

1988 BILL 50

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Third Session, 21st Legislature, 37 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 50**

**PLANNING AMENDMENT ACT, 1988**

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MR. BRASSARD

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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Bill 50  
Mr. Brassard

## BILL 50

1988

### PLANNING AMENDMENT ACT, 1988

(Assented to , 1988)

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

- 1 *The Planning Act is amended by this Act.*
- 2 *Section 11(2) is amended by striking out "June" and substituting "July".*
- 3 *Section 44 is repealed and the following is substituted:*
  - 44(1)** If the council of a municipality is of the opinion that a statutory plan or a land use by-law adopted by the council of an adjacent municipality has or may have a detrimental effect within the boundaries of the first municipality, it may refer the matter to the Board whether or not the matter is one that comes within the purview of a regional plan or a ministerial regional plan.
  - (2) A referral under subsection (1) shall be made
    - (a) within 60 days of the passing of a by-law to adopt the statutory plan or land use by-law, or
    - (b) if the referral relates to an amendment to the statutory plan or land use by-law, within 60 days of the passing of the by-law to amend the statutory plan or land use by-law.
  - (3) If the Board receives a referral under subsection (1), the Board shall decide whether or not the statutory plan or land use by-law is detrimental to the municipality that made the referral and may
    - (a) dismiss the referral if the Board decides that the statutory plan or land use by-law is not detrimental,
    - (b) order the council of the adjacent municipality to amend or repeal the statutory plan or the land use by-law, as the case may be, if the Board is of the opinion that the statutory plan or land use by-law is detrimental, or

## Explanatory Notes

**1** This Bill will amend chapter P-9 of the Revised Statutes of Alberta 1980.

**2** Section 11 presently reads:

*11(1) The Board shall notify each council by May 1 of each year, or as soon thereafter as possible, of the amount the council is required to pay into the Alberta Planning Fund.*

*(2) Each council shall pay the amount required of it on or before June 1 of each year or within 30 days of the Board's notification under subsection (1), whichever last occurs.*

**3** Section 44 presently reads:

*44(1) If a council of a municipality is of the opinion that an action taken under this Act by the council of an adjacent municipality has or may have a detrimental effect within the boundaries of the first municipality, it may refer the matter to the Board whether or not the action is one that comes within the purview of a regional plan or ministerial regional plan.*

*(2) The Board shall decide any matter referred to it under subsection (1) and the decision is binding, subject to the right of either council under section 152 to appeal.*

- (c) refuse to order the council of the adjacent municipality to amend or repeal the statutory plan or the land use by-law, as the case may be, if the Board is of the opinion that the statutory plan or land use by-law does not have a significant detrimental effect.
  - (4) A provision of a statutory plan or land use by-law with respect to which the Board has made an order under subsection (3) shall,
    - (a) if the Board has ordered the provision to be amended, be deemed to be of no effect and not to form part of the statutory plan or land use by-law, as the case may be, from the date of the order until the date on which the plan or by-law is amended in accordance with the order, and
    - (b) if the Board has ordered the provision to be repealed, be deemed to be of no effect and not to form part of the statutory plan or land use by-law, as the case may be, from and after the date of the order.
  - (5) Sections 139 to 141 do not apply when a statutory plan or a land use by-law is amended or repealed according to an order of the Board under subsection (3).
  - (6) The Board's decision under subsection (3) is binding, subject to the rights of either council to appeal under section 152.
- 4 *Section 50(2) is repealed and the following is substituted:*
- (2) The regional planning commission shall give at least 30 days' notice in writing to every local authority in the planning region of its intention to consider the adoption of the proposed regional plan as the regional plan.
- 5 *Section 54(4) and (5) are repealed and the following is substituted:*
- (4) If there is a dispute between a regional planning commission and the council of a municipality as to whether or not a statutory plan or a land use by-law contravenes subsection (1) or (2), the regional planning commission or the council may refer the dispute to the Board.
  - (5) A referral under subsection (4) shall be made
    - (a) within 60 days of the passing of a by-law to adopt the statutory plan or land use by-law, or
    - (b) if the referral relates to an amendment to the statutory plan or land use by-law, within 60 days of the passing of the by-law to amend the statutory plan or land use by-law.
  - (6) If the Board receives a referral pursuant to subsection (4), the Board shall decide the dispute and may
    - (a) dismiss the referral if the Board is of the opinion that the statutory plan or land use by-law does not contravene subsection (1) or (2),

