phillips\*

*There are a number of different types of maps that may exist as part of the land planning and development tools of a municipality. For example, there is the optional official map available to all municipalities in New York who desire to set forth existing and proposed public improvements. There may be one or more maps that are included with a local comprehensive land use plan that can be used to illustrate various objectives and goals, and municipalities that have adopted zoning ordinances have a zoning map that is included with the text to show the boundaries of the districts set forth in the ordinance. This article focuses primarily on the use of the official map.*

### Introduction

Official maps have been used by cities and towns throughout the United States for over a century, yet they have been described as one of the “least known” planning tools available to local planners.<sup>1</sup> Roughly half of the states have adopted enabling legislation which gives local governments the power to adopt and implement official maps.<sup>2</sup> Most statutes follow a central theme, promoted in early model statutes, that authorizes local legislatures to adopt a map showing existing and proposed streets, highways, drainage systems, parks, and other public improvements.<sup>3</sup> For example, Bassett and Williams suggest in their *County Planning Enabling Act* that the legislative body of a county be empowered (upon receiving advice from the county planning commission) “... to adopt and establish an official map of the county showing the highways, freeways, parks, parkways, and sites for public buildings or works, including sub-surface facilities, in the acquisition, financing, or construction of which the county has participated or may be called on to participate...”<sup>4</sup> Another early model, the Municipal Mapped Streets Act

\* Allyson Phillips is a third year law student at Albany Law School.

(1935) developed by Alfred Bettman, authorized the adoption of an official map only after a comprehensive plan had been completed by the local planning agency. It provided: "From and after the time when the planning commission of any municipality shall have adopted a master plan which includes a major street plan, or shall have progressed in its master planning to the stage of the making and adoption of a major street plan, and shall have certified copy of such major street plan to the council of the municipality, and council may establish an official map of the municipality..."<sup>5</sup>

Cities, towns, villages and counties in New York are authorized to adopt and amend an official map; they are not, however, required to do so.<sup>6</sup> While the enabling statutes for each type of municipal jurisdiction are not identical with respect to the official map, they generally all provide that the official map should delineate streets, highways and parks theretofore laid out, adopted and established by law, as well as drainage systems.<sup>7</sup>

### Official Maps, Comprehensive Plan Maps and Zoning Maps

Official maps are planning tools in their own right, and cannot be considered synonymous with comprehensive plans or zoning maps in general, which differ in purpose and scope.<sup>8</sup> In New York, the adoption of an official map is conclusive with respect to the location and width of proposed streets, parks, and drainage systems,<sup>9</sup> so the scale and dimensions found on an official map must be precise, and based on surveys rather than rough estimates.<sup>10</sup> In contrast, a comprehensive plan can be thought of as a general vision with policies and aspirational goals for the future development and growth of a given jurisdiction over a period of time.<sup>11</sup> From a planning perspective, the comprehensive plan should be inclusive and should address a wide range of planning issues that could include, but is not limited to, transportation patterns and future needs, natural and built resources inventories, population trends and other information needed to support a set of goals and objectives to guide the future development of the municipality.<sup>12</sup> The maps that may accompany a comprehensive or master plan (and they are not required to be part of these documents),<sup>13</sup> are not final and may vary in accuracy depending on the purpose they are intended to serve.<sup>14</sup>

Zoning maps, on the other hand, are the maps that accompany the written text of the zoning ordinance. These maps typically simply delineate the boundaries of the various zoning districts set forth in the ordinance. Although zoning maps must be accurate, fidelity to proper scale is not normally required.<sup>15</sup> While boundaries drawn on zoning maps generally follow existing streets or lot lines (without so delineating), they do not

necessarily reflect the exact dimensions or locations of proposed future improvements.<sup>16</sup> Thus, official maps do not portray the boundaries of zoning districts, nor do they relate to the zoning plan in any way, except to the extent that the zoning scheme and the official map "undertake to implement a common plan for development, encompassed in the comprehensive, or master plan."<sup>17</sup>

