

No. 89

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5th Session, 13th Legislature, Alberta  
7 Elizabeth II, 1959

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## **BILL 89**

A Bill to amend The Town and Rural Planning Act

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HON. MR. HOOKE

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## Explanatory Note

**2.** (a) The Act presently gives power to control development but does not define "development".

(b) The definition of "new parcel" set out in clause (l) was used only in section 25 which was repealed in 1958.

(c) Clause (n) presently reads:

"(n) "non-conforming use" means

(i) the lawful use being made of land or a building, or

(ii) the lawful use intended to be made of a building lawfully under construction,

at the date of the first publication of the official notice of a proposal to pass a zoning by-law in the municipality within which the land or building is situated and which use does not or will not conform to the requirements of the zoning by-law when passed;"

(d) Clause (o) is reworded for greater accuracy. Clause (o) presently reads:

"(o) "parcel" means a parcel of land that is registered in a land titles office and the subject of a separate certificate of title;"

(e) The definition of "small parcel" set out in clause (r) was used only in section 25 which was repealed in 1958.

**3.** Section 9, clause (a) presently reads:

"9. The Board may

(a) fix a quorum for its meetings,".

**4.** Section 12, subsection (3) requires an order establishing a district planning commission to include regulations on certain matters.

# BILL

No. 89 of 1959

An Act to amend The Town and Rural Planning Act

(Assented to \_\_\_\_\_, 1959)

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

**1.** *The Town and Rural Planning Act*, being chapter 337 of the Revised Statutes is hereby amended.

**2.** Section 2 is amended

(a) by adding the following new clause immediately after clause (c):

(c1) "development" means

(i) the carrying out of building, engineering, mining or other operations in, on, over or under land, or

(ii) the making of any change in the use or intensity of use of any land or building;

(b) by striking out clause (l),

(c) as to clause (n) by adding the word "specific" immediately preceding the word "lawful" where it occurs in subclauses (i) and (ii),

(d) by striking out clause (o) and by substituting the following:

(o) "parcel" means an area of land the boundaries of which are of record in a land titles office;

(e) by striking out clause (r).

**3.** Section 9, clause (a) is amended by adding immediately at the end thereof the words "hearings, or other sittings,".

**4.** Section 12, subsection (3) is amended

(a) by adding the word "and" immediately at the end of clause (b),

(b) by adding immediately after clause (b), the following new clause:

**5.** This proposed new section is similar in effect to section 87 of The Land Titles Act but is not restricted to parcels within a plan of subdivision.

**6.** Interim development control is exercised in a municipality under authority of an interim development by-law. The interim development order does not directly affect the rights of citizens but authorizes the passing of the by-law and sets out the provisions it may contain. The Regulations Act does not apply to municipal by-laws.

**7.** Section 71 presently reads:

'71. An interim development order shall prescribe

- (a) the date upon which the suspension of the operation of any existing zoning by-law comes into effect, and
- (b) the manner in which the council, its agents or servants may exercise interim development control and the matters to be subject to such control."

- (c) requiring the commission to submit annually to its members and to the Board a report on its operations during the preceding year concerning district planning, municipal planning, subdivision approvals, income and expenditure, and any other matters of major importance.

**5.** The following new section is added immediately after section 24:

**Division of Parcels**

**24a.** Where a Registrar is of the opinion that an instrument

- (a) granting a lease for three years or more of only part of a parcel, or
- (b) charging, mortgaging or otherwise encumbering only part of a parcel,

has the effect or may have the effect of subdividing the parcel in a manner contrary to the regulations made under *The Surveys and Expropriation Act* with respect to subdivisions, the Registrar shall not accept the instrument until a plan so subdividing the parcel is registered under section 82 of *The Land Titles Act*.

**6.** The following new section is added immediately after section 70:

**70a.** For the purpose of removing doubt it is hereby declared that an interim development order made by the Minister pursuant to section 70 is not a regulation within the meaning *The Regulations Act*.

**7.** Section 71 is amended

- (a) by adding the word "and" immediately at the end of clause (b),
- (b) by adding immediately after clause (b) the following new clause:
- (c) the appointment by the council of an interim development board or an interim development officer to assist the council in the administration of interim development control.

**8.** A new procedure is established for dealing with matters arising out of the exercise of interim development control. The extent to which a council may delegate its powers is set out and an appeal is given to the Provincial Planning Advisory Board. Section 71a presently reads:

"71a. (1) Where an interim development order applies to a municipality that is represented on a district planning commission or that employs a professional planning staff of one or more qualified persons, the order shall provide for the establishment of an appeal board consisting of either

- (a) at least three persons to be appointed annually by resolution of the council, none of whom shall be officials or servants of the council and a majority of whom shall consist of persons other than members of the council, or
- (b) the council.

