

BULLETIN

The Planning & Subdivisions Act, 2010

Assented to by Parliament on March 16th, 2010 the Act became law in the Bahamas with power to repeal the Town Planning Act, the Private Roads and Sub-divisions Act, the Private Roads and Subdivisions (Out Islands) Act and the Conservation and Protection of Physical Landscape of The Bahamas (Quarrying and Mining Zones) Order, 1997.

The Act however, is not yet in effect but the entirety or different sections thereof shall come into force on such dates as the Minister for the Environment may appoint by Notice published in the Gazette. It is anticipated that the Act or sections thereof will first come into force in New Providence with either simultaneous or eventual application to any Family Island or Family Island Government District and the Port Area of Grand Bahama.

It has recently been stated by the Minister of the Environment that *"The Government has determined to delay the coming into force, the implementation of the Planning and Subdivisions Act, until October 1st."* – The Tribune, Business Section, Monday July 5th, 2010. In the interim a summary of key provisions under the Act follows:

1. Objects and Purposes:-

Among others the foremost object and purpose is to provide for a land use planning based development control system led by policy, land use designations and zoning.

2. Definitions of Mention:-

"Minister" unless specified, means the Minister responsible for the Environment.

"Land Use Plan" means a policy document showing existing and future planned land uses including lands to be protected from development.

"Development" means the carrying out of any building operation, engineering or other operations in, on, over or under land; the clearing of land, the severance or subdivision of land into four or more lots; or the making of any material change in the use or otherwise of any land or building, structure or part thereof and includes outdoor uses, an addition to, or the constructing, erecting, placing, relocating, altering or replacing of, a building or structure or part thereof.

"legal non-conforming use" means the use of any land, building or structure, including that lawfully under construction or for which a building permit is in effect, that is not permitted by existing zoning, if such use existed on the day the zoning was enacted.

"Severance" means the division of not more than four new lots from an existing lot, the adding of land to an existing lot, the making of lot line adjustments. In addition, rights of way and easements also require land severance approval.

"Subdivision" in relation to land most significantly means the division of a parcel of land, into five or more new lots, parcels or tracts from an existing lot in any division of which provision is made for the reservation of land for the construction of access roads, rights-of-way or easements if required.

"Zoning" means provisions that divide land

into zones, prescribe the purpose for which land, buildings and structures in any zone may be used, prescribe the design standards allowed for development, and prohibit the use of land, buildings and structures for any other purpose.

3. Structure and Administration:-

Administration under the Act shall be carried out by a Town Planning Committee, a Department of Physical Planning and a Subdivision Appeal Board. The definitions of which follow below:-

Town Planning Committee (“the Committee”) - shall consist of seven (7) members holding office for a period of three (3) years. The Minister may after consultation with the Committee give such general direction to the Committee as to the exercise and performance of its functions as appear to the Minister to be requisite in the public interest and the Committee shall give effect to such direction. Each decision of the Committee shall be published on the Official Government Website and in the case of a Family Island on the Family Island Administrator Notice Board or other prominent place.

Department of Physical Planning (“the Department”) – shall consist of a Director and such other officers who shall be subject to the general direction and control of the Minister. There shall be a Policy and Planning Division and a Development Review Division. A Register shall be kept by the Director of all applications, decisions, revocations or modifications of approvals, notices served, agreements made, buildings of special or historic value, and approved Subdivisions and Severances. The Director shall be the technical adviser to Minister and chief executive officer and technical adviser to the Committee and shall have the authority to approve applications that meet planning and zoning standards and to enforce the provisions of the Act. The Director also has the right to enter premises to ensure

there is no contravention of a provision of the Act or Approval.

Subdivision and Development Appeal Board – shall apply the procedures of Section 65 of the Act on hearing appeals; against any decision of the Committee relating to a development application, where the Committee fails to make a decision within four (4) months of receiving a complete development application, against an order of the Minister made under the provisions Section 24, against a decision of the Committee to extinguish the effect of a restrictive covenant, against the decision of the Committee by any person who has an interest in the matter. An appeal from a decision of the Subdivision Appeal Board will be to the Supreme Court but only on a point of law and the Supreme Courts decision shall be final and binding. While an appeal is pending no development may proceed on any land which is the subject of an appeal.

4. Land Use and Development Controls

In preparation of Development one should be familiar with application criteria considerations inclusive of the requirement for site plan approval and the provision of environmental impact statements, applicable land use plans inclusive of secondary land use plans, all applicable zoning bye-laws and Orders as well as areas that are designated of architectural interest.

