

No. 89

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3rd Session, 15th Legislature, Alberta  
14 Elizabeth II

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## **BILL 89**

A Bill to amend The Planning Act

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HON. MR. HOOKE

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## Explanatory Note

1. This Bill will amend chapter 43 of the Statutes of Alberta, 1963.

2. Section 24 presently reads:

24. (1) Subject to any specific requirements and exemptions that may be made under this Act and The Subdivision and Transfer Regulations, the owner of land comprising a proposed subdivision shall provide from that land, without compensation,

(a) such public roadways and public utility parcels, or portions thereof, for the purpose of providing suitable access and services to all parcels in the subdivision, and

(b) such reserves,  
as are required by this Act and the regulations.

(2) In each subdivision, the reserves shall contain not less than ten per cent of the total area of the land being subdivided.

3. Section 25 provides that in certain circumstances money may be paid in lieu of giving reserves, the amount to be the value of the land that would otherwise have gone for the reserve. Subsection (2) presently reads:

(2) For the purposes of subsection (1), the value of the land shall be computed by multiplying an assessment of the land as determined pursuant to the 1959 Assessment Manual prescribed by Alberta Regulation 142/60 by two and one-half.

4. Section 26, subsection (2), clause (a) presently reads:

(2) All moneys received by a municipality pursuant to section 25 and from the lease or sale of reserves under subsection (1) shall be paid into a special account and may

(a) be expended only for the purchase of land to be held and used by the municipality or a school board for the purposes of schools, public parks and recreation areas, or

.....

and the earnings derived from the investment of the money shall be paid into the special account.

5. Section 95, subsections (2) and (3) presently read:

(2) In the case of a city, town or village, the general plan to be prepared may include such areas of land outside the boundaries of the city, town or village as the councils concerned consider necessary to include, having regard to the future orderly and economical growth and development of the city, town or village.

(3) A municipality with a population of two thousand five hundred persons or less, need not comply with sections 100 to 113.

# BILL

No. 89 of 1966

An Act to amend The Planning Act

(Assented to , 1966)

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

1. *The Planning Act* is hereby amended.

2. Section 24 is amended by striking out subsection (2) and by substituting the following:

(2) In each subdivision the reserves shall contain such area as is prescribed by the regulations, being not more than ten per cent of the total area of the land being subdivided.

(3) Notwithstanding subsection (2), where the land to be subdivided contains swamps, gullies, ravines or natural drainage courses or other land which in the opinion of the Board is unsuitable for building sites or private use, the Board may require that these areas be provided as reserves in addition to or in part contribution to the reserves to be provided under subsection (2).

3. Section 25 is amended by striking out subsection (2) and by substituting the following:

(2) For the purposes of subsection (1), the value of the land shall be the amount obtained by multiplying by one and one-half the fair actual value of the land as determined for assessment purposes immediately before the subdivision of the land.

4. Section 26, subsection (2), clause (a) is amended by striking out the words "by the municipality or a school board".

5. Section 95 is amended by striking out subsections (2) and (3) and by substituting the following:

(2) A general plan to be prepared may include land lying within the boundaries of more than one municipality as the councils of the municipalities concerned consider necessary to include, and agree to by resolution having regard to the future orderly and economical growth and development of the area of all the land so included.

**6. Section 97, subsection (2) presently reads:**

(2) Where a general plan includes areas of land outside the boundary of a city, town or village, either

- (a) each council within whose municipal territory such land lies may also adopt the general plan by by-law passed in accordance with sections 129 to 136, or
- (b) development control may be exercised with respect to those areas in the manner provided by this Part.

**7. The present subsection (3) of section 95 is re-enacted in a more appropriate location.**

**8. Section 100 presently reads:**

100. (1) A council, on passing a resolution authorizing the preparation of a general plan, shall forthwith apply to the Minister for an order authorizing the exercise of control over development in the areas to be included in the general plan or parts thereof before

- (a) the completion and adoption of the general plan, and
- (b) the passage of a zoning by-law prepared in accordance with the general plan.

(2) Control shall be exercised over development on the basis of the merits of each individual application for permission to carry out development, having regard to the proposed development conforming with the general plan being prepared.

(3) When the area for which a general plan is to be prepared under subsection (2) of section 95 includes land lying outside a city, town or village, development control shall be exercised jointly by the councils concerned in a manner consistent with this Act and in accordance with the terms of the order issued under subsection (1).