### Amending the Official Map

Although an official map must remain stable enough to advance and protect the plan for community development, it must also be amenable to meet the changing conditions of community life, and therefore most enabling statutes allow municipalities to amend their official maps after they have been adopted.<sup>18</sup> Changes or additions may be made so as to lay out new streets or parks, and they may be made as frequently as the local governing body deems necessary to provide for the public health, safety and welfare.<sup>19</sup> When an amendment is finally adopted by the local legislature, it becomes part of the official map, and thus carries the full force and effect of the original.<sup>20</sup> The procedural requirements for amending an official map are similar to those for adopting an official map; both include provisions for mandatory notice and public hearings.<sup>21</sup>

The legislative bodies of towns, cities and villages are further required to refer any proposed amendment to the local planning board so that they may issue a report on the proposed amendment before final action is taken.<sup>22</sup> If the planning board does not issue a report within the statutorily designated thirty-day time period, they forfeit their right to further suspend action on the matter.<sup>23</sup> With respect to the counties, prior to adoption or amendment of the official map, the county legislative body is required to refer the proposed action to the legislative body and planning board of each municipality within the county (in addition to the county planning board).<sup>24</sup> Where a municipal legislative body disapproves of the proposed amendment by resolution, the county legislative body may not adopt the amendment except by a two-thirds vote of the county legislative body.<sup>25</sup> Further, where a county has adopted a comprehensive plan, the county legislative body is authorized to amend the official map by a majority vote, notwithstanding a disapproval resolution from another municipality, so long as the change is in accordance with the comprehensive plan.<sup>26</sup>

In the case of the City of New York, the authority to amend the official map is found in the City Charter.<sup>27</sup> The Charter vests the power to amend an official map in the Board of Estimates, and proclaims that they are free to adopt such amendment by majority vote, after public hearing, if they are proposed by the city planning commission.<sup>28</sup> If the amendment is not proposed by the planning commission, the Board is

For authorization to photocopy, please contact the Copyright Clearance Center at 222 Rosewood Drive, Danvers, MA 01923, USA (978) 750-8400; fax (978) 646-8700 or West's Copyright Services at 610 Opperman Drive, Eagan, MN 55123, fax (651)687-7551. Please outline the specific material involved, the number of copies you wish to distribute and the purpose or format of the use.

**New York Zoning Law and Practice Report** (USPS# pending) is issued bimonthly, six times per year; published and copyrighted by Thomson/West, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526. Application to mail at Periodical rate is pending at St. Paul, MN. POSTMASTER: Send address changes to **New York Zoning Law and Practice Report**, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526.

required to refer the matter to the planning commission so they can review the proposal, study its relation to the master plan, and issue a report with their recommendations.<sup>29</sup> After a public hearing,<sup>30</sup> the planning commission may recommend that the Board of Estimates adopt, modify, or reject the proposed amendment, the latter of which can only be overcome by a three-fourths vote of the board.<sup>31</sup> The New York City charter gives the planning commission considerable authority to exercise their own discretion to block proposed amendments to the official map, more than is typically entrusted to local planning agencies under most state enabling statutes.<sup>32</sup>

### A. Filing an Approved Plat

Generally, once a municipality adopts an official map, the local planning body may require compliance as a condition of plat approval in order to safeguard the integrity of the official map.<sup>33</sup> This requirement forces developers to plan subdivisions in a manner that takes proposed public improvements into account, therefore minimizing the potential for haphazard development that force municipalities to alter or abandon their official maps. However, since official maps are amenable to change, the adoption of an official map does not prevent a developer from proposing new streets or parks in a subdivision plan, nor does it necessarily create an “insurmountable barrier” to the approval of a plat that shows some deviation from the adopted plan.<sup>34</sup> If new public improvements or alterations are proposed by a developer seeking plat approval, the local planning body may approve the changes if they accord with the community’s overall plan for future development.

New York’s enabling legislation provides that municipalities can amend their official maps by approving and filing plats that are inconsistent with the original map’s objectives and goals.<sup>35</sup> Once a plat showing new streets, highways, or parks, has been approved, and properly filed, it constitutes an amendment to the official map of the jurisdiction in which the land is situated.<sup>36</sup> The customary procedural requirements are not bypassed when an official map is amended in this manner because the municipality is still required to give notice, and hold a public hearing, before they can approve the plat.<sup>37</sup> Furthermore, the planning board’s authority to review plat proposals before their approval preserves the planning board’s role in the amendment process.<sup>38</sup>

