

# CONSOLIDATION OF PLANNING ACT

R.S.N.W.T. 1988,c.P-7

Sections 38 to 48 NIF

(Current to: July 15, 2014)

## AS AMENDED BY NORTHWEST TERRITORIES STATUTES:

R.S.N.W.T. 1988,c.6(Supp.)

In force March 31, 1999: S.N.W.T. 1999,c.6,s.10(4)

R.S.N.W.T. 1988,c.8(Supp.)

In force July 19, 1993: SI-008-93

R.S.N.W.T. 1988,c.67(Supp.)

S.N.W.T. 1994,c.4

In force May 1, 1994: SI-006-94

S.N.W.T. 1995,c.11

## AS AMENDED BY NUNAVUT STATUTES:

S.Nu. 2009,c.7,s.4

s.4 in force June 16, 2009

S.Nu. 2011,c.6,s.21

s.21 in force February 25, 2011

### Note:

Sections 236, 237 and 238 of the *Land Titles Act*, R.S.N.W.T. 1988,c.8(Supp.), provide for certain amendments to be made to paragraph 42(3)(b) and sections 43 and 46 of the *Planning Act*. By virtue of subsection 251(2) of the *Land Titles Act*, these amendments are not to come into force until the provisions they amend come into force. For purposes of convenience, the amendments in sections 236, 237 and 238 of the *Land Titles Act* have been included in this consolidation, even though sections 38 to 48 of the *Planning Act* have not yet been brought into force.

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

A copy of a statute of Nunavut can be obtained from the Territorial Printer at the address below. The Annual Volumes of the Statutes of Nunavut and this consolidation are also available online at <http://www.justice.gov.nu.ca/english/legislation.html> but are not official statements of the law.

Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

Territorial Printer  
Legislation Division  
Department of Justice  
Government of Nunavut  
P.O. Box 1000, Station 550  
Iqaluit, NU X0A 0H0

Tel.: (867) 975-6305  
Fax: (867) 975-6189  
Email: [Territorial.Printer@gov.nu.ca](mailto:Territorial.Printer@gov.nu.ca)

## GLOSSARY OF TERMS USED IN CONSOLIDATIONS

### *Miscellaneous*

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

### *Citation of Acts*

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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## PLANNING ACT

### INTERPRETATION

#### Definitions

1. In this Act,

"appeal board" means a development appeal board referred to in subsection 21(1);  
(*commission d'appel*)

"building" includes any structure, erection, stockpile, sign or fixture built or placed on land; (*bâtiment*)

"council" means the council of a municipality; (*conseil*)

"development" means

- (a) the carrying out of any construction or excavation or other operations in, on, over or under land, or
- (b) the making of any change in the use or the intensity of use of any land or building; (*aménagement*)

"development officer" means a development officer appointed under a zoning by-law;  
(*agent d'aménagement*)

"development scheme" means a development scheme referred to in section 7; (*schéma d'aménagement*)

"Director" means the Director of Planning appointed under section 49; (*directeur*)

"general plan" means a plan referred to in section 2; (*plan directeur*)

"highway" means a primary highway designated as such under the *Public Highways Act* or a major roadway designated as a highway by a planning commission or shown as a highway on a general plan; (*route*)

"land titles office" means a land titles office established under the *Land Titles Act*;  
(*bureau des titres de biens-fonds*)

"non-conforming building" means a building

- (a) that is lawfully constructed or lawfully under construction at the date of first publication of an official notice of a proposal to pass a zoning by-law affecting the land on which the building is situated, and
- (b) that does not or will not conform to the requirements of the zoning by-law when it becomes effective; (*bâtiment dérogatoire*)

"parcel" means an area of land the boundaries of which are

- (a) shown on a plan registered in a land titles office, and
- (b) described in the certificate of title to the land,

and that has not been divided into smaller areas by any plan or instrument registered in a land titles office; (*parcelle*)

"plan of subdivision" means a plan of survey registered in a land titles office for the purpose of subdividing a parcel or parcels of land; (*plan de lotissement*)

"public authority" includes any council, school board, hospital board or other public body with power to use or develop land for public or community purposes; (*administration*)

"reserve" means a parcel of land set aside for the uses set out in section 47; (*réserve*)

"subdivision" means a division of a parcel by means of a plan of subdivision, plan or survey, agreement or any instrument or caveat transferring or creating an estate or interest in part of the parcel. (*lotissement*)

R.S.N.W.T. 1988,c.8(Supp.),s.230,231,232,233,234.

## PART I

### MUNICIPAL PLANNING

#### GENERAL PLANS

Preparation of general plan

**2.** A council may resolve to prepare a general plan describing the manner in which the development or redevelopment of a municipality may best be organized and carried out, having regard to considerations of orderliness, economy and convenience.