**4** Section 50(2) presently reads:

*(2) The regional planning commission shall give at least 30 days' notice in writing to every local authority in the planning region of its intention*

*(a) to consider the adoption of the proposed regional plan as the regional plan, or*

*(b) to consider the adoption of an amendment to the regional plan, as the case may be.*

**5** Section 54 presently reads:

*54(1) When a regional plan has been ratified by the Minister, no local authority shall enact any by-law, take any action or authorize or undertake any development that is inconsistent with the regional plan.*

*(2) Every statutory plan, replotting scheme and land use by-law, every action taken or thing done by a local authority, regional planning commission or a council and every decision of a municipal planning commission, joint municipal planning commission, development appeal board or development officer shall conform with the regional plan.*

*(3) The regional planning commission shall send the regional plan ratified by the Minister to every local authority affected by it.*

*(4) If there is a dispute between a regional planning commission and a local authority as to whether there has been a contravention of subsection (1) or (2), the regional planning commission or the local authority may refer the dispute to the Board.*

*(5) If the Board receives a referral pursuant to subsection (4), the Board shall decide the dispute and the decision is binding, subject to the right of the regional planning commission or the local authority under section 152 to appeal.*

(b) order the council to amend or repeal the statutory plan or the land use by-law, as the case may be, if the Board is of the opinion that the statutory plan or land use by-law contravenes subsection (1) or (2), or

(c) refuse to order the council to amend or repeal the statutory plan or the land use by-law, as the case may be, if the Board is of the opinion that the statutory plan or land use by-law contravenes subsection (1) or (2) but that the contravention does not materially conflict or interfere with the regional plan.

(7) A provision of a statutory plan or land use by-law with respect to which the Board has made an order under subsection (6) shall,

(a) if the Board has ordered the provision to be amended, be deemed to be of no effect and not to form part of the statutory plan or land use by-law, as the case may be, from the date of the order until the date on which the plan or by-law is amended in accordance with the order, and

(b) if the Board has ordered the provision to be repealed, be deemed to be of no effect and not to form part of the statutory plan or land use by-law, as the case may be, from and after the date of the order.

(8) Sections 139 to 141 do not apply when a statutory plan or a land use by-law is amended or repealed pursuant to an order under subsection (6).

(9) The Board's decision under subsection (6) is binding, subject to the right of the regional planning commission or the council to appeal under section 152.

*6 Section 56(3) is amended*

*(a) by repealing clause (b) and substituting the following:*

*(b) 30 days' notice of the proposed amendment is given in writing to every local authority in the planning region, and*

*(b) in clause (c) by striking out "in accordance with section 50(2)" and substituting "under clause (b)".*

*7 Section 58(2) and (3) are repealed.*

**6** Section 56(3) presently reads:

*(3) No amendment to a regional plan shall be adopted by a regional planning commission unless*

*(a) a public hearing has been held pursuant to section 49(1),*

*(b) notice of the proposed amendment is given in accordance with section 50(2), and*

*(c) at the meeting of which notice was given in accordance with section 50(2), at least 2/3 of those persons entitled to vote and who were present and voted, voted in favour of the amendment.*

**7** Section 58 presently reads:

*58(1) The Board shall hold a public hearing on the appeal after giving at least 10 days' notice to*

*(a) the appellant,*

*(b) the council of each municipality in the planning region,*

*(c) every other local authority whose powers extend to the planning region, and*

*(d) any other persons or organizations the Board considers necessary.*

*(2) After hearing the parties and any other local authority or person it wishes to hear, the Board may approve the amendment and, if it does so,*

8 *Section 69 is amended by adding the following after subsection (3):*

(3.1) A land use by-law may specify land in addition to that referred to in section 139 as adjacent land for the purpose of that section.

9 *Section 77.1 is repealed and the following is substituted:*

**77.1(1)** An agreement made in accordance with section 76, 77 or 92 may require that the applicant for a development permit or subdivision approval shall pay for all or a portion of the cost of an improvement constructed or paid for in whole or in part by a municipality at any time prior to the date of approval of the development permit or subdivision approval application.

(2) An agreement made in accordance with section 76, 77 or 92 may require that the applicant for a development permit or subdivision approval shall construct or pay for all or a portion of an improvement with an excess capacity.