### B. Dedication

A private property owner may give a piece of land to a municipality with the understanding that the property will be used in a manner beneficial to the entire community. If a municipality has designated a particular piece of private property for a proposed public improvement within their official map, and the affected property owner dedicates the land to the municipality, the official map is not impacted in any way, and no amendment is needed to effectuate the dedication.<sup>39</sup> However, when an offer of dedication is made through the filing of a plat, which designates land for roads, parks, or other public improvements, approving and filing the plat will constitute an amendment to the official map even if the property remains in private hands.<sup>40</sup>

In New York, as previously noted, streets, highways, or parks that are included in subdivision plans will become part of the official map if the plat is approved by the local planning board, and properly filed.<sup>41</sup> A property owner or developers can safeguard their interest in the land, however, by explicitly stating that no offer of dedication is being made to the public when they submit a plat to the planning board for approval.<sup>42</sup> In some jurisdictions, failure to include such a provision within a plat, showing land designated for future public improvements, will be interpreted as a continuing offer of dedication from the time the plat is approved by the planning board and filed, leaving the municipality free to accept the offer at any time.<sup>43</sup>

### C. Vacation

Vacation occurs when a municipality abandons plans to construct a proposed road, highway, or park. In New York, a municipality may amend its official map by vacating plans for public improvements.<sup>44</sup> Where the vacation of a public improvement has the effect of amending the official map, the procedural requirements for amending the official map should be followed in the vacation proceeding.<sup>45</sup>

## Effect of Adoption of Official Map

### A. Evidence of Location

As early as 1897, the United States Supreme Court stated: “The object of the recording of the map is to give notice to all persons of the system of highways proposed to be established....”<sup>46</sup> In New York, the official map can also be seen as providing notice of location because official maps are “final and conclusive” with respect to the location and dimensions of proposed future improvements.<sup>47</sup> The New York Court of Appeals has upheld the conclusive nature of official maps and affirmed their use as evidence of location.<sup>48</sup>

### B. Approval of Subdivision Plats

In New York, municipal planning boards must require consistency with the official map as part of the plat approval process.<sup>49</sup> Local planning boards must ensure that “streets and highways [are] coordinated so as to compose a convenient system conforming to the official map and properly related to the proposals shown in the comprehensive or master plan of the municipality.”<sup>50</sup> Therefore, a municipality may not approve a subdivision plat when proposed structures or roads infringe on, deny access to, or otherwise adversely impact proposed future improvements shown on the official map, unless they adhere to the statutorily proscribed procedure for amending the official map through the plat approval process.<sup>51</sup> By adhering to this procedure, the municipality can ensure that subdivision controls and the official map operate in concert to implement the comprehensive plan for development.<sup>52</sup>

### C. Permits for Building in Mapped Streets

If an official map were a simple notice of a plan for future development, its legal effect would be insignificant, and its practical impact would probably be trivial.<sup>53</sup> Haphazard development in the middle of proposed streets and parks would defeat the purpose of

the plan, and a municipality would be forced to pay increased condemnation costs when the time came to start building.<sup>54</sup> Ultimately the added expenses would be prohibitive, and the ultimate purpose of the map would be defeated.<sup>55</sup> Many local governments would be forced to alter or abandon plans to accommodate the buildings in existence, rather than pay to have them condemned or leave them stranded on private access roads.<sup>56</sup>

To strengthen the legal effect of official maps, enabling statutes provide authority to deny building permits to anyone seeking to build in an area designated for a future park or road, or anyone seeking to construct a building that is not accessible by a mapped street.<sup>57</sup> Although some states delegate authority to local legislative bodies to impose restrictions through local ordinances, others, including New York, prohibit the issuance of permits by statute.<sup>58</sup> Regardless of the method used, these limitations preserve the integrity of the map, and shift some of the cost of public improvements to the developer in connection with the approval process, thus providing for orderly municipal growth at the least cost to the taxpayer.<sup>59</sup>