Requirements of general plan

- 3.** A general plan must
- (a) be prepared under the direction of qualified planning officers or qualified planning consultants, to be appointed by and responsible to the council;
  - (b) be prepared on the basis of surveys and studies of land use, population growth, the economic base of the municipality, the needs of the municipality relating to transportation, communication, public services and social services and any other factors that are relevant to the preparation of a general plan;
  - (c) include a map showing the division of the land that is to be included in the general plan into areas of permitted land use classes that the council considers necessary for the purposes of the general plan;
  - (d) include proposals as to the content of a zoning by-law;



- (e) include proposals relating to the provision of public roadways, services, public buildings, schools, parks and recreation areas and the reservation of land for these and other public and community purposes;
- (f) include a schedule setting out the sequence in which specified areas of land may be developed or redeveloped and in which the public services and facilities referred to in paragraph (e) should be provided in specified areas;
- (g) include proposals relating to the financing and programming of public development projects and capital works to be undertaken by the municipality or other public authorities having jurisdiction within the area included in the general plan; and
- (h) include any other written statements, reports, charts and drawings that may be necessary to express and illustrate the proposals contained in the general plan.

#### Adoption of general plan

**4.** A council may, in accordance with sections 25 to 29, by by-law, adopt a general plan.

#### Review

**5.** A council shall review its general plan at least once every five years after its adoption.

#### Zoning by-law

**6.** Where a general plan is adopted under section 4, the council shall, immediately after adoption of the general plan, proceed with the enactment of a zoning by-law to include those areas of land affected by the general plan in respect of which no control over development has been exercised.

## DEVELOPMENT SCHEMES

#### Development schemes

- 7.** (1) At any time after the adoption of a general plan, a council may prepare, and by by-law adopt, a development scheme for the purpose of one or both of the following:
- (a) ensuring that any proposal contained or to be included in the general plan will be carried out or will be carried out in a particular manner;
  - (b) amplifying the details of any proposal contained or to be included in the general plan.

Powers of council

(2) Without limiting the generality of subsection (1), a council, by a development scheme, may

- (a) provide for the acquisition, assembly, consolidation, subdivision and sale or lease by the municipality of lands and buildings that are necessary to carry out the development scheme;
- (b) reserve land for future acquisition as the site or location of any public roadway, service or building or for a school, park or other open space and make agreements with the owners of the land that will permit its acquisition and use for those purposes;
- (c) specify the manner in which any particular area of land is to be used, subdivided or developed and regulate or prohibit the construction of buildings that would interfere with the carrying out of the development scheme; and
- (d) make available any land for any use at any particular time including, but without restricting the generality of this power, residential, commercial, recreational, institutional and industrial uses.

Contents of development scheme

**8.** A development scheme must describe and set out

- (a) the manner in which the development scheme is intended to implement a proposal or part of a proposal contained or to be contained in the general plan;
- (b) the land affected by the development scheme, and the names and addresses of the owners of that land; and
- (c) the details of
  - (i) the development to be carried out,
  - (ii) any land to be reserved and the manner in which the reservation is to be effected, or
  - (iii) the manner in which land affected by the development scheme is to be subdivided.

Effective date

**9.** A development scheme comes into force on its adoption by by-law in accordance with sections 25 to 29.

Acquisition of lands and buildings

**10.** (1) Where a development scheme is in force, a council, other than the council of a hamlet or village, may acquire by expropriation under the *Expropriation Act* or otherwise any lands or buildings the acquisition of which is essential to the carrying out of the development scheme, together with lands that

- (a) are the remnants of parcels, portions of which are necessary for carrying out the development scheme; or
- (b) may be injuriously affected by the development scheme.

Disposal of land

(2) A council may dispose of any lands acquired for the purpose of a development scheme without the approval of the voters, subject to any building or other restrictions that may be set out in the development scheme.

Capital development

**11.** (1) Notwithstanding anything in this Act, the Minister may, by order, after consultation with the council of the City of Iqaluit, from time to time set aside areas within the City of Iqaluit within which to carry out a scheme for the development of the capital of Nunavut.

Notification

(2) The Minister shall notify the council of the City of Iqaluit of the intention of the Minister to set aside an area under subsection (1).

Reply

(3) The council of the City of Iqaluit shall, within 30 days after receipt of the notice referred to in subsection (2), reply to the Minister stating its objections, if any, and the grounds for the objections. S.Nu. 2009,c.7,s.4(2),(3).

Powers of Minister

**12.** The Minister may, for the purposes of carrying out a development scheme referred to in section 11, by order, exercise any power given to a municipality under this Act.

ZONING BY-LAW

Zoning by-law

**13.** A council may pass a zoning by-law to regulate the use and development of land within the municipality and for that purpose may

- (a) divide the municipality into zones of permitted land use classes of the number, shape and area that it considers advisable;
- (b) specify the purposes for which buildings and land may be used; and
- (c) regulate or prohibit the use of the land or buildings referred to in paragraph (b) for any other purpose.

Basis of zoning by-law

**14.** (1) A zoning by-law must

- (a) be based on a general plan or on a survey of the existing land uses and conditions of land and buildings in the municipality; and
- (b) specify for each zone the uses of land and buildings that are permitted or conditionally permitted or prohibited in the zone, subject only to the regulations that may be contained in the zoning by-law.