(3) An agreement made in accordance with subsection (2) or (4) obligating an applicant for a development permit or subdivision approval to construct or pay for an improvement with an excess capacity may also provide for the reimbursement of the cost incurred or payment made in respect of the excess capacity together with interest thereon at such time as land benefitted by the excess capacity is developed or subdivided.

(4) If a municipality has at any time, either before or after this section comes into force, entered into an agreement providing for reimbursement of payments made or costs incurred in respect of the excess capacity of an improvement by an applicant for a development permit or subdivision approval, the municipality shall, when other land that is benefitted by the improvement is developed or subdivided, enter into an agreement with the applicant for a development permit or subdivision approval for the other land that may require the applicant to pay an amount in respect of the improvement, as determined by the municipality, which amount may be in excess of the cost of the improvement required for the proposed development or subdivision.

(5) An agreement made in accordance with subsection (1) or (4) may require that, in addition to paying for all or part of the cost of an improvement, an applicant for a development permit or subdivision approval shall pay interest, in an amount to be fixed by the municipality, on the cost.

(6) The powers and duties conferred and imposed under this section shall be deemed to have been in full force and effect for all purposes as and from January 1, 1970.

(7) In this section,

(a) “excess capacity” means any capacity in excess of that required for a proposed development or subdivision;



*shall submit it to the Minister for ratification with or without recommendations.*

*(3) Notwithstanding an order under subsection (2), the Minister may refuse to ratify the amendment to the regional plan.*

**8** Consequential to section 16 of this Bill.

**9** Section 77.1 presently reads:

*77.1(1) An agreement under section 76, 77 or 92 may require that the applicant for a development permit or subdivision approval shall pay for all or a portion of an improvement in excess of the requirement for the proposed development or subdivision.*

*(2) An agreement requiring payment in accordance with subsection (1) may also provide for the reimbursement of the excess cost paid in accordance with that agreement.*

*(3) If a municipality has entered into an agreement providing for reimbursement in accordance with subsection (2), the municipality shall, at such time as other land that is benefited by the improvement is developed or subdivided, as the case may be, enter into agreements with applicants for development permits or subdivision approval for that land requiring those applicants to contribute a proportionate share of the cost of the improvement.*

*(4) An agreement under subsection (3) may include an allowance for interest charges accumulating from the time that the payment was made under subsection (1) until the contribution is made under subsection (3).*

*(5) In this section, "improvement" means*

*(a) a facility or land referred to in section 76(2), or*

*(b) a roadway, walkway, utility or facility referred to in section 77(1) or 92(1).*

(b) “improvement” means

(i) a facility or land referred to in section 76(2), or

(ii) a roadway, walkway, utility or facility referred to in section 77(1) or 92(1),

whether or not located on the land to be developed or subdivided and whether or not constructed at the time of development or subdivision approval.

10 *Section 83(2) is amended by adding “unless the applicant has entered into an agreement with the development officer to extend the 40-day period” after “of the application”.*

11 *Section 84(1)(a)(ii) is amended by adding “and any extension of that period” after “period”.*

12 *Section 86 is amended*

*(a) in subsection (2)*

*(i) by striking out “subsections (3) and (3.1)” and substituting “subsection (3)”;*

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

*(b.1) a lake lot shown on an official plan as defined in the *Surveys Act* that is filed or lodged in a land titles office;*

*(iii) by repealing clause (d);*

*(iv) in clause (e) by striking out “described in the existing title by reference to a plan of subdivision” and substituting “shown and delineated on a plan of subdivision”;*

*(b) by adding the following after subsection (2):*

*(2.1) For the purpose of subsection (2) a parcel shall be deemed to be a quarter section, river lot, lake lot or settlement lot, as the case may be, if the parcel would consist of a quarter section, river lot, lake lot or settlement lot except that land has been removed from the parcel by a subdivision effected solely for a purpose referred to in section 3 or by a plan of subdivision or any other instrument that effected a subdivision.*

*(c) by repealing subsections (3.1) and (3.2).*

**10** Section 83(2) presently reads:

*(2) An application for a development permit shall, at the option of the applicant, be deemed to be refused when the decision of a development officer is not made within 40 days of receipt of the application.*

**11** Section 84(1) presently reads:

*84(1) An appeal to a development appeal board shall be commenced by serving a written notice of the appeal on the development appeal board within 14 days after,*

*(a) in the case of an appeal made by a person referred to in section 83(3), the date on which*