### Statutory Administrative Relief

The full impact of statutes that prevent municipalities from granting building permits to develop on land designated for future public improvements in the official map have been muted by other statutory provisions, and court decisions that impose limitations on local bodies exercising this power. In New York, statutes provide that “where the lands within a mapped street or highway is not yielding a fair return on its value, the zoning board of appeals (or other appropriate board) may, in a specific case and upon a majority vote of its members, grant a permit to build in such mapped street or highway.”<sup>60</sup> Thus, the local zoning board of appeals can grant exceptions in limited circumstances, to allow land owners to obtain building permits, for construction projects “that will add as little cost to the ultimate opening of the street or highway as is practicable, and to cause as little change to the official map as is consistent with granting relief.”<sup>61</sup> The board must hold a hearing, and give notice in local newspapers, to ensure that effected property owners and other concerned citizens have an opportunity to be heard before the board takes action.<sup>62</sup> The enabling legislation also allows courts to review decisions by the zoning board of appeals just as they are permitted to do under enabling legislation relating to zoning matters in general.<sup>63</sup>

### Constitutional Issues and the Effects of Official Maps

The adoption or amendment of an official map does not divest the owner of title to the land that lies where future streets or parks are to be located, or oblige the municipality to acquire the land immediately.<sup>64</sup> Once the municipality decides to begin construction on the planned streets or designate a public park, the municipality then becomes obliged to acquire the land, condemnation proceedings take place, and the landowner

is compensated for the taking of his property.<sup>65</sup> Until such time, however, a landowner may be unable to use the mapped property in the manner s/he chooses, and, as is the case in New York, may be prohibited from freely improving the property in any way which requires a building permit.<sup>66</sup> Effects such as this have given rise to claims that the adoption of official maps may constitute an immediate taking of private property for public use; requiring compensation for the affected property owner at the time of adoption.<sup>67</sup> Nationally, some courts have held that a “taking” can occur if certain conditions are in place.<sup>68</sup>

In 1936, the New York Court of Appeals first examined the constitutional validity of official map legislation that prohibited development on private land designated for future public improvements. In rejecting a landowner’s plea for declaratory judgment in *Headley v. City of Rochester*,<sup>69</sup> the Court of Appeals refused to hold that the official map adopted by the City of Rochester was unconstitutional and void, and instead provided a “classic rationale” in support of its validity.<sup>70</sup> The court first noted that the adoption or amendment of an official map does not divest private property owners of title to their land, or oblige the municipality to acquire the land if it is located in an area designated for future public improvements.<sup>71</sup> Having established these points, the court then went on to examine the impact that haphazard development would have on the integrity of official maps if municipalities were unable to exercise control over the development of specific parcels. The court noted:

So long as the owners of parcels of land which lie partly in the bed of streets shown on such a map are free to place permanent buildings in the bed of a proposed street and to provide private ways and approaches which have no relation to the proposed system of public streets, the integrity of the plan may be destroyed by the haphazard or even malicious development of one parcel or tract to the injury of other owners who may have developed their own tracts in a manner which conforms to the general map or plan.<sup>72</sup>

Furthermore, the court pointed out the erection of permanent structures on parcels designated for future public improvements could raise the property’s value so as to hinder its acquisition down the line, or render the land unsuitable for such improvements, thus jeopardizing the maps overall objectives and goals.<sup>73</sup>

With these concerns in mind, the court held that the City of Rochester’s amendment of their official map, which designated twenty-five feet of the plaintiff’s property within the bed of a mapped street, was a valid exercise of their police power, that struck a good balance between the municipality’s need to protect the integrity of the plan, and a landowner’s right to sell or use his land, subject to reasonable limitations.<sup>74</sup> The court refused to hold the amendment invalid in this case because the act did not interfere with the plaintiff’s use and enjoyment of his property, or cause him to suffer any perceivable damage, thus precluding him from challenging the act’s constitutionality.<sup>75</sup> In doing so, however, the court left open the possibility that this permissive regulation

could rise to the level of an unconstitutional “taking” in the rare instances where affected property owners are left with actual damages and no means of administrative relief.