Public uses

(2) A zoning by-law may establish a zone in which land is to be used for the purposes of the municipality or other public authority if all the land in the zone

- (a) is owned by the municipality or other public authority, or
- (b) is to be acquired by the municipality or other public authority,

but if any of the land in the zone is not owned by the municipality or a public authority on the expiration of six months after the date of establishment of the zone, the zoning by-law ceases to be effective in regulating or prohibiting the use of that land and the buildings on that land in that zone.

Contents of zoning by-law

- 15.** (1) A zoning by-law may contain provisions for the purpose of
- (a) regulating in any zone
    - (i) the ground area, floor area, height and bulk of buildings, and the height of fences, walls and hedges,
    - (ii) the depth, dimensions and area of yards, courts, off-street parking areas and other open spaces to be provided around buildings, and the maintenance of these spaces,
    - (iii) the placement, location, arrangement and maintenance of buildings on their sites and their relationship to other buildings and to streets and property lines,
    - (iv) the placement, height and maintenance of fences, walls, hedges, shrubs, trees and other objects where their regulation is necessary to maintain proper visibility for the safe movement of traffic,
    - (v) the design, character and appearance of buildings,
    - (vi) the nature and amount of the access to sites that may be required or allowed or not allowed from adjoining highways and public roadways but allowing at least one place of access to a site from an adjoining public roadway,
    - (vii) the use, location, design and construction of off-street parking and loading facilities, and
    - (viii) the public display of signs and advertisements and prohibiting or controlling the placement, construction, height, size and character of signs and advertising devices;
  - (b) specifying conditions under which dilapidated signs and advertisements may be required by resolution of council to be renovated or removed;
  - (c) specifying as to any zone
    - (i) the minimum site area and dimensions of parcels required for particular sizes of buildings or uses of lands or of buildings,

- (ii) maximum and minimum permissible densities of population, which may be expressed in the zoning by-law as a ratio of habitable rooms per hectare or as a number of dwelling units per site area or in a similar manner, and
- (iii) the facilities to be provided for off-street parking or loading of vehicles, which may be expressed in the zoning by-law in terms of the minimum number of parking or loading stalls or the minimum area for parking or loading required to be provided for particular sizes of buildings or uses of land or of buildings;
- (d) regulating the erection of buildings
  - (i) within a specified distance of any lake, river or water-course,
  - (ii) on land that is subject to flooding or subsidence or is low-lying, marshy or unstable, and
  - (iii) within a specific distance from any airfield or airport; and
- (e) imposing building regulations or adopting and constituting as building regulations the regulations published under the titles of the *National Building Code of Canada* with such modifications to them as the council, with the approval of the Director, may determine.

Off-street parking

(2) In specifying the facilities to be provided for off-street parking under subsection (1), a zoning by-law may provide that an owner of land to be developed may, subject to the approval of the council,

- (a) provide the required off-street parking on land other than on the land to be developed; or
- (b) at the option of the owner and in place of providing off-street parking, pay to the municipality an amount of money on the terms that the council considers reasonable in return for equivalent public parking space to be provided by the municipality elsewhere in the zone.

Municipal off-street parking facilities

(3) Any money received under paragraph (2)(b) by the municipality shall be used only for the development of municipal off-street parking facilities.

Development officer

**16.** (1) A zoning by-law must

- (a) provide for the appointment of a development officer, who shall be an official of the municipality;
- (b) authorize the development officer to receive applications for development permits; and

- (c) require that where an application for a development permit is approved, an official of the municipality must post a notice of the approval conspicuously on the property for which the application has been approved.

Other powers of development officer

- (2) A zoning by-law may authorize a development officer
  - (a) to consider and decide on applications for development permits; and
  - (b) to exercise, on behalf of the council, the powers of the council under section 20.

Application of zoning by-law

**17.** (1) A zoning by-law may prohibit the erection of a building on any site where it would otherwise be permitted under the zoning by-law where, in the opinion of the council or a development officer satisfactory arrangements have not been made by the developer for the supply to the building of water, electric power, sewage and street access, or any of them, including payment of the costs of installing or constructing any such utility by the developer.

Power to determine use of land

(2) A zoning by-law may provide that a council or a development officer may determine whether or not a specific use of land or a building that is not provided for in the zoning by-law with respect to any zone is similar in character and purpose to another use of land or a building that is included in the list of permitted uses specified for that zone in the zoning by-law.

Permits

**18.** A zoning by-law may

- (a) regulate or prohibit
  - (i) the excavation or filling-in of land, or the removal of top soil from land,
  - (ii) changes in the use of a building or of land, and
  - (iii) the erection, construction, placement, moving in, enlargement, alteration, repair, removal or demolition of a building,

and may require that a permit for that must be obtained;

- (b) establish a system of development permits and building permits and the terms and conditions under which a permit may be issued, suspended, reinstated or revoked; and
- (c) require that
  - (i) any work undertaken without a permit or after a permit has been suspended or revoked, or
  - (ii) any prohibited use being made of land or of a building,

shall be discontinued on notice issued by an official of the municipality and shall not be resumed until a permit for that purpose has been issued or reinstated.

Non-conforming buildings and uses

**19.** A zoning by-law must provide for the continued lawful use or construction of buildings and lands that were lawfully used, constructed or under construction immediately before the coming into force of the zoning by-law notwithstanding that the use or construction does not conform to the provisions of the zoning by-law.