(3) Where the general plan to be prepared includes areas of land lying within the boundaries of more than one municipality, and where there is disagreement between the councils of two or more such municipalities as to

(a) the land lying within the boundaries of one or more such municipalities that should not be included in the general plan to be prepared, or

(b) the extent of the areas of land that are to be included in the general plan to be prepared,

a council that is a party to the disagreement may apply to the Board for an inquiry by the Board into the disagreement.

(4) At least ten days before the date set for the inquiry referred to in subsection (3), the Board shall give notice in writing to the council of any municipality that it thinks is concerned, stating the time and place of the inquiry.

(5) The Board, after hearing arguments or receiving written submissions presented by any municipality invited to attend the inquiry shall make recommendations to resolve the disagreement and report its findings on the matter to the Minister.

**6.** Section 97 is amended by striking out subsection (2) and by substituting the following:

(2) Where a general plan includes areas of land lying within the boundaries of more than one municipality, either

(a) each council within whose municipal territory any of that land lies may also adopt the general plan by by-law passed in accordance with sections 129 to 136, or

(b) in respect of any of that land lying within the boundaries of a county, municipal district, improvement district or special area, development control, if in force, may continue to be exercised.

**7.** The following section is added after section 99:

**99a.** A municipality with a population of two thousand five hundred persons or less, need not comply with sections 100 to 113.

**8.** Section 100 is amended by striking out subsection (3) and by substituting the following:

(3) Where a general plan is to be prepared for land lying within the boundaries of more than one municipality, development control shall be exercised jointly by the councils of the municipalities concerned and the method of exercising the joint development control shall be agreed to by resolution of the councils concerned.

(4) Where the method of exercising joint development control cannot be agreed to by the councils of the municipalities concerned, a council that is a party to the disagree-

**9. Section 102 presently reads:**

102. The Minister, upon the report of the Board, may make an order, to be known as a development control order which shall

- (a) suspend the operation of any existing zoning by-law within the area over which development control is to be exercised, and
- (b) authorize the enactment of such by-laws as may be necessary to enable a council or two or more councils jointly to exercise development control over the described area.

**10. Section 121, subsection (1), clause (b) presently reads:**

121. (1) A zoning by-law may contain provisions for the purpose of .....

- (b) specifying as to any zone such uses of land or a building as may be made only with the express permission of the council in each case,

**11. Section 123, subsection (3) presently reads:**

(3) A zoning by-law may provide that when an application for a change of zoning or a permit is refused, an application for the same change or permit may not be submitted by the same or any other person until at least six months, or such longer period (not exceeding two years) as may be fixed by the by-law after the refusal.

**12. New sections are added to enable a person to apply to a council to have a zoning by-law amended and providing an appeal to the Provincial Planning Board.**

ment may apply to the Board for an inquiry into the matter and the Board shall hold an inquiry and make recommendations to resolve the disagreement in the same manner as prescribed in subsections (4) and (5) of section 95 and report its findings on the matter to the Minister.

**9.** Section 102 is amended by adding after the words “report of the Board” the words “made under section 95, 100 or 101”.

**10.** Section 121, subsection (1), clause (b) is amended by adding at the end thereof the words “and providing that the council may limit the period of time such uses may be allowed and why they must be terminated or discontinued”.

**11.** Section 123 is amended by striking out subsection (3) and by substituting the following:

(3) A zoning by-law may provide that when a permit is refused, an application for the same permit may not be submitted by the same or any other person until at least six months after the refusal.

**12.** The following sections are added after section 134:

**134a.** (1) Any person may apply to a council to have a zoning by-law amended to change the zoning with respect to a specified parcel of land.

(2) A council may prescribe an application fee, not exceeding two hundred dollars, in respect of an application under subsection (1).

**134b.** (1) Upon receipt of an application to amend a zoning by-law, accompanied by the prescribed application fee, a council shall forthwith give first reading to a by-law to amend the zoning by-law in the manner applied for.

(2) Sections 130 to 132 apply *mutatis mutandis* to an amending by-law given first reading pursuant to subsection (1).

**134c.** (1) If after section 130 has been complied with the council decides not to give the by-law second or third reading

(a) the council shall forthwith, in writing, notify the applicant of its decision, and

(b) the applicant, within ten days of the date the decision is mailed to him, may, in writing, appeal the decision to the Board.

(2) Where a council

(a) does not notify an applicant of a decision not to give an amending by-law second or third reading, and

**13. Section 146 presently reads:**

146. (1) Upon a question of jurisdiction or upon a question of law an appeal lies from

- (a) an order of the Board made pursuant to subsection (2) of section 6,
- (b) an order of a council made pursuant to section 110, and
- (c) an order of a development appeal board made pursuant to section 128,

to the Supreme Court of Alberta.

