

1971 Bill 62

Fourth Session, 16th Legislature, 20 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 62

An Act to amend The Planning Act

THE MINISTER OF MUNICIPAL AFFAIRS

First Reading

Second Reading

Third Reading

BILL 62

1971

AN ACT TO AMEND THE PLANNING ACT

(Assented to _____, 1971)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1. *The Planning Act is hereby amended.*

2. *Section 2 is amended by adding the following after clause (f):*

(f1) "development permit" means a certificate or document permitting a development and includes a plan or drawing or set of plans or drawings, specifications or other documents upon which the permit is issued;

3. *Section 5 is amended*

(a) *as to subsection (2), clause (b) by adding after the word "chairman" the words ", a deputy chairman",*

(b) *by striking out subsection (5) and by substituting the following:*

(5) If the chairman is absent from any meeting

(a) the deputy chairman may act as the chairman,
or

(b) the members of the Board present at the meeting may designate any member present to be chairman for that meeting.

(c) *as to subsection (6) by adding after the word "chairman" the words ", the deputy chairman",*

(d) *by adding the following subsection after subsection (6):*

(6.1) An order, direction, approval or other instrument that the Board is to make on a matter submitted to it pursuant to section 21, 22 or 24 may be made by the chairman, the deputy chairman or any other member of the Board without the need for calling a meeting of the Board.

4. *Section 6 is amended by striking out subsections (2) and (3) and by substituting the following:*

Explanatory Notes

1. This Bill will amend chapter 270 of the Revised Statutes of Alberta 1970.

2. "Development permit" defined.

3. Section 5 (2) (b), (5) and (6) presently read:

(2) The Board shall consist of

(b) a chairman and other members who shall be appointed by the Lieutenant Governor in Council to hold office during pleasure,

but no Ministers of the Crown shall be appointed to the Board.

(5) If the chairman is absent from any meeting, the members of the Board present at the meeting may designate any member present to be chairman for that meeting.

(6) An order, direction, approval or other instrument that the Board is to make may be made on its behalf by the chairman or any other member of the Board.

4. Section 6 (2) and (3) presently read:

(2) The Board shall hear, decide and issue orders respecting appeals in all cases where, under this Act or the regulations or any other Act or any regulations thereunder, the Board is required to do so.

(3) A decision of the Board under subsection (2) is final and binding upon all parties, subject only to an appeal under section 116.

(2) The Board

(a) shall hear, decide and issue orders respecting appeals or other matters coming within its jurisdiction in all cases where, under this Act or the regulations or any other Act or any regulation thereunder, the Board is required to do so, and

(b) may rehear any matter before it.

(3) An order of the Board pursuant to subsection (2)

(a) may be reviewed, rescinded, varied, altered or changed if no development has commenced as a result of the issuance of the original order,

(b) is final and binding upon all parties and all persons subject only to an appeal under section 146, and

(c) unless acted upon within 12 months from its date of issue, or such further period of time as the Board may specify, is void.

5. Section 9 is struck out and the following is substituted:

9. (1) A regional planning commission may be composed of such number of members to be appointed in such manner as may be determined by order of the Minister.

(2) Each municipality situated in a regional planning area may be represented by one member of the municipal council to be appointed by the council who may attend the organizational meeting and the annual general meeting of the regional planning commission.

(3) Notwithstanding subsection (1), the representative appointed by the municipal council pursuant to subsection (2) and not appointed to the commission may attend any meeting of the commission at which an item of business of a planning nature affecting his municipality is to be dealt with by the commission and the representative may speak to and vote on the matter before the commission as if he were a member.

6. Sections 11 and 12 are struck out and the following section is substituted:

11. (1) The Minister shall establish a fund to be known as the Alberta Planning Fund.

(2) The Lieutenant Governor in Council shall by April 15, 1971 and by February 28 in each year thereafter, or as soon thereafter as possible, establish a rate expressed in mills, not exceeding in any case the rate of one mill.