UNAUTHORIZED CONSTRUCTION

Unauthorized construction

**20.** (1) Where the erection, construction, enlargement, alteration, repair, removal or demolition of a building or any excavation or work is carried out on any land or a building is used otherwise than in accordance with

- (a) this Part,
- (b) a development scheme or zoning by-law, or
- (c) a permit issued under a zoning by-law,

a council, by written notice either served personally or sent by registered mail to the owner of the property affected and to any contractor engaged in the work, may require the removal, demolition or alteration of the building, the filling in of the excavation, or the cessation of the work or the use to which the land or building is being put, as the case may be.

Contents of notice

(2) The notice referred to in subsection (1) must state

- (a) the grounds on which the removal, demolition, alteration, filling in, or cessation of work or use is required; and
- (b) that the removal, demolition, or alteration of the building, the filling in of the excavation, or the cessation of the work or the use of the land or building, as the case may be, shall be carried out or effected within a period stated in the notice, which shall be not more than two months from the date of the serving or sending of the notice.

Failure to comply with notice

(3) Where an owner of property to whom notice is given under subsection (1) fails to comply with the requirements of the notice, the council, by its officials, may enter on the property and carry out or effect the removal, demolition, alteration, filling in or cessation of use that the notice requires to be done or effected, and may recover the expense of that from the owner by action.

Charge and lien

(4) The expense referred to in subsection (3), until paid by the owner, is a charge and lien on the property in respect of which the notice was given.

## DEVELOPMENT APPEAL BOARD

### Development appeal board

**21.** (1) A zoning by-law must provide for the establishment of a development appeal board by the council composed of a chairperson and at least two other members appointed concurrently for a three-year term of office by resolution and who shall not be dismissed except for cause.

### Filing appointments

(2) A copy of every resolution made under subsection (1) or (5) must be filed with the Director.

### Appointments

(3) The persons to be appointed to an appeal board shall include at least one member of the council, but shall not include employees of the municipality.

### Majority

(4) A majority of the appeal board shall be persons other than members of the council.

### Vacancy

(5) The filling of a vacancy caused by the retirement or resignation of a member of an appeal board must be made by resolution of the council.

### Duty of chairperson

(6) The chairperson of an appeal board shall sign all notices of decision and other documents on behalf of the appeal board, relative to any jurisdiction or power of the appeal board, and any documents so signed are deemed to be signed on behalf of and with the approval of the appeal board.

### Absence of chairperson

(7) Where the chairperson of an appeal board is absent or disabled, any document of the appeal board may be signed by any one member, and when so signed has the same effect as though signed by the chairperson.

### Meetings

**22.** (1) A zoning by-law shall provide for the holding of meetings, the keeping of minutes and any other matters pertaining to the transaction of the business of the appeal board.

### Right of member of council

(2) A member of a council who is appointed to an appeal board as provided in subsection 21(3) is not precluded from discussing and voting on all matters brought before a council as provided in section 23.



### Appeal

**23.** (1) A person claiming to be affected by a decision of a development officer or a council made under a zoning by-law may appeal to the appeal board by serving written notice of appeal to the appeal board within

- (a) 14 days after notice of the decision has been mailed to the applicant or posted pursuant to paragraph 16(1)(c); or
- (b) a further time, not exceeding an additional 46 days, that the chairperson of the appeal board, for just cause, may allow.

### Refusal of permit

(2) An application for a development permit shall be deemed to be refused when a decision on the application is not made within 40 days after receipt of the application in its complete and final form by the development officer or the council and the person affected as a result of that may appeal in writing to the appeal board as though the person had received a refusal at the end of the 40-day period.

### Hearing

(3) An appeal board shall

- (a) hold a hearing within 30 days after the receipt by it of a notice of appeal;
- (b) ensure that reasonable notice of the hearing is given to the appellant and all persons who, in the opinion of the appeal board, may be affected; and
- (c) consider each appeal having due regard to the circumstances and merits of the case and to the purpose, scope and intent of a general plan that is under preparation or is adopted and to the zoning by-law that is in force.

### Duty of appeal board at hearing

(4) Where an appeal is heard, the appeal board shall hear the development officer and any other persons that it considers necessary for a full and proper hearing.

### Powers of appeal board

(5) In determining an appeal, an appeal board

- (a) may confirm, reverse or vary the decision appealed from and may impose conditions or limitations that it considers proper and desirable in the circumstances; and
- (b) shall render its decision in writing to the appellant within 60 days after the date on which the hearing is held.

### Decision

(6) A decision of an appeal board is final and binding on all parties subject only to appeal under section 51.

Report

(7) An appeal board shall, within 15 days after the appeal board renders its decision, make a complete report of the appeal proceedings to the Director, including all representations made at the hearing.

General plan

(8) No decision of an appeal board under this section shall be incompatible with the general plan for the municipality.

