

1973 Bill 51

Second Session, 17th Legislature, 21 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 51

The Planning Amendment Act, 1973

MR. GHITTER

First Reading

Second Reading

Third Reading

Printed by QUEEN'S PRINTER for the Province of Alberta, EDMONTON

Bill 51
Mr. Ghitter

BILL 51

1973

THE PLANNING AMENDMENT ACT, 1973

(Assented to _____, 1973)

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*

(a) *by renumbering clause (a) as clause (a1) and by adding the following clause immediately preceding clause (a1):*

(a) "airport" means an area of land or water, including the frozen surface thereof, or other supporting surface used or intended to be used either in whole or in part for the arrival and departure, movement or servicing of aircraft, and includes any building, installation or equipment in connection therewith, and for which an airport licence has been issued by the Minister of Transport;

(b) *by adding the following clause after clause (d):*

(d1) "conditional use" means the use of land or a building provided for in a zoning by-law for which a development permit may be issued upon an application having been made;

(c) *by adding the following clause after clause (m):*

(m1) "permitted use" means the use of land or a building provided for in a zoning by-law for which a development permit shall be issued upon an application having been made;

3. *Section 20 is amended by striking out subsection (2) and by substituting the following:*

(2) An application to subdivide shall be deemed to be refused

(a) in the case of land situated adjacent to bodies of water, when a decision thereon is not made within 120 days, or

Explanatory Notes

1. This Bill will amend chapter 276 of the Revised Statutes of Alberta 1970.

2. New definitions are added to the Act. The words defined are used in the amendments contained in this Bill.

3. Section 20(2) presently reads:

(2) An application to subdivide shall be deemed to be refused when a decision thereon is not made within 60 days after receipt of the application in its complete and final form by the approving authority and the applicant may appeal to the Board as provided in subsection (1) as though he had received a refusal at the end of the period specified in this subsection.

(b) in all other cases, when a decision thereon is not made within 60 days, after receipt of the application in its completed and final form by the approving authority, and the applicant may appeal to the Board as provided in subsection (1) as though he had received a refusal at the end of the applicable period specified in this subsection.

4. *Section 25 is amended by adding the following after subsection (4):*

(5) A municipality may acquire land by purchase, lease, licence or expropriation within a proposed subdivision, in addition to the reserve provided pursuant to subsection (1), for the purpose of public parks, school sites, public recreation areas and recreation areas under *The Recreation Development Act*, or any of them.

(6) Land that is to be acquired by a municipality pursuant to subsection (5) shall be paid for by the municipality on the basis of its market value immediately after the subdivision of the land.

5. *The following heading and sections are added after section 93:*

Land in the Vicinity of Airports

93.1 The Lieutenant Governor in Council may by order establish any part of Alberta as an airport vicinity protection area upon the report of the Minister that the establishment of the area is in the public interest for the purpose of promoting the health, safety and general welfare of users of land situated in the vicinity of an airport.

93.2 (1) The Lieutenant Governor in Council may make airport vicinity protection regulations for the purpose of controlling, regulating or prohibiting any use and development of land within an airport vicinity protection area.

(2) A regulation under this section may prescribe:

- (a) areas or zones of land use classes of such number, shape or size as is considered advisable;
- (b) the uses of land and buildings that are permitted, conditionally permitted or prohibited in such areas or zones;
- (c) the maximum heights, bulk, material and orientation of buildings and any other development that may be permitted in such areas or zones;
- (d) such other rules and requirements not inconsistent with this Act as may be necessary to carry out the intent of this section.

4. Section 25 requires a subdivider of land to provide, without compensation, any land required for roads and a reserve of 10 per cent of the area being subdivided. The municipality can presently purchase or expropriate any additional land it may require. The amendments provide that any amount so acquired for parks, schools and recreation areas from proposed subdivisions shall be paid for on the basis of the land value after subdivision.

5. New provisions are added for governing the development of land in the immediate vicinity of airports.

93.3 An order establishing an airport vicinity protection area and the airport vicinity protection regulations applicable thereto are binding upon any regional planning commission and a council of a municipality and their respective officers, agents or servants, in whose jurisdiction the airport vicinity protection area or part thereof is situated and those regulations shall form part of any regional plan, preliminary regional plan, general plan, development scheme, development control by-law, development control resolution or zoning by-law in effect in the area and to the extent that any such plan, scheme, by-law or resolution is inconsistent with the regulations, the plan, scheme, by-law or resolutions shall be deemed to be amended so as to conform to the regulations.

93.4 Notwithstanding any other provisions in this Act, where neither a development control by-law or a zoning by-law is in effect in a municipality in which part or all of an airport vicinity protection area is situated at the time of coming into effect of the order establishing the area, the council of the municipality shall forthwith pass a zoning by-law to apply to that part of the municipality affected by the order.

6. Section 95, clause (c) is amended by striking out sub-clause (v) and by substituting the following:

- (v) proposals for a period of not less than five years relating to the financing and programming of public development projects and capital works to be undertaken by the municipality and may include such proposals of other public authorities having jurisdiction within the area included in the general plan,

7. Section 119 is struck out and the following is substituted:

119. A council may pass a zoning by-law to regulate the use and development of land within its municipal boundaries and for that purpose may divide the municipality into zones of such number, shape and size as it considers advisable.