(3) Each municipality shall pay into the Fund annually a sum equal to the amount which results from applying the applicable mill rate established pursuant to subsection (2)

5. Section 9 presently reads:

9. (1) A regional planning commission may be composed of
 - (a) not more than two members to represent the public to be appointed by the Board upon the recommendation of the commission,
 - (b) not more than three members to represent a city to be appointed by the city council,
 - (c) not more than one member to represent each improvement district to be appointed by the Minister,
 - (d) one member and one alternate member to represent any other municipality to be appointed by the municipal council, and
 - (e) not more than five members to represent the Government to be appointed by the Board.
- (2) A person appointed to a commission
 - (a) to represent the public may only be a resident of the regional planning area,
 - (b) to represent a municipality other than an improvement district may only be a member of the municipal council, and
 - (c) to represent an improvement district or the Government may only be an employee of the Government.
- (3) An alternate member appointed to a commission may be a member of a municipal council, or a resident or municipal secretary of a municipality represented on the commission.
- (4) Notwithstanding subsection (2), two or more municipalities may be represented on a commission by the same member who shall be a member of the municipal council of one of those municipalities and who shall be appointed jointly by the councils of those municipalities.

6. Sections 11 and 12 presently read:

11. (1) The council of a municipality represented on a regional planning commission shall
 - (a) annually appoint, by resolution, the members to represent it on the commission, and
 - (b) pay to the commission the funds required of it to meet the expenses of the commission.
- (2) The council of a municipality situated in a regional planning area which is not represented on the regional planning commission shall pay to the commission
 - (a) the funds required of it to meet its portion of the annual expenses of the commission, and
 - (b) the cost of any planning service performed by the commission upon the request of the municipality.
12. (1) The council of a municipality situated in a regional planning area may petition the Board concerning
 - (a) the financing of the regional planning commission,
 - (b) the allocation of services by the regional planning commission to that municipality, and
 - (c) the funds required to be paid by that municipality to the regional planning commission.
- (2) The Board, upon hearing the petition, may make such order or recommendation, including the adjustment of the funds to be paid to the commission by any municipality, as it deems desirable, and the decision of the Board is final and binding on the commission and on any municipality concerned.

to the equalized assessment of the municipality as established for the year under The Municipalities Assessment and Equalization Act.

(4) The Minister shall advise each municipality by April 30, 1971 and by March 31 in each year thereafter, or as soon as possible thereafter, of the amount it is required to pay into the Fund.

(5) Each municipality shall pay the amount required of it on or before the first day of June of each year.

(6) In default by any municipality of the payment of the amount required of it, the Minister may require the Provincial Treasurer to withhold any moneys payable by the Province until the amount owing by the municipality is paid.

(7) There shall be paid from the Fund to each regional planning commission such sums as may be authorized by order of the Board together with grants as authorized by the Legislature sufficient to meet the operating costs of the regional planning commission.

(8) Any surplus accruing to the Fund at the end of the fiscal year shall remain in the Fund and be available for use in the following year.

7. Section 16, clause (b) is amended by adding after the words "development scheme or" the words "uses of land prescribed in a".

8. Section 20 is amended by striking out subsection (1) and by substituting the following:

20. (1) Where an application

(a) is refused for any reason other than a failure to comply with an existing general plan, preliminary regional plan, regional plan, replotting scheme, development scheme or with the uses of land prescribed in a zoning by-law, or

(b) is approved conditionally,
the applicant may appeal to the Board by serving written notice of appeal on the secretary of the Board within 30 days after the date upon which notice of the decision is mailed to him.

9. Section 23 is amended by adding the word "or" at the end of clause (c) and by adding the following clause after clause (c):

(d) representing a survey performed in accordance with section 75 of The Land Titles Act,

7. Section 16 (b) presently reads:

16. Land shall not be subdivided unless

(b) the proposed subdivision conforms to any existing general plan, preliminary regional plan, regional plan, replotting scheme, development scheme or zoning by-law affecting the land,

8. Section 20 (1) presently reads:

20. (1) Where an application

(a) is refused for any reason other than a failure to comply with section 16, clause (b), or

(b) is approved conditionally,

the applicant may appeal to the Board by serving written notice of appeal on the secretary of the Board within 14 days after notice of the decision is mailed to him.