Criteria for Consideration of Applications - on submission of a development application the Committee shall consider; the health, safety, convenience and welfare of the present and future inhabitants, conformity to the Land Use Plan, the Zoning Bye-law, conformity to National Land Use Development Policies, the suitability of the land for the proposed Development, conservation of natural resources, preservation of natural resources and environmentally sensitive lands, flood control, adequacy of utilities and services, restrictions or proposed restrictions (if any) on

the land or buildings and structures proposed to be erected thereon and the restrictions (if any) on adjoining lands, the adequacy of community services, the proposed grades and elevations of roads and adequacy of road links, dimensions of proposed lots in a subdivision, amount of land to be dedicated for public purposes, population density of area, percentage of land to be cleared, height of surrounding buildings, coastline encroachment and previous applications submitted for subject land.

Areas of Architectural interest – located in the set boundaries of downtown Nassau defined in the Act shall be subject to special architectural policies in the Land Use Plan in order to protect historic building types and styles. Additionally, other areas of architectural interest or historical value on any island may also be made subject to special architectural policies in a Land Use Plan in order to protect historic building types and styles across the Bahamas.

Environmental Impact Statements – shall be submitted to the Department as part of any proposed type of Development that may have significant effects on the environment due to its nature, size or location or when the Development is of national importance, or of regional impact.

Land Use Plans – prepared by or for the Department (after consultation with interested parties and at least one public opportunity where questions and suggestions may be presented) shall be available for every Island of the Bahamas and shall contain among other aspects, maps, schedules tables and other descriptive matter that illustrate written statements on goals and objectives and land use policy and land use designations from residential and industrial to conservation and tourism with existing and planned road and utility corridors taken into consideration and even areas that should not be developed. Secondary Plans may also be prepared

bringing greater detail to specific areas. All Development approvals (save legal non-conforming land uses) and zoning shall be in conformity with the Land Use Plan which shall be available with all current amendments for viewing and purchase at the Department of Physical Planning and posted on the Official Government Website. If a draft Land Use Plan has not received final approval by the Minister, the Committee shall in considering any application for development be guided by the prescriptions of the draft Land Use Plan.

Zoning Bye-laws – shall be adopted by the Committee for each Island of the Bahamas and approved by the Minister which shall zone all land and allow for existing uses, prohibit and regulate the use of land and erecting of buildings and structures except for such purposes as set out in the bye-laws and shall recognize and incorporate all zoning orders issued by the Minister. In the absence of a Zoning Bye-law for a particular Island, a generalized zoning code shall be adopted by the Committee in conformity with the governing Land Use Plan.

Zoning Orders – made by the Minister may prescribe areas where new buildings or Development may or may not be permitted, areas that are to be environmentally protected, identified for the purposes of agriculture, forestry, fisheries and may also provide development controls on specific areas. Zoning Orders shall be in conformity with the Land Use Plan and any National Land Use Development Policies and if in conflict with a Zoning Bye-law shall prevail to the extent of such conflict.

Restrictive Covenants – in existing Developments will be impacted through the subsequent zoning of such land by the further restriction or addition to the uses already existing under a Deed or Conveyance which may even change the restrictions and uses permitted. After zoning all new restrictive

covenants shall be in conformity with the zoning and cannot further restrict nor permit uses or restrict the ability of the land being developed than set out in such zoning.

Legal non-conforming use – of land or a building or structure on such land that has been zoned contrary to its current use shall nevertheless continue so long as such legal non-conforming use does not cease, expand its physical presence, sustain damages to more than half its physical size less foundation or is not sold or leased.

Site Plan Control – approval is required for all Developments unless exempt by the Minister, and the Committee must approve all plans before commencement showing the location, massing and conceptual design of the exterior of all buildings and structures to be erected, the existing grading and proposed alteration in contour and elevation of the land, servicing facilities, vehicular facilities, pedestrian facilities inclusive of those with disability, storage and waste facilities, lighting facilities and boarder and landscape facilities.

Bonus Zoning – is an incentive that can be provided; authorizing the increase of height and density of a Development otherwise than permitted in a Zoning Bye-law in return for provision of additional facilities, preservation of important areas or any other public benefit deemed suitable by the Committee.

