

1967 Bill 82

Fifth Session, 15th Legislature, 15 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 82

An Act to amend The Planning Act

THE MINISTER OF MUNICIPAL AFFAIRS

First time

Second time

Third time

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An Act to amend The Planning Act

(Assented to _____, 1967)

HER 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 5, subsection (4) is amended by adding after the words "pursuant to section 110" the words "or section 128".

3. Section 18 is amended by striking out the words "and The Subdivision and Transfer Regulations do not apply when the" and by substituting the words "does not apply when a development or a".

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

(2) In each subdivision the reserves shall contain such area of land, being not more than 10 per cent of the land being subdivided, as is prescribed by The Subdivision and Transfer Regulations.

(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 the reserves to be provided under subsection (2).

5. Section 25 is amended by striking out subsections (1) and (2) and by substituting the following:

25. (1) Where it appears to the approving authority that the provision of a reserve would serve no practical purpose or for any other reason would be unnecessary or undesirable, the approving authority may require that the provision of a reserve in part or in full be deferred until a further subdivision is made or may recommend to the Board and the Board may order

Explanatory Notes

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

2. Section 5 (4) presently reads:

(4) When the Board is hearing appeals pursuant to section 110, the Board shall not consist of employees appointed under The Public Service Act, 1962, other than the Director.

3. Section 18 presently reads in part:

18. This Act and The Subdivision and Transfer Regulations do not apply when the subdivision is effected solely for the purposes of providing for

(a) public roadways, highways, highway maintenance garages and sites, government weigh scales, or
.....

4. Section 24 (2) presently reads:

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

5. Section 25 (1) and (2) presently read:

25. (1) Where it appears to the approving authority that the provision of a reserve would serve no practical purpose or for any other reason would be unnecessary or undesirable, the approving authority may recommend to the Board and the Board may order that the provision of a reserve in part or in full

(a) be deferred until a further subdivision is made, or

(b) be waived and that in lieu thereof the applicant be required to pay to the municipality a sum of money in an amount equivalent to the value before the subdivision of the land that would otherwise have been provided as a reserve.

(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.

- (a) that the provision of a reserve in part or in full be waived, or
- (b) that in lieu thereof the applicant be required to pay to the municipality a sum of money in an amount equivalent to the value of the land that would otherwise have been provided as a reserve.

(2) For the purposes of clause (b) of subsection (1), the value of the land shall be determined on the basis of its value on the market immediately before the subdivision of the land.

6. Section 26, subsection (2) is amended by striking out clause (a) and by substituting the following:

- (a) be expended only for the purchase of land to be held and used for the purposes of schools, public parks and recreation areas or for the development of public parks and recreation areas, or

7. 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 such areas of 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.

(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 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, or
- (c) any other matter connected with 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 10 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 26 (2) (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.

7. Section 95 presently reads:

95. (1) A council may resolve to prepare a general plan describing the manner in which the future development or re-development of the municipality may best be organized and carried out, having regard to considerations of orderliness, economy and convenience.

(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.

8. Section 97 is struck out and the following is substituted:

97. (1) A council may adopt a general plan by by-law passed in accordance with sections 129 to 136.

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

9. Section 99 is amended by renumbering the section as subsection (1) and by adding the following after the renumbered subsection (1):

(2) Notwithstanding clause (a) of subsection (1) of this section and subsection (2) of section 119, the council may exclude from the provisions of a zoning by-law any areas of land included in the general plan and may exercise or continue to exercise development control in the areas excluded, in which case sections 100 to 113 apply.

10. The following section is added after section 99:

99a. A municipality with a population of 2,500 persons or less need not comply with sections 100 to 113.

11. Section 100 is amended

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

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

(b) as to subsection (2) by adding the words "or as adopted" at the end of the subsection,

(c) 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 joint development control shall be agreed to by resolutions 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

8. Section 97 presently reads:

97. (1) A council may, by by-law, adopt a general plan.
- (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.

9. See note to clause 11.

10. Subsection (3) of the present section 95 is re-enacted in a more appropriate place in the Act.

11. The amendment to sections 99 and 100 are to make it possible for a council to introduce or to continue to exercise development control over all or part of the land included in a general plan that has been adopted.

a party to the disagreement 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 is prescribed in subsections (4) and (5) of section 95 and report its findings on the matter to the Minister.

12. Section 102 is amended by adding after the words "report of the Board" the words "made under section 95 or 101".

13. Section 109 is amended by renumbering the section as subsection (1) and by adding the following after the renumbered subsection (1) :

(2) A member of a council who has been appointed to a development appeal board pursuant to subsection (1) is not precluded from discussing and voting on all matters brought before a council pursuant to sections 110 and 128.

14. Section 110, subsection (5) is amended by adding after the words "under this section" the words "or section 107".

15. Section 121, subsection (1) is amended by striking out clause (b).

16. Section 122 is struck out and the following is substituted:

122. A zoning by-law may provide that a municipal planning commission or an official of a municipality may be authorized to act on behalf of the council in respect of matters referred to in sections 123 to 126.