ENACTMENT OF BY-LAWS

Enactment of by-laws

**24.** Sections 25 to 29 apply to zoning by-laws and by-laws adopting general plans and development schemes.

Publication

**25.** (1) After giving a proposed by-law first reading and before giving it second reading, a council shall publish in two issues of a newspaper circulating in the municipality or post in three public places in the municipality an official notice stating

- (a) the purpose for which the council proposes to pass the by-law;
- (b) the place or places, one of which shall be the office of the municipality, where a copy of the proposed by-law may be inspected by the public during office hours; and
- (c) the time and place at which the council will hold a public hearing on the proposed by-law, which shall not be less than 10 days after the posting or the last publication of the official notice, as the case may be.

Procedure

(2) Before publication or posting of a notice under subsection (1), a council may, by resolution, establish the procedure to be followed by persons who wish to submit representations concerning the by-law and, without restricting the generality of this power, may

- (a) require the submission of written representations to the council prior to the public hearing; and
- (b) regulate the presentation of oral submissions at the public hearing.

Notice

(3) Any requirements or regulations made by resolution of the council under subsection (2) shall be set out in the notice referred to in subsection (1).

Public hearing

(4) A council shall hold a public hearing at the time and place stated in the notice referred to in subsection (1), and at the hearing shall hear

- (a) every person who wishes to make representations concerning the manner in which any provision of the proposed by-law may affect the person or an owner of land whom the person represents;
- (b) the public at large;
- (c) any local group of residents or property owners; and
- (d) the Director or an expert witness designated by the Director.

Additional public hearings

(5) A council may hold more than one public hearing and the time and place of any public hearing after the first public hearing must be stated in the notice referred to in subsection (1) or in a separate notice or notices to the same effect.

Duties of council

(6) A council shall

- (a) consider all representations made at the public hearing or submitted in writing pursuant to paragraph (2)(a) and make a ruling on those representations;
- (b) make amendments to the by-law that are necessary to give effect to any ruling made under paragraph (a), and give the by-law second reading; and
- (c) submit to the Minister one copy of the by-law, together with a statutory declaration by the proper officer of the municipality deposing as to
  - (i) the contents of the official notice and its publication or posting pursuant to subsection (1),
  - (ii) the holding of a public hearing, and
  - (iii) the persons by whom representations were made, the nature of the representations and the manner in which they were dealt with by the council.

R.S.N.W.T. 1988,c.67(Supp.),s.1.

Amendment of by-laws

**26.** (1) The Minister

- (a) may approve or refuse to approve a by-law;
- (b) may require the alteration or deletion of any provision of a by-law that in the opinion of the Minister may
  - (i) impose undue restraint on the rights of any person claiming to be affected by the by-law,
  - (ii) be inimical to the orderly and economical development or use of any land affected by the by-law, or
  - (iii) be inconsistent with any provision of this Act or a by-law made under subsection 132.2(2) of the *Cities, Towns and Villages Act* or subsection 132.2(2) of the *Hamlets Act*; or
- (c) may require the addition to a by-law of any provision that in the opinion of the Minister is necessary for clarification of the full intent, purposes or application of the by-law.

Duties of council

(2) Where the Minister requires any alteration, deletion or addition to a by-law, the council shall

- (a) make the required alteration, deletion or addition; and
- (b) submit two copies of the revised by-law to the Minister for the approval of the Minister.

S.N.W.T. 1994,c.4,s.4; S.Nu. 2011,c.6,s.21(2).

Approval and effect of by-law

**27.** Where the Minister approves a by-law or revised by-law, the council may give the by-law third reading, but no by-law shall have any force or effect until it has received third reading.

Documents as part of by-law

**28.** (1) A zoning map and a schedule of permitted and prohibited land uses accompanying or appended to a zoning by-law shall be deemed to be part of the zoning by-law.

*Idem*

(2) All maps and documents constituting a general plan shall be deemed to be part of the by-law in which a development scheme is adopted.

*Idem*

(3) All maps, plans, drawings, specifications and documents describing a development scheme and referred to in or annexed to a by-law shall be deemed to be part of a by-law by which a development scheme is adopted.

Amendment or repeal of by-law

**29.** (1) A council may, by by-law, amend or repeal any by-law adopting a general plan or a development scheme or any zoning by-law.

Application

(2) Subject to subsection (3), sections 25 to 28 apply to an amending or repealing by-law made under subsection (1).

Certificate of Director

(3) Where the Director certifies that an amendment to be made by a proposed by-law is only for the purpose of clarifying a provision of the existing by-law, a council need not publish or post an official notice of its intention to pass an amending by-law or hold a public hearing pursuant to section 25.

Right to compensation

- 30.** No person is entitled to compensation by reason only of
- (a) the making or passing of a zoning by-law;
  - (b) any provision contained in a zoning by-law; or
  - (c) any lawful action taken under a zoning by-law.

Copies

**31.** A council that has adopted a general plan or development scheme or has passed a zoning by-law shall without delay prepare copies of it, together with any incorporated amendments, maps and schedules, which shall be made available to the general public at reasonable cost.

RIGHT TO ENTER

Definition of "occupier"

**32.** (1) In this section, "occupier" means the person in possession of or having control over the property or that part of the property into which or on which the entrance was refused.