*(i) the person is notified of the order or decision or the issuance of the development permit, or*

*(ii) if no decision is made with respect to the application for a development permit, the 40-day period referred to in section 83(2) expired,*

*or*

*(b) in the case of an appeal made by a person referred to in section 83(4), the date on which the notice of the issuance of the permit was given in accordance with the land use by-law or land use regulations.*

**12** Section 86(2), (3.1) and (3.2) presently read:

*(2) Subject to subsections (3) and (3.1), a Registrar may accept for registration without subdivision approval an instrument that has the effect or may have the effect of subdividing a parcel described in a certificate of title if registration of the instrument would result in the issuing of one or more certificates of title and the parcel described in each certificate of title so issued would consist only of one or more of the following:*

*(a) a quarter section;*

*(b) a river lot shown on an official plan referred to in section 32 of the Surveys Act that is filed or lodged in a land titles office;*

*(c) a settlement lot shown on an official plan referred to in section 32 of the Surveys Act that is filed or lodged in a land titles office;*

*(d) a part of the parcel described in the existing title if the boundaries of the part are described in the existing title other than by reference to a legal subdivision;*

*(e) a part of the parcel described in the existing title if the boundaries of the part are described in the existing title by reference to a plan of subdivision.*

*(3.1) The Registrar shall not accept for registration an instrument that has the effect of subdividing a parcel referred to in subsection (2)(d) or (e) unless the instrument is accompanied by a certificate indicating that each parcel to be created by it has direct access or a lawful means of access to a public roadway.*

*13 Section 91 is amended*

*(a) in subsection (1)(b) by striking out “and land use by-law that affects” and substituting “and, subject to subsection (1.1), any land use by-law or land use regulation that affects”;*

*(b) by adding the following after subsection (1):*

(1.1) A subdivision approving authority may approve an application for subdivision approval notwithstanding that the proposed subdivision does not comply with the land use by-law or land use regulation if, in its opinion,

(a) the proposed subdivision would not

(i) unduly interfere with the amenities of the neighbourhood, or

(ii) materially interfere with or affect the use, enjoyment or value of neighbouring properties,

and

(b) the proposed subdivision conforms with the use prescribed for that land in the land use by-law or land use regulation, as the case may be.

*14 Section 106(1) is amended by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding the following after clause (c):*

(d) the regional planning commission for the area within which the land proposed to be subdivided is situated, with respect to the compliance of the proposed subdivision with the regional plan that affects the land, if

(i) the regional planning commission is not the subdivision approving authority, and

(ii) the regional planning commission notified the subdivision approving authority in writing, prior to the decision of the subdivision approving authority, that the proposed subdivision did not comply with the regional plan,

*15 Section 118(a) is amended by striking out “or public utility,” and substituting “, public utility, pipeline as defined in the Oil and Gas Conservation Act or transmission line as defined in the Hydro and Electric Energy Act”.*

*(3.2) The certificate referred to in subsection (3.1) shall be given*

*(a) by a development officer of the municipality if the parcel to be subdivided is located in a city, town, new town, village or summer village, or*

*(b) by the Minister of Transportation and Utilities if the parcel to be subdivided is located in a county, municipal district, improvement district or special area.*

**13 Section 91 presently reads:**

*91(1) A subdivision approving authority shall not approve an application for subdivision approval unless*

*(a) the land that is proposed to be subdivided is, in the opinion of the subdivision approving authority, suitable for the purpose for which the subdivision is intended;*

*(b) the proposed subdivision conforms to the provisions of any regional plan, ministerial regional plan, statutory plan and land use by-law that affects the land proposed to be subdivided;*

*(c) the proposed subdivision complies with this Act and the regulations;*

*(d) all outstanding property taxes on the land proposed to be subdivided have been paid to the council of the municipality in which the land is situated or arrangements satisfactory to the council have been made for the payment thereof.*

*(2) A subdivision approving authority may approve or refuse an application for subdivision approval.*

**14 Section 106(1) presently reads:**

*106(1) An appeal from the decision of a subdivision approving authority, or any condition imposed by it under this Act or the regulations, may be commenced by*

*(a) the applicant for subdivision approval,*

*(b) the council of the municipality within which the land is proposed to be subdivided, if the council is not the subdivision approving authority; or*

*(c) a school authority with respect to*

*(i) the allocation of municipal reserve and school reserve or money in place thereof,*