8. Section 120 is amended by striking out clause (b) and by substituting the following:

- (b) shall prescribe for each zone the permitted uses of land and buildings and the conditional uses of land and buildings, if any, therein, and

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

95. A general plan

(c) shall include

- (v) proposals for a period of not less than five years after the adoption of the plan 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,**

7. Section 119 presently reads:

119. A council may pass a zoning by-law to regulate the use and development of land within its municipal boundaries and for that purpose may divide the municipality into zones of permitted land use classes, of such number, shape and area as it considers advisable, prescribe the purposes for which buildings and land may be used, and regulate or prohibit the use of such land or buildings for any other purpose.

8. Section 120(b) presently reads:

120. A zoning by-law

- (b) shall prescribe for each zone established, the uses of lands and buildings that are permitted or conditionally permitted or prohibited therein, subject only to such regulations as may be contained in the by-law, and**

9. Sections 122 and 123 are struck out and the following are substituted:

122. A zoning by-law shall

- (a) provide for a system of development permits or building permits, or both, and the processes under which a permit may be issued, refused, suspended, reinstated and revoked, and
- (b) require that any development undertaken on land contrary to the terms and conditions of the permit or without a permit or after a permit has been suspended or revoked, be discontinued upon notice issued by an authorized official of the municipality and may not resume until the permit therefor has been issued or reinstated.

123. A zoning by-law

- (a) shall provide for the appointment of a development officer who shall be an official of the municipality;
- (b) shall authorize the development officer or a municipal planning commission to receive, consider and decide on applications for a development permit, subject to a council assigning the authority in part to a municipal planning commission as provided in section 15;
- (c) shall require that the development officer or municipal planning commission approve an application for a permitted use upon the application conforming to the provisions of the zoning by-law and shall authorize the development officer or municipal planning commission, in his or its discretion, to approve permanently or for a limited period of time or refuse an application for a conditional use and, subject to clause (d) and to section 124, subsection (3), shall require the development officer or municipal planning commission to refuse the application for a use which is neither a permitted use nor a conditional use;
- (d) may authorize the development officer or the municipal planning commission to approve an application for a permitted use or a conditional use notwithstanding that the proposed use does not comply with the provisions of the by-law passed pursuant to section 121 if the non-compliance is minor and denial of the application for a development permit would cause the applicant unnecessary hardship because of circumstances peculiar to the use, character or situation of his land or building;
- (e) may authorize the development officer or municipal planning commission to impose such conditions on approval of an application for a conditional use as,

9. Sections 122 and 123 presently read:

122. A zoning by-law shall

- (a) provide for a system of development permits or building permits, or both, and the terms and conditions under which a permit may be issued, refused, suspended, reinstated and revoked, and
- (b) require that any prohibited use being made of land or a building or any work thereon undertaken without a permit or after a permit has been suspended or revoked be discontinued upon notice issued by an authorized official of the municipality and be not resumed until a permit therefor has been issued or reinstated.

123. A zoning by-law shall

- (a) provide for the appointment of a development officer who shall be an official of the municipality,
- (b) authorize the development officer or a municipal planning commission to receive, consider and decide on applications for a development permit, subject to a council assigning the authority in part to a municipal planning commission as provided in section 15, and
- (c) authorize the development officer or a municipal planning commission when deciding on an application for a development permit to approve the application unconditionally or impose conditions considered appropriate, permanently or for a limited period of time, or refuse the application.

in the opinion of the development officer or municipal planning commission, are necessary to carry out the purpose and intent of the general plan, if any, and the zoning by-law.

10. Section 124 is amended

(a) as to subsection (1), clause (a) by striking out the words preceding subclause (i) and by substituting the following:

(a) when an application for a development permit is approved for a conditional use or pursuant to subsection (3) or pursuant to section 123, clause (d),

(b) as to subsection (3) by striking out the word "permissible" and by substituting the words "permitted uses".

11. Section 128 is amended by striking out subsections (1) and (3) and by substituting the following:

128. (1) An aggrieved person may appeal the decision of a development officer or municipal planning commission made under a development control by-law or a zoning by-law to the development appeal board 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 of the proposed development or published in a newspaper circulating in the area.

(2) Notwithstanding subsection (1), no appeal lies to the development appeal board when the decision of the development officer or municipal planning commission is one of approval for a proposed development in a zone under a zoning by-law and the proposed development complies in every respect with the provisions of the by-law relating to permitted uses for that zone.

(3) An application for a development permit shall, at the option of the applicant, be deemed to be refused when the decision by the development officer or the municipal planning commission thereon is not made within 40 days after receipt of the application in its complete and final form, and the applicant may appeal in writing to the development appeal board as provided in subsection (1) as though he had received a refusal at the end of the period specified in this subsection.

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

10. Section 124 (1)(a)(i) and (3) presently read:

124. (1) A zoning by-law shall provide that

(a) when an application for a development permit is approved for a conditional use of land or buildings or as authorized under subsection (3),

(i) an official of the municipality shall immediately post a notice of the decision conspicuously on the property for which the application has been made, or

(3) A zoning by-law may provide that a development officer or a municipal planning commission may determine that a specific use of land or a building that is not provided for in a zone in the by-law is similar in character and purpose to another use of land or a building that is included in the list of permissible or conditional uses prescribed for that zone in the by-law.

11. Section 128 (1) and (3) presently read:

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,

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.

(2) Repealed 1971, c. 84, s. 16

(3) An application for a development permit shall be deemed to be refused when a decision thereon is not made within 40 days after receipt of the application in its complete and final form by the development officer or the municipal planning commission, and the person claiming to be affected may appeal in writing to the development appeal board as provided in subsection (1) as though he had received a refusal at the end of the period specified in this subsection.