17. Section 123 is amended by striking out subsections (2) and (3) and by substituting the following:

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

(3) A zoning by-law may provide that a council may determine that a specific use of land or a building that is not provided for in a zoning by-law is similar in character and purpose to another use of land or a building included in the zoning by-law in the zone in which the specific use is proposed.

(4) A zoning by-law may provide that in any zone a specific use of land or a building may only be allowed with the express permission of the council and that the council may limit the period of time that use may be allowed and why it must be terminated or discontinued.

12. Section 102 reads in part:

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

13. Self-explanatory.

14. Section 110 (5) presently reads:

(5) A person claiming to be affected by a decision of a council under
this section may appeal the decision to the Board within ten days of
the receipt by him of the decision.

**15. Section 121 (1) (b) is moved to section 123 (4). See clause
17.**

16. Section 122 is revised to correct typographical errors.

17. Section 123 (2) and (3) presently read:

(2) A zoning by-law may provide that the council, in its discretion and
in any particular circumstances of proposed land use to be set out in the
by-law, shall determine the manner in which any provision of the
by-law shall apply in specific cases.

(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.

18. Section 128 is struck out and the following is substituted:

128. (1) A person claiming to be affected by a decision of a municipal planning commission or an authorized official of a municipality pursuant to section 122

- (a) to strictly enforce the requirements of a zoning by-law or of section 125 so as to cause him special and unnecessary hardship because of circumstances peculiar to the use, character or situation of his land or building, or
- (b) to not allow a specific use of land or a building that is not expressly provided for by the zoning by-law but is similar in character and purpose to other uses of land and buildings provided for in the zoning by-law in the zone in which the specific use is proposed, or
- (c) to refuse to issue a development permit for a specific use of land or a building expressly provided for in the zoning by-law in the zone in which the specific use is proposed,

may within 14 days after the notice of the decision is mailed to him appeal in writing to the development appeal board.

(2) If a decision on an application to develop is not made by the municipal planning commission or an authorized officer of a municipality pursuant to section 122

- (a) within 30 days after receiving the application in its complete and final form, or
- (b) within such longer period as the applicant may consent to in writing,

the application shall be deemed to be refused and the applicant may appeal in writing to the development appeal board within 14 days from the end of that period as though he had received a refusal at the end of that period.

(3) The development appeal board shall hold a hearing and it shall ensure that reasonable notice of the hearing is given to all persons, who in its opinion, may be affected, and it shall consider each appeal having due regard to the circumstances and merits of the particular case and to the purpose, scope and intent of any general plan that is adopted and to the zoning by-law that is in force.

(4) In determining an appeal, the development appeal board may confirm, reverse or vary the decision appealed from and may impose such conditions or limitations as it considers proper and desirable in the circumstances.

(5) A person claiming to be affected by a decision made by a development appeal board may, within 14 days after the date the notice of the decision is mailed to him, appeal in writing to the council, and the council shall hold a hearing and it shall consider each appeal having due regard to the

18. This is a reorganization of the present section to provide an extension of the appeal procedure with respect to decisions rendered on development applications under a zoning by-law, which presently may be appealed to a development appeal board, but includes further levels of appeal to a council and thence to the Provincial Planning Board.

circumstances and merits of the particular case and to the purpose, scope and intent of any general plan that is adopted and to the zoning by-law that is in force.

(6) In determining an appeal, a council may confirm, reverse or vary the decision appealed from and may impose such conditions or limitations as it considers proper and desirable in the circumstances.

(7) A person claiming to be affected by a decision made by a council

(a) resulting from an appeal pursuant to subsection (6), or

(b) resulting from the exercise of discretionary powers under a zoning by-law pursuant to subsection (3) of section 123, or

(c) resulting from the exercise of express permission under a zoning by-law pursuant to subsection (4) of section 123,

may within 14 days after the notice of the decision is mailed to him appeal in writing to the Board, and the Board shall hold a hearing and it shall consider each appeal having due regard to the circumstances and merits of the particular case and to the purpose, scope and intent of any general plan that is adopted.

(8) In determining an appeal, the Board may confirm, reverse or vary the decision appealed from and may impose such conditions or limitations as it considers proper and desirable in the circumstances.

(9) The decision of the Board is final and binding on all parties subject only to appeal under section 146.

19. 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 an order of the Board made pursuant to section 107, 110 or 128 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 30 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 10 days after the appeal has been set down, give to the parties affected by the appeal or to the counsel by whom the parties were represented before the tribunal and to the secretary of the tribunals affected, notice in writing

19. These new sections replacing present section 146, provide for appeals on development matters which have been determined by order of the Provincial Planning Board and may be taken to the Appellate Division of the Supreme Court of Alberta on matters of law and jurisdiction. These amendments parallel the final appeal procedure prescribed in The Local Authorities Board Act.

that the case has been set down to be heard in appeal and the appeal shall be heard by the Appellate Division as speedily as practicable.

(4) The council of the municipality in which a decision is made by an authorized official or a municipal planning commission and which is the subject of an appeal, shall be the respondent at the hearing, notwithstanding that other tribunals may have been affected in accordance with sections 107, 110 and 128.

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, and
- (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 Appellate Division 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 Appellate Division 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, subsection (2) of section 107, subsections (1) and (3) of section 110 and subsections (1) and (4) of section 128.

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