Following the *Headley* decision, many courts throughout New York were forced to review the effects of official maps within their jurisdictions, leading some to require compensation for private property owners who had their land “taken” for public use. For example, in *Roer Construction Corp. v. City of New Rochelle*,<sup>76</sup> the Westchester Supreme Court held that the City of New Rochelle’s official map was unconstitutional with respect to its effect on the plaintiff’s property, because it rendered the land totally useless and unusable. In this case, the plaintiff purchased a piece of property, expressed a desire to build an apartment building on it, and actually applied for a building permit.<sup>77</sup> Before the board had an opportunity to rule on the plaintiff’s permit application, the City amended its official map, and designated all of the plaintiff’s property within the bed of a proposed ‘Memorial Highway.’<sup>78</sup> The court found for the plaintiff and held that the city’s action “deprived the plaintiff of the use and enjoyment of *all* of its lands for a period of indefinite duration ... [constituting] an unconstitutional interference with vested rights of property ....”<sup>79</sup> For this reason, the court ordered the City of New Rochelle to pay the plaintiff compensation for his loss, or run the risk of having their official map declared void.<sup>80</sup>

Three years later, the issue came before the Nassau County Supreme Court in *59 Front St. Realty Corp. v. Klaess*.<sup>81</sup> In this case, the plaintiff owned and operated a business, which occupied his entire lot, located on a main thoroughfare in the Village of Rockville Center.<sup>82</sup> After a devastating fire that completely destroyed the existing structure, the plaintiff applied to the Village for a building permit so that he could restore the premises to its original condition.<sup>83</sup> While the plaintiff’s permit application was pending, the Village amended its official map, creating new street widening lines on the road which would require a twenty-foot building set-back on the plaintiff’s property.<sup>84</sup> The plaintiff sought a variance from the board of appeals and was denied.<sup>85</sup> He then filed suit seeking an order directing the superintendent of the Department of Buildings to issue a building permit. Before returning the matter back to the board of appeals, the court restated “the fundamental principle” that if private property is to be taken for public use, compensation must be paid to the owner.<sup>86</sup> The court noted that the new setback requirements had the effect of rendering almost one-half of the plaintiff’s land useless for an indefinite period of time, constituting “an actual taking in all but name.”<sup>87</sup> Finally, the court concluded that “unless such acquisition is to take place in the near future, it would seem that petitioner must be afforded some reasonable use of this portion of its property.”<sup>88</sup>

Although the courts in New York have been more receptive to suits brought by private property owners who are denied building permits pursuant to the official map, the Court of Appeals has held that a plaintiff who desires to sell, rather than develop his property, can bring an action to challenge the validity of

the official map with regard to the effect it has on their property. In *Jansen v. City of New York*,<sup>89</sup> the court held that the City of New York’s official map, which designated seventy-eight percent of the plaintiffs property within the bed of a mapped street, had the effect of rendering the plaintiff’s property incapable of development, and totally unmarketable for an unforeseeable period of time.<sup>90</sup> As a result the court found in favor of the plaintiff and declared the official map void with respect to his property.<sup>91</sup>

The validity of the City of Rochester’s official map came under fire, almost thirty years after the Court of Appeals first addressed its constitutional implications in *Headley*, when a plaintiff brought suit alleging that the official map unconstitutionally “took” his private property. In *Rochester Business Institute Inc. v. City of Rochester*,<sup>92</sup> the Plaintiff was forced to modify plans for a proposed building and to incur added expenses in order to accommodate a new fourteen foot set-back the city imposed for the purposes of widening the street. The Fourth Department refused to declare the map void with respect the plaintiff’s property, or to grant him compensation, because the added expenses, which amounted to approximately six percent of the total cost, were deemed “trivial” in comparison to the harm to the public welfare that would result if the city were prevented from planning for the community’s future needs.<sup>93</sup>

## Conclusion

There has not been a great deal of litigation over the official map in New York, and in fact many municipalities choose not to use the official map because of the belief the there is little value to its existence since the zoning ordinance and map can adequately address future development needs. While it remains an available planning tool, perhaps the uncertainty over whether the designation/reservation of private lands on the official map for future public purposes would constitute a taking provides a further disincentive for localities to rely on this map since there is more certainty through the zoning and subdivision process.