(1a) Where an appeal board is established in accordance with clause (a) of subsection (1) the interim development order may provide a further right of appeal to the council upon such conditions as may be specified in the order and in that event the council has all the powers of an appeal board to vary decisions.

(2) Where an interim development order applies to a municipality other than a municipality referred to in subsection (1) the order shall designate the Board as the appeal board.

(3) An appeal may be made by a person

- (a) when the order or a by-law made pursuant to the order provides for an appeal, or
- (b) when he claims that a decision causes him a special and unnecessary hardship because of circumstances peculiar to a location or situation to which the decision applies.

(4) The decision appealed from may be varied in such measure as may be permitted by the order or by-law or in such measure as the appeal board deems desirable and necessary to relieve hardship, but having regard always to the general scope and intent of the order and the by-law and of the general plan that is being prepared."

**9.** Self-explanatory.

**8.** Section 71a is struck out and the following is substituted:

**71a.** (1) Subject to subsection (2) all applications in respect of matters arising out of the exercise of interim development control shall be considered and determined by the council.

(2) A council may, by by-law, delegate to the interim development board or the interim development officer authority to consider and decide on its behalf any application concerned with matters within the scope of those parts of the general plan or policies concerning development that have been adopted by resolution of the council.

(3) A person affected by the decision of an interim development board or an interim development officer may appeal

(a) to an appeal board established pursuant to subsection (4), or

(b) where no appeal board is established, to the council.

(4) A council may by by-law establish an appeal board consisting of at least three persons to be appointed annually by resolution of the council, none of whom shall be officials or servants of the council and at least one of whom shall be a member of the council.

(5) The appeal board shall hear an appeal from a decision of the interim development board or the interim development officer and shall recommend a decision to the council, giving reasons for the recommendation.

(6) After considering the recommendation of the appeal board the council shall give a decision in the appeal.

(7) A person affected by a decision of a council under this section may appeal the decision to the Board.

(8) The Board may vary the decision appealed from in such measure as the Board deems desirable and necessary, having regard to the general scope and intent of the order and the by-law and the general plan that is being prepared.

(9) An appeal under subsection (3) or subsection (7) shall be made in the manner and within the period stated in the order.

**9.** Section 72 is amended

(a) by renumbering the section as subsection (1),

(b) by adding immediately after the renumbered subsection (1) the following subsections:

(2) Where an interim development order is in effect in a municipality other than an improvement district or special area, the council shall make

**10. (a) Section 80 authorizing zoning by-laws is amended.**

**(b) Subsection (8), clause (a), subclause (iv) presently reads:**

“(8) The by-law may prescribe  
(a) a system of permits controlling  
.....  
(iv) the excavation of land.”.

**(c) Subsection (9), clause (a), subclause (i) presently reads:**

“(9) The by-law  
(a) may prohibit  
(i) the excavation of land.”.

**(d) Subsection (10) presently reads:**

“(10) The by-law may provide that when a person proposes a particular use that is not named or specified in the by-law the matter shall be referred to an appeal board constituted pursuant to section 81 who shall decide whether the proposed use is sufficiently similar to a use permitted by the by-law to be considered a permitted use and if it is the appeal board may permit the proposed use in the proper district.”.

**11. (a) Section 81 requiring a zoning by-law to provide for the establishment of an appeal board is amended. Subsection (2) of section 81 presently reads:**

“(2) A municipality that is represented on a district planning commission or that employs a professional planning staff of one or more qualified persons shall not establish the Board as the appeal board.”.

**(b) Subsection (4) presently reads:**

“(4) On an appeal made under clause (a) of subsection (3) the appeal board, having regard to the merits and circumstances of the particular case, and the general scope and intent of the by-law and in order to avoid unnecessary hardship, may

- (a) exercise the powers granted it in subsection (5),
- (b) relax any requirement of the by-law made pursuant to subsection (6) of section 80,
- (c) impose such additional restrictions, limitations or conditions as may seem to it to be desirable and proper in the circumstances, and
- (d) where the appeal concerns an existing use that is not permitted in a district under the zoning by-law, permit the continuance of the non-conforming use.”.



an annual report to the Board on the progress made in the preparation of the general plan, and on the operation of interim development control.

(3) The Minister upon the recommendation of the Board may rescind an interim development order if he is not satisfied with the progress being made in the preparation of the general plan or with the manner in which interim development control is being administered.