9. Section 23 (c) presently reads:

23. Where an instrument

(c) providing for the sale of part of a parcel,

has the effect or may have the effect of subdividing the parcel, the Registrar shall not accept the instrument unless it is approved in accordance with this Act and The Subdivision and Transfer Regulations.

10. Section 25 is amended

(a) *as to subsection (3) by adding after the words "subsection (2)", wherever they occur, the words "or (4)",*

(b) *by adding the following subsection after subsection (3):*

(4) Notwithstanding subsection (2), where land adjoining the bed and shore of a lake, river, stream or other body of water is to be subdivided, the owner shall provide from that land without compensation the following reserves in lieu of the reserves to be provided under subsection (2), namely,

(a) a strip of land not less than 10 feet in width throughout lying between the boundary of the bed and shore and the boundary of the land that will be retained by the owner, and

(b) a parcel fronting on the bed and shore and being

(i) an area having a width throughout of not less than one-quarter of the length of the reserve referred to in clause (a) and having a depth of not less than 125 feet, or

(ii) an area equivalent to 10 per cent of the area of the land to be subdivided,

whichever is the greater.

11. Section 26 is amended

(a) *as to subsection (2) by striking out the word "before" and by substituting the word "after",*

(b) *by striking out subsections (3) to (6) and by substituting the following:*

(3) Where the provision of a reserve in part or in full is deferred, the approving authority or its designated representative shall file a caveat with the Registrar of a land titles office respecting the deferred reserve against the title to the land affected.

12. The following sections are added after section 26:

26.1 (1) A reserve shall be used by a municipality only for the following purposes:

(a) a public park;

(b) a public recreation area;

(c) a school site or part thereof where the school authority has entered into an agreement with the municipal authority whereby the school is to be used for community purposes outside school hours;

10. Section 25, subsections (2) and (3) read:

(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 approving authority is unsuitable for building sites or private use, the approving authority may require that these areas be provided as reserves in addition to the reserves to be provided under subsection (2).

11. Section 26 (2) and (3) read:

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

(3) Where the provision of a reserve in part or in full is deferred, the Director, as caveator, may file a caveat respecting the deferred reserve against the title to the affected land in the land titles office.

See note to following section of this Bill.

12. Section 26, subsections (4) to (6) presently read:

(4) A reserve shall be used by a municipality or other public authority only for the purposes of a school, a public park or recreation area, but if it appears that a reserve will not be required for any of these purposes the Board, upon application by the municipality, may authorize the lease of the reserve or its exchange for another parcel of similar value or its sale in such manner and on such terms as the Board specifies.

(5) All moneys received by a municipality pursuant to subsection (1) and from the lease or sale of reserves under subsection (4) shall be paid into a special account and may

(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 such other special purposes as may be determined by the Board or for the development of public parks and recreation areas, or

(b) be invested in such securities as a trustee may invest in under The Trustee Act,

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

(6) The municipal auditor, in his annual report to the council, shall report on the activities and position of the special account.

- (d) a planted buffer strip separating an industrial area from a residential area.

(2) Where a reserve parcel has been allocated for the use of a school as prescribed in subsection (1) and that use is discontinued, the ownership to the reserve parcel reverts to the municipality.

26.2 (1) If it appears to a municipality that a reserve will not be required for any of the purposes provided in section 26.1, the council, by resolution, may indicate its intention to apply to the Board for an order disposing of the reserve.

(2) Notice of a resolution passed pursuant to subsection (1) shall be

- (a) mailed by registered mail to the persons registered or assessed as owners of the land abutting or adjoining the reserve parcel, and

- (b) published in two issues of a newspaper circulating in the municipality,

stating the time and place at which the council proposes to hold a public hearing on the matter, which shall not be less than 10 days after the publication of the resolution.