*(ii) the location of school reserve allocated to it, or*

*(iii) the amount of school reserve or money in place thereof,*

*by filing written notice of the appeal with the Board within 30 days of the date of receipt of the written decision of the subdivision approving authority.*

**15 Section 118(a) presently reads:**

*118 Notwithstanding sections 111 to 117, a council or a council and a school authority, as the case may be, may authorize*

*(a) the construction, installation and maintenance or any of them of a public roadway or public utility, on, in, over or under reserve land, or*

16 *Section 139 is amended*

(a) *by repealing subsection (1) and substituting the following:*

**139(1)** Except as otherwise prescribed by this Act or when an exemption is given by the Minister under section 141, before giving 2nd reading to

- (a) a proposed land use by-law,
- (b) a proposed by-law adopting an area structure plan,
- (c) a proposed by-law adopting an area redevelopment plan,
- (d) a proposed by-law adopting a general municipal plan,
- (e) a proposed by-law amending a by-law referred to in clauses (a) to (d), or
- (f) a proposed by-law repealing a by-law referred to in clauses (a) to (d),

a council shall hold a public hearing with respect to the proposed by-law in accordance with section 140 after giving notice of it in accordance with subsections (3) and (4).

(b) *by repealing subsection (2);*

(c) *in subsection (3) by striking out “In addition to the notice to owners required under subsection (2), if any, the” and substituting “The”;*

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

(4) In addition to the notice required under subsection (3), in the case of an amendment to a land use by-law that will change the district designation of a parcel, the council shall give written notice containing the information referred to in subsection (3)(d) to the owner of that parcel and to each owner of adjacent land.

(5) In subsection (4), “adjacent land” means land that is contiguous to the parcel that is being redesignated and includes

- (a) land that would be contiguous if not for a public roadway, river or stream, and
- (b) any other land specified in the land use by-law as adjacent land for the purpose of this section.

17 *Section 145 is amended*

(a) *by repealing subsection (1)(d);*

(b) *by adding the following after subsection (1):*

(1.1) The Minister may make regulations governing the fees to be paid by persons

- (a) applying to the Minister or to a regional planning commission for subdivision approval or appealing the decision of a subdivision approving authority to the Board, or
- (b) making applications to the Board under this Act.

**16** Section 139 presently reads:

*139(1) Except when an exemption is given by the Minister under section 141, before giving 2nd reading to*

- (a) a proposed land use by-law;*
- (b) a proposed by-law adopting an area structure plan,*
- (c) a proposed by-law adopting an area redevelopment plan,*
- (d) a proposed by-law adopting a general municipal plan,*
- (e) a proposed by-law amending a by-law referred to in clauses (a) to (d), or*
- (f) a proposed by-law repealing a by-law referred to in clauses (a) to (d).*

*a council shall hold a public hearing with respect to the proposed by-law in accordance with section 140 after giving notice of it in accordance with subsections (2) and (3) of this section.*

*(2) A council shall give written notice to each owner of land that is the subject of a proposed amendment to a land use by-law and summarize its effect.*

*(3) In addition to the notice to owners required under subsection (2), if any, the council shall*

- (a) name the one or more dates, places and times it will hold a public hearing with respect to the proposed by-law and provide for the holding of any further public hearings it considers necessary;*
- (b) outline the procedure to be followed by anyone wishing to be heard at the public hearing;*
- (c) outline the procedure by which the public hearing will be conducted;*
- (d) direct the publication in 2 issues of a newspaper circulating in the area to which the proposed by-law relates a notice containing*
  - (i) a statement of the purpose of the proposed by-law;*
  - (ii) the name of the one or more places, one of which shall be the office of the council, where*
    - (A) a copy of the proposed by-law; and*
    - (B) the documents that a person is entitled to inspect under section 151 of the Municipal Government Act and that relate to the proposed by-law;**may be inspected by the public;*
- (iii) the one or more dates, places and times the council will hold a public hearing with respect to the proposed by-law;*
- (iv) an outline of the procedures referred to in clauses (b) and (c).*

**17** Section 145(1) presently reads in part:

*145(1) The Lieutenant Governor in Council may make regulations*

- (d) prescribing the fees to be paid by persons*
  - (i) applying to the Minister or to a regional planning commission for subdivision approval or on appeal to the Board, or*
  - (ii) making applications to the Board under this Act;*