**10.** Section 80 is amended

- (a) by adding immediately after subsection (1), the following new subsection:

(1a) The by-law shall be based upon a survey of the existing uses and conditions of land and buildings and an analysis of future needs in the development of the municipality which shall be reported upon to the satisfaction of the Board prior to the passing of the by-law.

- (b) as to subsection (8), clause (a) by adding immediately at the end of subclause (iv) the words "and the removal of topsoil from land",

- (c) as to subsection (9), clause (a) by adding immediately at the end of subclause (i) the words "or the removal of topsoil from land",

- (d) by striking out subsection (10) and by substituting the following:

(10) The by-law may provide that when a person proposes a particular use that is not named or specified in the by-law, the matter shall be referred to the council or to an agent or servant of the council designated in the by-law for a decision as to whether the proposed use is sufficiently similar to a use permitted by the by-law to be considered a permitted use.

**11.** Section 81 is amended

- (a) as to subsection (2) by adding immediately following the word "municipality" the words "other than a new town, an improvement district or a special area",

- (b) as to subsection (4) by striking out clauses (a) and (b) and by substituting the following clauses:

(a) confirm, reverse or vary a decision appealed from,

(b) impose such requirements or limitations as it deems to be desirable and proper in the circumstances,

(c) Subsection (5) of section 81 presently reads:

"(5) On an appeal made under clause (b) or clause (c) of subsection (3) the appeal board in making its decision shall be bound by the provisions contained in the zoning by-law but having regard to the merits and circumstances of the particular case and the general scope and intent of the by-law, may

(a) confirm, reverse or vary a decision appealed from, and

(b) impose, add to, or substitute conditions and requirements in place of those originally imposed."

**12.** (a) Provisions dealing with non-conforming buildings are clarified. Subsection (1) of section 82 presently reads as follows:

"82. (1) A non-conforming building shall not be enlarged or added to and no structural alterations except those required by statute or by-law shall be made therein."

(b) Subsection (4) of section 82 presently reads:

"(4) A non-conforming use may be extended throughout the building in which it was permitted under subsection (3) in respect of a part of the building, but the building, whether or not it is a non-conforming building, shall not be enlarged or added to and no structural alterations shall be made therein."

(c) Self-explanatory.

**13.** (a) Section 83 provides the procedure to be followed in enacting a zoning by-law, an interim development by-law and any by-law adopting a general plan or development scheme. The proposed subsection (1a) will enable the Director to check the form and content of proposed by-laws.

(b) Subsection (2), clause (a) of section 83 reads in part:

"(2) The council, before finally passing a by-law, shall

(a) in two issues of at least one newspaper circulating in its municipality, publish an official notice stating"

(c) Authority is given to regulate proceedings at the hearing so that they may be more effectively dealt with.

- (c) as to subsection (5) by striking out clause (b) and by substituting the following:
  - (b) impose such requirements or limitations as it deems to be desirable and proper in the circumstances.

**12.** Section 82 is amended

- (a) by striking out subsection (1) and by substituting the following:

**82.** (1) A non-conforming building shall not be enlarged, added to, rebuilt or structurally altered except

- (a) as may be required by statute or by-law,
  - (b) as may be necessary to make it a conforming building, or
  - (c) as may be deemed necessary by the council, or an agent or servant of the municipality designated by the by-law, for the routine maintenance of the building.
- (b) as to subsection (4) by adding immediately preceding the words "A non-conforming use" the words "Subject to subsection (1)",

- (c) by adding immediately after subsection (4), the following new subsection:

(4a) Where a non-conforming use is being made of part of a parcel and the use is being continued pursuant to subsection (3), the use shall not be extended to any other part of the parcel and no additional building shall be erected upon the parcel while the non-conforming use continues.

**13.** Section 83 is amended

- (a) by adding immediately after subsection (1), the following:

(1a) The council shall

(a) before giving a proposed by-law second reading, and

(b) before holding a public hearing pursuant to this section,

deposit a copy of the proposed by-law with the Director.

- (b) as to subsection (2), clause (a) by adding immediately preceding the word "publish" the words "or in at least one issue of each of two newspapers circulating therein",
- (c) by adding immediately after subsection (2) the following new subsections:
  - (2a) A council may, by resolution, prescribe the procedure to be followed by persons in presenting

(d) The Board's approval is required to reduce the possibility of deficiencies and irregularities in by-laws.

(e) Subsection (5) refers only to zoning by-laws. It is intended that this subsection apply to all by-laws under section 83.

**14. Section 84, subsections (3) and (4) presently read:**

"(3) Section 83 applies to an amending or repealing by-law.