(3) A person claiming to be affected by the proposed disposition of the reserve shall serve written notice of his objection to the municipal secretary prior to the day on which the hearing is proposed to be held.

(4) The council shall hold a hearing at the time and place stated in the resolution and at the hearing shall hear a submission by

- (a) any person who is the registered or assessed owner of the land abutting or adjoining the reserve parcel;
- (b) any local group of residents or property owners;
- (c) the director of a regional planning commission where a reserve parcel is situated in a regional planning area;
- (d) a representative of a municipal planning commission.

(5) A hearing need not be held if no written notice of objection is received by a council pursuant to subsection (3).

(6) When applying to the Board for an order disposing of a reserve, the council shall submit to the Board a statutory declaration of the municipal secretary deposing as to

- (a) the contents of the resolution and its publication pursuant to subsection (2);
- (b) the holding of the hearing;

- (c) the persons by whom representations were made, the nature of the representation and the manner in which the representations were dealt with by the council.

(7) The Board may authorize the sale or lease of the reserve, or its exchange for another parcel of similar value in such manner and on such terms as the Board may specify.

(8) All moneys received by a municipality pursuant to section 26 and from the sale or lease of a reserve under subsection (7) shall be paid into a special account and may

- (a) be expended only for the purchase of land to be held and used for the purpose stated in section 26.1 or for the development of public parks and recreation areas or for such other specified purposes as may be determined by the Board, or
- (b) be invested in such securities as the trustee may invest in under The Trustee Act, and the earnings derived from the investment of the money shall be paid into the special account.

(9) Upon authorizing the disposal of a reserve parcel the Board shall file a copy of the appropriate order with the Registrar of the land titles office and the Registrar shall be authorized

- (a) in the case of a sale, to remove the reserve designation from the parcel on the registered plan and from the title of the parcel, or
- (b) in the case of an exchange of parcels, to transfer the reserve designation to the parcel which is the subject of the exchange on the registered plan and to the title of the parcel.

(10) The municipal auditor in his annual report to the council, shall report on the activities and position of the special account pursuant to subsection (8).

26.3 The council of a municipality shall submit to the Board a copy of

- (a) the annual report of the municipal auditors referred to in section 26.2, subsection (10), and
- (b) a report on the numbers and uses allocated to all reserve parcels acquired by the municipality and any subsequent development thereon in the previous calendar year

by the first day of May in each year.

26.4 Where a person, association, corporation, agency or, except when otherwise ordered by the Board, a council

- (a) authorizes, orders, approves, causes, or condones either by resolution, by-law or otherwise the use of a reserve other than those uses prescribed in section 26.1, or

- (d) erects or causes to be erected an obstruction, barrier, notice or sign on land preventing or purporting to prevent the lawful use by any person of a public roadway, reserve or walkway established pursuant to section 25,

the person or member of an association, corporation, agency or council who is a party to the decision or action is guilty of an offence and liable on summary conviction to a fine of not more than \$500 and in addition to a fine of not more than \$100 for every day the offence continues, and in default of payment to imprisonment for a term not exceeding 30 days.

13. Section 95, clause (c), subclause (v) is amended by adding after the word "proposals" the words "for a period of not less than five years after the adoption of the plan".

14. Section 121, subsection (1) is amended by adding the following clause after clause 15:

16. the removal of trees and shrubs from any land or the prohibition thereof.

15. Section 122, clause (a) is amended by striking out the words "and building permits" and by substituting the words "or building permits, or both,".