## REFERENCES

1. Joseph C. Kucirek & J.H. Beuscher, *Wisconsin’s Official Map*, 1957 Wis. L. Rev. 176, 176 (1957). The term “Official Map” first appeared in New York *Country Planning Enabling Act* (1926). Kenneth H. Young, *Anderson’s Am. Law of Zoning* § 26.01, 26:04.
2. Kenneth H. Young, *Anderson’s Am. Law of Zoning* § 26.01, 26:04.
3. *Id.* at 26:04.
4. *Id.*
5. *Id.*
6. See N.Y. Gen. City L. §§ 26 and 29; N.Y. Town L. §§ 270 and 273; N.Y. Village L. § 7-724 and N.Y. Gen. Mun. L. § 239-e.
7. *Id.*
8. Young, *supra* note 2 at § 26:01.
9. N.Y. Gen. City Law § 26 (“Such map is to be deemed to be final and conclusive with respect to the location and width of streets, highways, drainage systems and the location of parks shown thereon. Such official map is hereby declared

- to be established to conserve and promote the public health, safety and general welfare); 12 N. Y. Jur. 2d § 67.
10. James Jay Brown, *A Brief Guide to Understanding Land Use Planning and Zoning*, Florida Env. and Land Use Law, Vol. II, c. 1 (1994); Anderson, *Am. Law of Zoning* § 26.01, 26:14 (4<sup>th</sup> ed. 1989).
  11. *Id.*
  12. For a discussion of the comprehensive plan in New York, see New York State Department of State, *Zoning and the Comprehensive Plan* (December 1999), available at: <http://www.dos.state.ny.us/lgss/pdfs/zncomplan.pdf> (site visited May 2005).
  13. For example, Town Law § 272-a defines a comprehensive plan as “the materials, written and/or graphic, including, but not limited to maps, charts, studies, resolutions, reports and other descriptive material that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement, growth and development of the town...”
  14. Young, *supra*, note 2 at § 26.01, 26:14; William H. Danne, 12 N. Y. Jur. 2d Buildings § 67.
  15. Municipalities are often forced to turn to the text of the zoning ordinance itself to resolve ambiguities created by inaccurate zoning maps. Anderson, *Am. Law of Zoning* § 26.01, 26:14 (4<sup>th</sup> ed. 1989); *see, e.g.*, *Parmenter v. Board of Appeals*, 360 Mass. 852 (“In view of the ambiguity of the [zoning] map, it was reasonable (as an aid to interpretation) to resort to evidence of maps used when the by-law was adopted and testimony from one of the zoning map’s draftsmen concerning his instructions, their purport, and the then existing uses of the area.”).
  16. Young, *supra*, note 2 at § 26.01, 26:14.
  17. Kenneth H. Young, *Anderson’s Law of Zoning in New Jersey*, § 24:01.
  18. Young, *supra*, note 2 at § 26:07. Some authors have gone so far as to say *all* enabling statutes which authorize the adoption of an official map have provisions which allow the adopting agency to amend it. *See, e.g.*, Anderson and Roswig, *Planning, Zoning, Subdivision: A Summary of Statutory Law in the 50 States*, 224 (1966).
  19. *See* N.Y. Gen. Mun. Law § 239, N.Y. Gen. City Law § 29, N.Y. Town Law § 273, *and* N.Y. Vill. Law § 7-724.
  20. Young, *supra*, note 2 at § 26:07.
  21. *Id.* In New York, notice requirements differ depending on the type of jurisdiction. N.Y. Gen. Mun. Law § 239-e(4). For example, a city legislature must publish notice of a proposed map change at least once in an official publication of such city or in a newspaper of general circulation, at least five days prior to the hearing. N.Y. Gen. City Law § 29. But the town law provides that notice of a hearing on a change in the official map must be published in a newspaper of general circulation at least 10 days prior to the hearing. N.Y. Town Law § 273. And while the Village law requires a public hearing on any proposed action that may be taken to change an official map, there is no publication requirement. N.Y. Vill. Law § 7-724.