Parkland, recreational and open space dedication – will as a condition of Site Plan or Subdivision approval for residential purposes be necessary and must consist of acceptable land representing no less than five (5) percent of the total land developed.

Development Charges, Agreements and Performance Bonds may also be necessary and entered into in accordance with the Act on submission of application to the Committee.

5. **Approval Authority**

No person shall commence or carry out any

Development of land, without having first applied for and obtained where applicable the approvals required under the Act. Any laying out of roads or water pipes, the clearing or filling in of land or preparatory construction without the required approval shall be in contravention of the Act.

Approvals - that may be required for the Development of land from the Committee include, Land Use Plan Amendment Approval, Zoning Bye-law Amendment Approval, Minor Variance Approval, Site Plan Approval, Architectural Design Approval (for buildings or land that lie within the set boundaries of Nassau as defined in the Act), and Subdivision Approval or Severance Approval. A Notice of Zoning Compliance is also required from the Director and no construction can start without also having obtained a valid building permit under the Buildings Regulation Act (Ch. 200).

Conditions or Amendments – may be imposed by the Committee on approvals; for Land Use Plan Amendment, Zoning Bye-law Amendment, Minor Variance, Architectural Design, and Severance and on Preliminary Support of Application for Site Plan or Subdivision. The Committee may also refuse approval giving written reasons, or defer consideration pending further information from the applicant or the Department. Persons who commence Development without final approvals are subject to being order to cease Development, to demolish the building, effect alterations or restore it to its original use and condition. Failure to meet conditions and time lines may result in approvals lapsing or being revoked and any decision of the Committee is final unless appealed to the Subdivision and Development Appeal Board.

No Approval required – for the uses of land as listed in the Third Schedule to the Act or in instances where the Development of land includes the carrying out of works for the maintenance, improvement or alteration of the

interior of the building, or the carrying out of works within the curtilage of a dwelling house for any purpose ancillary to the use of the dwelling house or when it is on the Governments behalf or other statutory undertaker for the maintenance of roads, sewers, water mains, pipes, cables and for the carrying out of agriculture (not including the breeding or keeping of livestock) or forestry.

6. Subdivisions:-

Subdivisions must have received Subdivision Approval before any lots can be sold and all Developers must sign in advance an acknowledgement of this condition. All lots within a Subdivision must conform to the standards of the Zoning Bye-law and all roads shall be of such width as required by the Land Use Plan. A

Subdivision Approval - shall be given after submission of a complete application and after all conditions of Preliminary Support of Application have been met. In addition to specific conditions, the owner shall have to provide a bond or bond insurance for a sum fixed by the Minister responsible for Public Works and shall enter into an agreement with the Minister responsible for Public Works for the proper constructions and provision of roads, electricity, water, telephone, and other utilities throughout the subdivision to the specifications approved by the Committee. No building or structure within a Subdivision shall be allowed to commence on any tract within the subdivision until; the road providing access from such tract out to the Public Road has been formed and graded, all lots have been marked out on the ground and set with markers and all utilities and services are available for hook up to each lot in the Subdivision.

Title to Subdivision lots - conveyed after the commencement of the Act will be null and void without prior Subdivision Approval. The Act

however makes provision to protect the title interests of persons whose conveyance of a lot was made prior to the commencement of the Act.

7. Private Roads:-

No alterations or work may be done to an existing private road until written approval has been received from the Minister responsible for Public Works and the Minister for Public Works may enter agreements with any private individual or association to construct, maintain and operate private roads or any other private services or works within the road allowance.

8. Penalties:-

There are penalties under the Act on summary conviction ranging from five thousand dollar (\$5,000.00) fines for obstructing a person acting in the execution of the Act, to a general ten thousand dollar (\$10,000.00) fine for anyone who contravenes a provision of the Act where no other specific penalty exists and also a twenty thousand dollar (\$20,000.00) fine or one year imprisonment for anyone who contravenes the provisions relating to Subdivision Developments.

Conviction – for an offence against the Act gives power to the Magistrate to make such order prescribed by the Act or in lieu of or addition to such order, make such order as the circumstances of the case may require. Failure to comply with such order will enable to Minister to enter the subject premises and carry out the terms of the order at the expense of the owner. Expenses incurred by the Minister in carrying out the terms of a Magistrate's order or expenses incurred by the Minister responsible for Public Works in completing the proper construction of any roads or the installation of required services and utilities in a Subdivision may form a first charge on all property of the owner wheresoever situate.