Right of entry for inspection

(2) A council or any of its authorized officers has the right to enter into or on any property within a municipality for the purpose of making any inspection required in connection with the preparation of a general plan, development scheme or zoning by-law or the carrying out or enforcement of the provisions of them.

Order

(3) Where entrance into or on any property referred to in subsection (2) is refused, a judge of the Supreme Court may, on application made on behalf of the council, by order require the occupier to admit an officer of the council into or on the property for the purpose of making an inspection under subsection (2).

Affidavit in support

(4) An application under subsection (3) must be supported by an affidavit of an officer of the municipality stating that entrance of the council or an officer of the council into or on the property was refused by the occupier of the property.

Notice

(5) Notice in writing of an intention to make an application under this section must be given to the occupier.

Service of notice

- (6) Service of the notice referred to in subsection (5) may be personal or by registered mail, and
- (a) where the notice is served personally, there must be not less than two clear days between the service of the notice and the day of hearing the application referred to in subsection (3); or
  - (b) where the notice is served by registered mail, it is sufficient to mail it addressed to the occupier at his or her last known address not less than seven clear days before the date of hearing the application.

Effect of order

(7) An order made under subsection (3) continues in force until the purpose for which it was made is fulfilled.

Offence and punishment

(8) Every person who wilfully disobeys or contravenes an order made under subsection (3) is guilty of an offence and liable on summary conviction to a fine not exceeding \$200 or to imprisonment for a term not exceeding 30 days or to both.

## ENFORCEMENT

Enforcement

**33.** A general plan, a development scheme or a zoning by-law may be enforced, and anything done in contravention of any provision contained in it, may be restrained by order of a judge of the Supreme Court on an action brought by a council whether or not any punishment has been imposed for the contravention.

Offences and punishment

- 34.** (1) Every person who undertakes or permits a development on any land and fails or neglects
- (a) to obtain a development permit under a zoning by-law, or
  - (b) to comply with a condition of a development permit,
- in accordance with the zoning by-law is guilty of an offence and liable on summary conviction
- (c) to a fine not exceeding \$500 and, in addition, to a fine not exceeding \$100 for every day the offence continues, and
  - (d) in default of payment of a fine under paragraph (c), to imprisonment for a term not exceeding 30 days.

Filing of notification

(2) When a person is convicted under subsection (1) of having undertaken or permitted a development that contravenes a zoning by-law or development permit, the council may file a notification of the illegal development against the title to the affected land in the land titles office for that land.

Further prosecution

(3) The conviction of a person under this section does not operate as a bar to further prosecution under this section for the continued neglect or failure on the part of the person to comply with

- (a) a zoning by-law or development scheme in force under this Part; or
  - (b) the conditions of a building permit issued in accordance with a zoning by-law or development scheme.
- R.S.N.W.T. 1988,c.8(Supp.),s.235.

Powers of council

**35.** For the purposes of carrying out the provisions of this Part, a council may exercise any of the powers conferred on it by the *Cities, Towns and Villages Act* or *Hamlets Act* in addition to the powers conferred on it by this Part.  
S.Nu. 2011,c.6,s.21(3).

ENFORCEMENT OF MUNICIPAL PLANNING

Enforcement of municipal planning

**36.** (1) Where, after making the inquiries that the Minister considers sufficient, the Minister is satisfied that

- (a) a council is not conforming to, enforcing or administering the provisions of a general plan, development scheme or zoning by-law in force in a municipality, or
- (b) it is in the public interest that a council review or prepare and adopt or enact a general plan, development scheme or zoning by-law,

the Minister may order the council to conform to, enforce, administer, review, prepare, adopt or enact, as the case may be, a general plan, development scheme or zoning by-law within the time or times that the Minister may state in the order.

Failure to comply with order

(2) If a council refuses or neglects to comply with an order made under subsection (1), the Minister may, for the purposes of carrying out the order, exercise for and in the name of the council any of the powers conferred on the council under this Part.

Observance of conditions

**37.** 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 the requirements or limitations and the agreement shall be deemed to be a covenant running with the land.

## PART II

### SUBDIVISION OF LAND

#### REGULATION OF SUBDIVISIONS

##### Subdivision of land

**38.** No land shall be divided unless

- (a) the land, in the opinion of the Director, is suited to the purpose for which the subdivision is intended and may reasonably be expected to be used for that purpose within a reasonable time after a plan or other instrument effecting the subdivision is registered;
- (b) the proposed subdivision conforms to any existing or proposed general plan, development scheme or zoning by-law that affects or will affect the land or adjacent land or is in conformity with a logical extension of the general plan, development scheme or zoning by-law;
- (c) the proposed subdivision complies in all respects with this Act and the regulations, and is approved in the prescribed manner; and
- (d) the person proposing the subdivision provides, if required by the municipality, for the installation and construction at his or her own expense of all necessary public roadways, sidewalks, curbs, culverts, drainage ditches, utility systems and other public facilities that may be required of the person under the regulations.

##### Approval of proposed subdivision

**39.** (1) A person who proposes to subdivide land must apply to the Director for approval of a plan of subdivision in the prescribed manner.

##### Power of Director

(2) The Director may approve or refuse to approve a proposed subdivision of land.