  22. N.Y. Town Law § 273; N.Y. Village Law § 7-724; N.Y. Gen. City Law § 29.
  23. *Id.*
  24. N.Y. Gen. Mun. L. § 239-3(4)(b) and (c).
  25. N.Y. Gen. Mun. L. § 239-e (c).
  26. *Id.*
  27. Young, *supra*, note 2 at § 26:07. *See* N.Y. City Charter § 199 (1976 & Supp. 1984-1985).
  28. *Id.*
  29. *Id.*
  30. The charter requires that at least ten days notice be given for the public hearing, and publication of the time and place in the city record.
  31. Young, *supra*, note 2 at § 26:07.
  32. *Id.*
  33. *Id.* at § 26:08.
  34. *Id.* at § 26:07.
  35. N.Y. Gen. City Law § 34; N.Y. Village Law § 7-732; N.Y. Town Law § 278.
  36. The improvements become part of the official map even if the land in question remains undedicated, and in the hands of private developers. Martin Fisch, 43 N.Y. Jur. 2d Dedication § 41; Young, *supra*, note 2 at § 26:07. The developer or landowner retains title to the property until it is formerly dedicated and accepted by the municipality, or until the municipality chooses to condemn the property for public use. *See* N.Y. Gen. City Law § 34(a) (“Any street, highway or park shown on filed or recorded plat is deemed to be private until such time as it has been formally accepted by resolution of the local legislative body, or until it has been condemned by city for use as public street, highway or park”); *see also* N.Y. Town Law § 279(4)(a), *and* N.Y. Village Law § 7-732(4).
  37. Young, *supra*, note 2 at § 26:07.
  38. *See* Martin Fisch, 43 N.Y. Jur. 2d Dedication § 41, *and* Young, *supra*, note 2 at § 26:07 (“The only substantial deviation from customary amendment procedure lies in the fact that the power to amend usually is vested in the municipal legislature rather than in the planning board.”).
  39. If a private property owner dedicates land for a public use, the dedication can be perfected by the municipality’s subsequent acceptance. Young, *supra*, note 2 at § 26:08. The adoption or amendment of an official map, showing the land in question has been designated for the use for which it was dedication, will be sufficient to constitute acceptance by the municipality. *Id.* A municipality can not compel a conveyance of land to it for the purposes of establishing a public park without compensating the property owner. *See* Kamhi v. Planning Board of Yorktown, 59 N.Y.2d 385, 465 N.Y.S.2d 865, 452 N.E.2d 1193 (1983), *but see also* Op. N.Y. St. Compt. File #81-37 (1981) (holding that the property owner has to pay taxes on private recreational area located within subdivision, even though the municipality required the designation as part of the plat approval process).
  40. Young, *supra*, note 2 at § 26:08.
  41. Martin Fisch, 43 N.Y. Jur. 2d Dedication § 41.
  42. *Id.*
  43. *See* N.Y. Gen. City Law § 34(a) (providing that “all streets, highways, or parks, shown on filed or recorded plats are offered for dedication to the public unless the owner of effected land, or the owner’s agent, makes notation on plat to the contrary prior to final plat approval”); *see also* N.Y. Town Law § 279(4)(a), *and* N.Y. Village Law § 7-732(4).
  44. N.Y. Gen. City Law § 29; N.Y. Village Law § 7-724; N.Y. Town Law § 272.
  45. Young, *supra*, note 2 at § 26:10.
  46. *Bauman v. Ross*, 167 U.S. 548, 597 (1897).
  47. N.Y. Gen. City Law § 29; N.Y. Village Law § 7-724; N.Y. Town Law § 270.
  48. *Youmans v. State*, 309 N.Y. 653, 128 N.E.2d 313 (1955) (holding that the official map is final and conclusive with regard to the location of a proposed highway under § 270 of the New York Town Law).
  49. *Supra* II(A).