(2) An appeal to the Supreme Court shall be made within thirty days from the date of the order of the tribunal.

(3) The tribunal whose order is being appealed is entitled to be represented by counsel and heard on the appeal.

(4) On the hearing of the appeal, no evidence, other than the evidence that was submitted to the tribunal upon the making of the order appealed from, shall be admitted but the judge may draw all such inferences as are not inconsistent with the facts expressly found by the tribunal and as are necessary for determining the question of jurisdiction or of law.

(5) The judge hearing the appeal shall either confirm or vacate the order and if he vacates it he shall refer the matter back to the tribunal with his opinion as to the error in law or jurisdiction and the tribunal shall deal with the matter in accordance with that opinion.

(6) In this section "tribunal" means a body named in subsection (1).



(b) fails to give the amending by-law third reading within three months of the date of receipt of the application therefor,  
the applicant, within ten days of the expiry of the three months, may, in writing, appeal to the Board for a decision.

**134d.** (1) In determining an appeal under section 134c the Board shall have regard to the general scope and intent of a general plan in force, or a general plan being prepared, and of a zoning by-law in force, but the Board is not bound thereby.

(2) On the appeal, the Board may, by order,

(a) direct the council to take whatever steps are necessary to pass the amending by-law, either unchanged or subject to such conditions and variations as the Board directs, or

(b) declare that the council is not required to pass the amending by-law applied for.

(3) A person may not make a further application to a council to have a zoning by-law amended in respect of the same land for the same use until at least one year after

(a) the date of the Board's decision in respect of the previous application, or

(b) the date of the council's decision under subsection (1) of section 134c, when an appeal therefrom was not made to the Board, or

(c) the lapse of three months from the date of receipt of the previous application by the council, when the council failed to give the by-law third reading and did not notify the applicant of its decision and an appeal was not made to the Board under subsection (2) of section 134c.

**134e.** When an amending by-law is passed the council shall refund to the applicant the amount of the application fee less the cost of advertising the by-law under section 130.

**13.** Section 146 is struck out and the following sections are substituted:

**146.** (1) Subject to subsection (2), upon a question of jurisdiction or upon a question of law an appeal lies from

(a) an order of the Board made pursuant to subsection (2) of section 6, section 110 or section 134d, and

(b) an order or decision of a development appeal board made pursuant to section 110 or 128, or

(c) an order or decision of a council made pursuant to section 110,

to the Appellate Division of the Supreme Court of Alberta.

(2) Leave to appeal shall be obtained from a judge of the Appellate Division upon application made within thirty

**14. Commencement of Act.**

days after the making of the order or decision of the tribunal sought to be appealed from and upon notices to the parties and to the tribunals affected and upon hearing such of them as appear and desire to be heard, and the costs of the application are in the discretion of the judge.

(3) Upon leave being obtained the party appealing shall within ten days after the appeal has been set down, give to the parties affected by the appeal or to the respective counsel by whom the parties were represented before the tribunal and to the secretary of the tribunals affected, notice in writing that the case has been set down to be heard in appeal and the appeal shall be heard by the court of appeal as speedily as practicable.

**146a.** On the hearing of the appeal:

- (a) the tribunal who made the order or decision appealed from and any other tribunal affected is entitled to be represented by counsel or otherwise and heard upon the argument;
- (b) no evidence other than the evidence that was submitted to the tribunal upon the making of the order appealed from shall be admitted, but the court may draw all such inferences as are not inconsistent with the facts expressly found by the tribunal and as are necessary for determining the question of jurisdiction or of law;
- (c) the court shall proceed either to confirm or vacate the order and in the latter event shall refer the matter back to that tribunal that in its opinion erred as to a question of law or of jurisdiction, and the tribunal shall deal with the matter in accordance with that opinion.

**146b.** (1) The court of appeal may fix the costs and fees to be taxed, allowed and paid upon the appeal, and may make rules of practice respecting appeals under this Act and until such rules are made the rules of practice applicable to appeals from a judge of the Supreme Court to the court of appeal apply.

(2) No member of any tribunal is personally liable to costs by reason or in respect of an appeal under section 146.

**146c.** In sections 146 to 146b “tribunal” means a body named in subsection (1) of section 146.

**14.** This Act comes into force on the day upon which it is assented to.

No. 89

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THIRD SESSION  
FIFTEENTH LEGISLATURE  
14 ELIZABETH II  
1966

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**BILL**

An Act to amend The Planning Act

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Received and read the

First time .....

Second time .....

Third time .....

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HON. MR. HOOKE

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