##### Where approval refused

(3) Where an application for approval of a proposed subdivision of land is refused, no application for approval of a proposed subdivision

- (a) of the same land, and
- (b) for the same use of the land,

shall be made by the same or any other person within six months after the date of the refusal.

##### Restriction

(4) No plan of subdivision of land shall be approved under subsection (2) unless it has first been referred to the municipality in which the land is situate.



Right of appeal

- 40.** (1) Where an application for approval of a proposed subdivision of land
- (a) is refused for any reason other than a failure to comply with paragraph 38(b), or
  - (b) is approved conditionally,
- the applicant may appeal to the Minister by serving on the Minister written notice of appeal within 14 days after notice of the decision is mailed to the applicant.

Deemed refusal

(2) An application for approval of a proposed subdivision of land shall be deemed to be refused when a decision on the application is not made within 60 days after the Director receives the application, and the applicant may appeal to the Minister as provided in subsection (1) as though the applicant has received a refusal at the end of the 60-day period.

Appeal

- (3) Where the Minister receives a notice of appeal under subsection (1), the Minister shall hold a hearing and shall
- (a) ensure that reasonable notice of the hearing is given to the council of the municipality in which the land is situate, the appellant and all persons who may be affected; and
  - (b) consider the appeal having due regard to the purpose, scope and intent of a general plan where it is in effect or being prepared and to the development and use of the land that may result from the proposed subdivision of land.

Who must be heard

(4) At a hearing under subsection (3), the Minister shall hear the representative of the council and any person who may have an interest in or may be affected by the subdivision of land that is the subject of the hearing.

Powers of Minister

- (5) In determining an appeal, the Minister
- (a) may confirm, reverse or vary the decision appealed from and may impose conditions or limitations that the Minister considers proper and desirable in the circumstances; and
  - (b) shall render a decision by an order in writing within 60 days after the date on which the hearing is held.

Term of order

(6) An order under subsection (5) is valid for a period of 12 months from the date on which it is issued.

#### Designation of person to hear appeal

(7) For the purposes of this section, the Minister may designate a senior member of the Government of Nunavut, other than the Director or an employee in the department of the Government in which the Director is employed, to hear an appeal on behalf of the Minister. R.S.N.W.T. 1988,c.6(Supp.),s.2,3; S.Nu. 2009,c.7,s.4(4).

#### Approval of plan of subdivision

**41.** Where an application for a proposed subdivision of land is approved, the applicant shall, within 12 months after the date of approval, submit to the Director a plan of subdivision or a registerable instrument drawn in conformity with the application.

#### When approval void

**42.** (1) Where a plan of subdivision or a registerable instrument is not submitted pursuant to section 41 within 12 months after the date of approval of the application, the approval is void.

#### Duty of Director

(2) Where the Director is satisfied that a plan of subdivision conforms with the approved application referred to in section 41, the Director shall forward the plan of subdivision to the Minister for the approval of the Minister.

#### Plan approval

- (3) The Minister may approve a plan of subdivision and may specify
- (a) the period of time for which the approval is effective; and
  - (b) a period of time within which the applicant must take all necessary steps to enable the Registrar of the land titles office for the land shown on the plan to register the plan of subdivision.

#### Procedure

(4) Where the Director is of the opinion that a plan of subdivision does not conform with an approved application referred to in section 41 or if any inquiry or inspection of the land made on the instructions of the Director reveals any condition or circumstance that may warrant reconsideration of the application, the Director shall report the facts to the Minister who may, after giving the applicant an opportunity to be heard,

- (a) approve the plan of subdivision;
  - (b) defer the approval of the plan of subdivision;
  - (c) refuse to approve the plan of subdivision;
  - (d) alter or cancel any condition, subject to which the application was approved; or
  - (e) impose any additional conditions that the Minister considers necessary in the circumstances.
- R.S.N.W.T. 1988,c.8(Supp.),s.236;  
R.S.N.W.T. 1988,c.6(Supp.),s.3.

Restrictions on registration of instruments

**43.** Where an instrument

- (a) granting a lease of only part of a parcel,
- (b) charging, mortgaging or otherwise encumbering only part of a parcel, or
- (c) providing for the sale of part of a parcel,

has the effect or may have the effect of subdividing the parcel, the Registrar of the land titles office for the parcel shall not accept the instrument unless it is approved in accordance with this Act and the regulations. R.S.N.W.T. 1988,c.8(Supp.),s.237.

Roadways, parcels and reserves

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

- (a) public roadways and public utility parcels, or portions of them, for the purpose of providing suitable access and services to all parcels in the subdivision, and
- (b) reserves,

that are required by this Act and the regulations and ownership of such roadways, parcels and reserves is vested in the municipality.

Size of reserves

(2) In each subdivision the reserves referred to in subsection (1) must contain the area of land, being not more than 10% of the land being subdivided, that is prescribed.

Additional reserves

(3) Notwithstanding subsection (2), where the land to be subdivided contains swamps, gullies, ravines or natural drainage courses or other land that, in the opinion of the Minister is unsuitable for building sites or private use, the Minister may require that these areas be provided as reserves in addition to the reserves to be provided under subsection (2). R.S.N.W.T. 1988,c.6(Supp.),s.3.