50. William H. Danne, Jr., 12 N.Y. Jur. 2d Buildings § 82.
51. *Id.*
52. Kenneth H. Young, 4 *Anderson's Am. Law of Zoning* § 26:13.
53. *Headley v. City of Rochester*, 272 N.Y. 197 (1936), 5 N.E.2d 198 (1936); Young, *supra* note 2 at 26:14.
54. *Id.*
55. Young, *supra* note 2 at § 26:14.
56. *Id.*
57. In New York, a permit may not be issued for the erection of any building unless a street or highway giving access to the proposed structure has been designated on the official map. *See* N.Y. Gen. City Law § 36, N.Y. Town Law § 280-a(1), and N.Y. Village Law § 7-736(2), *but see also* *Di Biassi v. New York*, 19 S.A.D.2d 323, 242 N.Y.S.2d 942 (2d Dep't. 1963), *aff'd.*, 14 N.Y.2d 711, 250 N.Y.S.2d 60, N.E.2d 160 (holding that N.Y. Gen. City Law § 36 does not apply to New York City; city charter controls); *see* Young, *supra* note 2 at § 26:14.
58. Young, *supra* note 2 at § 26:14. *See* Utah Code Ann. Art. 66B § 6.02 ("For the purpose of preserving the integrity of the official map, the legislative body may provide by general ordinance that no permit shall be issued for any building or structure or part thereof on any land located between the mapped lines of any street as shown on the official map.") (emphasis added), *contrast with* N.Y. Gen. City Law § 35, N.Y. Village Law § 7-734, and N.Y. Town Law § 279.
59. *See* Powel, *Powel on Real Property*, 874 (1990 Supp.); Young, *supra* note 2 at § 26:14; and N.Y. Jur. 2d § 132. However, courts in New York have held that a municipality may not deny a building permit on the ground that a proposed site may be condemned for public use in the future, and development on the site would increase the condemnation expense. *See, e.g.,* *Winole v. Hempstead*, 59 Misc.2d 768, 300 N.Y.S.2d 197 (1969).
60. Salkin, *New York Zoning Law and Practice*, § 26:10 (4<sup>th</sup> ed. 1999).
61. *Id.*
62. Notice requirements vary among jurisdictions; the hearing must be preceded by fifteen days notice in cities, and ten days notice in towns. *See* Gen. City Law § 35, N.Y. Town Law § 280. There is no publication requirement for villages. *See* N.Y. Village Law § 7-734.
63. Salkin, *supra* note 60.
64. Laura Hunter Dietz, et. al., *Effect on Owners of Subject Property; Constitutional Issues*, 83 Am. Jur. 2d Zoning and Planning § 497.
65. Douglas W. Kmiec, *Coordination of Streets: Compensation for Official Map Designations*, 2 Zoning & Plan. Deskbook § 11:4 (2d ed.).
66. *Id.*
67. *See* Young, *supra* note 2 at § 26:14 ("The serious issue of constitutionality did not arise until official maps were given the additional effect of depriving an owner of mapped land of the right to develop it in any way which required a building permit.").
68. *Id.*
69. 272 N.Y. 197, 5 N.E.2d 198 (1936).
70. Young, *supra* note 2 at § 26:03.
71. *Headley*, 272 N.Y. at 199.
72. *Id.*
73. *Id.* The court also pointed out that the state's enabling legislation provides for administrative relief as a means to further protect property owners who are adversely affected by the adoption of an official map. *Id.* at 200.
74. Young, *supra* note 2 at § 26:03.
75. The court notes that the plaintiff's complaint is silent as to how he was injured by the official map's amendment, and that the plaintiff stipulated to the fact he had no present plan to build on the effected portions of his property. *Headley*, 272 N.Y. at 203-04.
76. 207 Misc. 46, 136 N.Y.S.2d 414 (1954).
77. *Id.* at 49. The plaintiff also secured architect plans, made financial arrangements, solicited tenants, and removed structures that were already located on the site. *Id.*
78. *Id.*
79. *Id.* at 51; *contrast* *Corbet v. the City of New York*, 494 N.Y.S.2d 348 (holding that the official map of New York City is not unconstitutional with regard to the plaintiff's property because the map only effected twenty-five percent of the plaintiff's property "rather than the bulk of it").
80. The court made it a point to note that even if the plaintiff had been aware of the contemplated amendment to the official map before he purchased the property, he would not be barred from seeking relief because "an owner cannot validate an otherwise invalid ordinance or resolution...." *Id.* at 52
81. 6 Misc.2d 774, 160 N.Y.S. 2d 265 (1957).
82. *Id.* at 774.
83. *Id.*
84. *Id.*
85. *Id.*
86. *Id.* at 775.
87. *Id.*
88. *Id.* In what could be considered a warning to municipalities everywhere, the court then invoked the words of the U.S. Supreme Court in *Pennsylvania Coal Co. v. Mahon*, stating, "We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." *Id.* (citing *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393).
89. 42 N.Y.2d 1079, 399 N.Y.S.2d 645, 369 N.E.2d 1179 (1977).
90. *Id.* at 1080-81.
91. The court ruled that the official map was void with respect to the plaintiff's property; however, the court held that there was no actual "taking" of the plaintiff's property, creating no compensable injury, so his relief was limited to a declaration of invalidity. *Id.* at 1081.
92. 25 A.D.2d 97, 267 N.Y.S.2d 274 (4th Dep't. 1966).
93. *Id.* at 103-04.