(4) The council need not publish an official notice of its intention to pass the amending by-law or hold a public hearing pursuant to the provisions of section 83, if the Director certifies that the amendment to be made by the by-law is only for the purpose of clarifying the provisions of the existing by-law."

**15. Section 94 deals with the effect on zoning control of a change of municipal boundaries. The amendment makes it applicable to interim development by-laws as well as zoning by-laws.**

**16. A condition on which the development of land is authorized is a covenant running with the land enforceable against subsequent purchasers.**

their views to the council, and without restricting the generality of the foregoing

(a) may require the submission of written statements of objections prior to the hearing, and

(b) may regulate the presentation of oral submissions at the hearing.

(2b) A resolution under subsection (2a) shall be passed before the publication of the notice required under subsection (2) and the notice shall describe the procedure to be followed.

(3) by adding immediately after subsection (4) the following new subsection:

(4a) A by-law shall not be finally passed under subsection (4) and no by-law has any force or effect until it has first been approved by the Board.

(e) as to subsection (5) by striking out the word "zoning".

**14.** Section 84 is amended by striking out subsections (3) and (4) and by substituting the following:

(3) Subject to subsection (4), section 83 applies to an amending or repealing by-law.

(4) The council need not publish an official notice of its intention to pass an amending by-law or hold a public hearing pursuant to section 83

(a) where the amendment does not involve any change in the classification, number, shape or area of the districts into which the municipality is divided pursuant to the provisions of section 80 and if it contains only provisions applicable to all such districts, or

(b) where the Director certifies that the amendment to be made by the by-law is only for the purpose of clarifying the provisions of the existing by-law.

**15.** Section 94 is amended by adding immediately after the word "zoning" wherever it occurs the words "or interim development".

**16.** The following new section is added immediately after section 95:

**95a.** Where a council or an appeal board has the power under this Act to impose certain requirements or limitations as a condition of issuing a permit or otherwise authorizing the development of land the council may enter into an agreement with the owner of the land with respect to the observance of these conditions and such agreement shall be deemed to be a covenant running with the land.

**17.** Subsection (1) of section 115 presently reads:

"115. (1) A commission may adopt a preliminary district plan at a meeting upon at least thirty days' notice of motion to adopt the plan being given at or previous to the preceding meeting of the commission."

**18.** Section 117 is amended to remove doubt as to when a preliminary district plan comes into effect and to require the approval of the Board.

**19.** Provisions relating to the coming into force of plans apply to the coming into force of amendments to the plans.

**20.** Clause (a) of section 122 presently reads:

"122. A commission may appeal to the Board where

(a) a council has not passed a zoning by-law required to properly implement a district general plan or preliminary district plan,".

**21.** The present section 123 is uncertain in meaning and is replaced.

**22.** Coming into force. The coming into force of section 8 is delayed to keep existing provisions in force until the Minister has issued new interim development orders in accordance with these amendments.

**17.** Section 115, subsection (1) is amended by striking out the word "thirty" and by substituting the word "twenty-eight".

**18.** Section 117 is amended

- (a) by renumbering the section as subsection (1),
- (b) as to the renumbered subsection (1)
  - (i) by striking out the words "Upon the adoption of a preliminary district plan by the commission" and by substituting the words "When a preliminary district plan comes into effect",
  - (ii) by adding immediately preceding the word "amend" in clause (b) the word "forthwith",
- (c) by adding immediately after the renumbered subsection (1) the following new subsection:
  - (2) A preliminary district plan comes into effect upon being adopted by the commission and being approved by the Board.

**19.** Section 119 is amended by adding the following new subsections immediately after subsection (3):

- (4) Section 109 applies *mutatis mutandis* to the amendment of a district general plan.
- (5) Section 117 applies *mutatis mutandis* to the amendment of a preliminary district plan.

**20.** Section 122, clause (a) is amended by striking out the word "zoning".

**21.** Section 123 is struck out and the following is substituted:

**123.** A person may appeal to the Board

- (a) where he has requested the commission to amend a district general plan and the amendment has been refused by the commission although the council of the municipality concerned has recommended that the amendment be approved, or
- (b) where he has requested the commission to amend a preliminary district plan and the amendment has been refused by the commission.

**22.** (1) This Act, other than section 8, comes into force on the day upon which it is assented to.

(2) Section 8 comes into force on the first day of July, 1959.

No. 89

FIFTH SESSION

THIRTEENTH LEGISLATURE

7 ELIZABETH II

1959

**BILL**

An Act to amend The Town and Rural Planning Act

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. HOOKE