Reserves

**45.** Where it appears to the Minister that the provision of a reserve would serve no practical purpose or for any other reason would be unnecessary or undesirable, the Minister may

- (a) require that the provision of a reserve in part or in full be deferred until a further subdivision is made; and
  - (b) order that the provision of a reserve be waived in part or in full.
- R.S.N.W.T. 1988,c.6(Supp.),s.3.

Caveat

**46.** Where the provision of a reserve is deferred, the Director, as caveator may submit for registration in the appropriate land titles office a caveat respecting the deferred reserve against the title to the land affected. R.S.N.W.T. 1988,c.8(Supp.),s.238.

Disposition of reserves

**47.** 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 those purposes, the Minister may, on application by the municipality, authorize the lease of the reserve or its sale in the manner and on the terms that the Minister may specify. R.S.N.W.T. 1988,c.6(Supp.),s.3.

Where municipality is owner

**48.** None of the provisions of this Act or the regulations relating to reserves apply where the owner of land being subdivided is a municipality.

PART III

GENERAL

DIRECTOR OF PLANNING

Director of Planning

**49.** The Minister shall appoint a Director of Planning.

HEARINGS AND APPEALS

Conduct of hearings

**50.** In the conduct of hearings under section 23, an appeal board is not bound by the technical rules of evidence, but shall

- (a) conduct the hearing in accordance with the rules that may be established by the appeal board;
- (b) provide every person concerned with the opportunity to be heard, to submit evidence and to hear the evidence of and cross-examine others; and
- (c) make and keep a written record of its proceedings, which may be in the form of a summary of the evidence presented to it at hearings.

Appeals

**51.** (1) Subject to subsection (2), an appeal on a question of jurisdiction or on a question of law lies to the Supreme Court from a decision of an appeal board made under section 23 or an order of the Minister made under section 40.

Leave to appeal

- (2) Leave to appeal must be obtained from a judge of the Supreme Court on
  - (a) application made within 30 days after the making of the order or decision sought to be appealed from;
  - (b) notices to the parties affected; and
  - (c) hearing such of the parties affected as appear and wish to be heard.

Costs

(3) The costs of an application under subsection (2) are in the discretion of the judge of the Supreme Court hearing the application.

Notice

(4) On obtaining leave to appeal, the party appealing must, within 10 days after the appeal has been set down, give to the parties affected by the appeal notice in writing that the case has been set down to be heard in appeal and the appeal shall be heard by the Supreme Court as speedily as practicable.

Council as respondent

(5) Where a decision of an authorized official of a council is the subject of an appeal, the council shall be the respondent at the hearing, notwithstanding that an appeal board may have been involved under section 23.

Procedure on appeal

- 52.** On the hearing of an appeal by the Supreme Court,
- (a) the party who made the order or decision appealed from and any other party affected is entitled to be represented by counsel or otherwise and to be heard on the argument;
  - (b) no evidence other than the evidence that was submitted to the Minister or the appeal board shall be admitted, but the Supreme Court may draw all inferences that are not inconsistent with the facts expressly found by the Minister or appeal board and as are necessary for determining the question of jurisdiction or of law; and
  - (c) the Supreme Court shall proceed either to confirm or vacate the order and if it vacates the order, it shall refer the matter back to the Minister or appeal board that in its opinion erred as to a question of law or of jurisdiction, and the Minister or appeal board shall deal with the matter in accordance with that opinion.

Costs and fees

**53.** (1) The Supreme Court may fix the costs and fees to be taxed, allowed and paid on an appeal.

Rules of practice

(2) The Supreme Court may make rules of practice respecting appeals under this Act and until those rules are made, the rules of practice applicable to appeals from a judge of the Supreme Court to the Court of Appeal apply.

Liability

(3) Neither the Minister nor any member of an appeal board is personally liable for costs by reason or in respect of an appeal under section 51.

## REGULATIONS

### Regulations respecting subdivision

**54.** The Commissioner, on the recommendation of the Minister, may make regulations generally for the purpose of controlling the subdivision of land, and without limiting the generality of this power to make regulations, may make regulations prescribing

- (a) the procedure to be followed by an applicant for approval of a proposed subdivision of land;
- (b) rules governing
  - (i) the laying out and dimensions of lots, blocks and other units of land,
  - (ii) the laying out and minimum widths, lengths and maximum grades of roads, streets and lanes, and
  - (iii) the locations, areas and shapes of reserves;
- (c) the locations where subdivisions of land intended for specific types of development and use are permitted or prohibited; and
- (d) the forms to be used, the approvals to be obtained and the fees to be paid by a person applying for approval of a proposed subdivision of land.

### Other regulations

**55.** The Commissioner, on the recommendation of the Minister, may make regulations

- (a) prescribing the manner and form in which development schemes must be prepared;
- (b) prescribing forms to be used for the purposes of this Act; and
- (c) respecting any other matter that the Commissioner considers necessary to carry out the intent of this Act.

## COMMENCEMENT

### Commencement

**56.** Sections 38 to 48 shall come into force on a day to be fixed by order of the Commissioner.