16. Section 128 is amended by striking out subsections (1) and (2) and by substituting the following:

128. (1) A decision of a development officer or a municipal planning commission made under a development control by-law or a zoning by-law may be appealed to the development appeal board

- (a) by a person claiming to be affected by the decision, except when approval has been given to a development in an area under a zoning by-law and the proposed use complies with the provisions of the by-law relating to permissible uses, in which case no appeal exists,
- (b) notwithstanding clause (a), by a person occupying land situated in one municipality and within one mile of an approved development to be situated in an adjoining municipality, claiming that the development would be injurious to the health and safety of persons and property, and
- (c) by a municipality owning land in an adjoining municipality and for which a development permit has been denied,

13. Section 95 (c) (v) presently reads:

95. A general plan

(c) shall include

(v) proposals relating to the financing and programming of public development projects and capital works to be undertaken by the municipalities or other public authorities having jurisdiction within the area included in the general plan,

14. Section 121 (1) /15 reads:

121. (1) A zoning by-law may contain provisions for the purpose of regulating as to any zone:

15. the excavation or filling in of land or the removal of topsoil from land or the prohibition thereof.

15. Section 122 (a) presently reads:

122. A zoning by-law shall

(a) provide for a system of development permits and building permits, and the terms and conditions under which a permit may be issued, refused, suspended, reinstated and revoked, and

16. Section 128 (1) and (2) presently read:

128. (1) A person claiming to be affected by a decision of a development officer or a municipal planning commission made under a development control or zoning by-law may, subject to subsection (2), appeal to the development appeal board by serving written notice of appeal on the secretary of the board within 14 days after notice of the decision is mailed or posted on the site or published in a newspaper.

(2) No appeal exists where a development permit is issued in an area under a zoning by-law and approved for the reason that the proposed use complies with the provisions of the by-law relating to permissible uses.

by serving written notice of appeal on the secretary of the development appeal board within 14 days after notice of the decision is mailed or posted on the site or published in a newspaper circulating in the area.

17. Section 139 is amended by striking out subsection (1) and by substituting the following:

139. (1) A person who commences a development on any land and

- (a) who,
 - (i) does any act or thing, or
 - (ii) permits any act or thing to be done, in contravention of a by-law in force pursuant to this Act, or
- (b) who fails or neglects
 - (i) to obtain a development permit, or
 - (ii) comply with a condition of a development permit, in accordance with a by-law in force pursuant to this Act,

is guilty of an offence and is liable on summary conviction to a fine of not more than \$500 and, in addition, to a fine of not more than \$100 for every day the offence continues and in default of payment to imprisonment for a term not exceeding 30 days.

18. Section 143 is struck out and the following is substituted:

143. Where a council, an approving authority, an appeal board, a municipal planning commission or a development officer has the power under this Act to impose certain requirements or limitations as a condition of issuing or authorizing a development permit or authorizing the subdivision of land, the council may enter into an agreement with the owner of the land with respect to the observance of those requirements or limitations and the council may file a caveat with the Registrar of a land titles office relating to the agreement against the title to the land affected.

19. Section 146 is amended by striking out subsection (1) and by substituting the following:

146. (1) Subject to subsection (2), an appeal lies to the Appellate Division of the Supreme Court of Alberta

- (a) upon a question of law or a question of jurisdiction from an order of a tribunal made pursuant to section 6, 20, 89, 110 or 128, and

17. Section 139 (1) presently reads:

139. (1) A person who commences a development on any land and who fails or neglects to

(a) obtain a development permit, or

(b) comply with a condition of a development permit,

in accordance with a by-law is guilty of an offence and is liable on summary conviction to a fine of not more than \$500, and in addition to a fine of not more than \$100 for every day the offence continues, and in default of payment to imprisonment for a term not exceeding 30 days.

18. Section 143 presently reads:

143. Where a council, an approving authority 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 subdivision or 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.

19. Section 146 (1) presently reads:

146. (1) Subject to subsection (2), upon a question of jurisdiction or upon a question of law an appeal lies from an order of a tribunal made pursuant to section 20, 110 or 128 to the Appellate Division of the Supreme Court of Alberta.

(b) from an order of a tribunal made pursuant to section 128, subsection (1), clause (b) or (c).

20. Section 147, clause (c) is amended by adding after the word “confirm” the words “, vary, reverse”.

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

20. Section 147 (c) presently reads:

147. On the hearing of the appeal

- (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.