

## COMMUNITY PLANNING LAW IN NEW BRUNSWICK\*

Gerard V. La Forest†

### General

New Brunswick enacted its first Town Planning Act in 1912.<sup>1</sup> While general in scope the Act appears to have been limited in practice to the City of Saint John. Nonetheless other municipalities provided for planning within their jurisdictions under other powers. It was not until 1936, however, that a system of planning law similar to that now in force was introduced in the province by the Town Planning Act of that year.<sup>2</sup> That Act, later re-enacted in the Revised Statutes of 1952,<sup>3</sup> was amended from time to time until 1961 when it was repealed and substituted by the existing Community Planning Act.<sup>4</sup> Continuity was provided by maintaining town planning commissions, official town plans, by-laws, regulations, orders and zoning appeal boards established under the previous Act, subject to minor modifications to adapt them to the new Act (s. 74).

The Community Planning Act came into force on June 1, 1961 (s. 76). It has since been amended three times, in 1963,<sup>5</sup> 1964,<sup>6</sup> and 1965.<sup>7</sup> The Act gives wide powers to the council of a city, county, town or village, or the board of commissioners (hereafter comprised in the expression "council") of a local improvement district to plan the community with the advice of

\* This article was prepared for the New Brunswick Department of Municipal Affairs and was originally published in the New Brunswick Municipal Monthly. It was intended to give in outline the general structure of community planning law in New Brunswick for members of planning commissions and other persons interested in community planning. It is now republished with the kind consent of the department. The article has been slightly modified in the light of amendments since its original publication. Further modifications to the Act will certainly take place in conformity with the government's announced intention of overhauling municipal legislation, but this seems unlikely to affect the general structure of the Act, though power now given to county councils, for example, may well be exercised by the Provincial Planning Board.

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1 (1912), 2 Geo. V, c. 19 (N.B.).

2 (1936) 1 Edw. VIII, c. 35 (N.B.).

3 R.S.N.B., 1952, c. 233.

4 (1960-61), 9 & 10 Eliz. II, c. 6. The repealing section is s. 75.

5 (1963), 12 Eliz. II (2nd sess.), c. 13.

6 (1964), 13 Eliz. II, c. 18.

7 (1965), 14 Eliz. II, c. 12.

a planning commission established and appointed by the council. In recent years an increasing number of municipalities are exercising these powers.

### Commission

When a council decides to provide for the planning of the municipality under the Act, its first step is to enact a by-law establishing a planning commission (s. 5). A commission must have no less than five, and not more than fifteen members (s. 5) who are appointed by resolution of the council (s. 6(1)). The members hold office initially for three years, but they are eligible for re-appointment (s. 6(2)). Their terms are staggered so that the terms of about one-third of the members expire on January 1 of each year; this is done by fixing the terms of about one-third of the original members at one year, one-third at two years and one-third at three years (s. 6(3)). Once appointed a member of the commission may not be removed by the council before the expiration of his term unless the commission consents to it (s. 6(1)). When a member is removed or dies or resigns, the council may replace him with another for the remainder of his term (s. 6(6)). If the council fails to appoint a successor on the termination of a member's term, the member remains in office until his successor is appointed (s. 6(7)).

The council may at any time increase or decrease the membership of a commission, but in adding or removing members it must maintain the principle that the terms of a third of the membership expire each year (s. 6(4), (5)). Furthermore, an increase or decrease in the membership of a commission requires an amendment to the by-law establishing the commission, and this can only be done on complying with the procedure discussed later under the heading "Enactment and Review of By-Laws".

The Act envisages a commission as a body for undertaking studies relating to the planning of the community and for advising the council on all matters involving community planning (s. 7(1)(a), (b)). Among other matters it may prepare and recommend to the council community plans and by-laws suitable for adoption under the Act (s. 7(1)(c)) and promote public interest and participation in community planning (s. 7(1)(d)). But the commission is ordinarily more than a mere advisory body. When a subdivision by-law is passed the Act gives the commission a number of important powers; in addition that by-law or a zoning by-law may give it other duties. These powers will be examined later under "Subdivision Control" and "Zoning". Moreover the council may give it other functions (s. 7(1)(e)), including the

power to administer any by-law under the Act (s. 7(3)). In performing its duties, the commission may appoint officers and employees, enter into contracts, expend funds supplied by the council and accept funds or grants from other sources (s. 7(2)).

Once a commission has been established, the council has certain duties in regard to it. Before making any final decision on a matter relating to community planning, the council must refer it to the commission for report (s. 8(1)). The council is not bound to accept the report or, in most cases, even to wait for it to be given, but, of course, it will normally give it consideration. However, before by-laws are passed under the Act, the council's power to override the commission is qualified to some extent. This will be examined later under "Enactment and Review of By-Laws". Again the council and its planning department must make information and reports relating to community planning in their possession available to the commission (s. 8(3)). Further, municipal officers must at the request of the commission perform such duties for the commission as they would for the council if the commission were not established, but the council may restrict this power (s. 8(2)). In a general way it may be said that the ultimate power relating to community planning is vested in the council, but the commission has the right to be consulted.

The Act provides some of the rules for the conduct of the commission's business, but, subject to these, the commission may make its own rules (s. 10(1)). Among the rules spelled out in the Act are the following. The commission must elect a chairman and a vice-chairman from among its members (s. 9(1)), whose terms of office are initially one year but who may be reappointed (s. 9(2)). The commission must also appoint a secretary, but unlike the other officers he is not necessarily a member of the commission (s. 9(2)). It may also appoint committees and advisors from among or outside its membership (s. 9(3)). The commission must keep records of its proceedings (s. 10(2)), have a seal (s. 10(4)) and meet at least once every three months (s. 10(5)). A majority of its members is a quorum, and a majority decision at a meeting is a decision of the commission (s. 10(3)); a vacancy in its membership does not prevent the commission from acting (s. 10(6)). The commission must on a day set by the council submit estimates of its expenditures for the ensuing year (s. 12(1)), and its accounts are subject to audit by persons designated by the council (s. 12(3)). Finally the council may make such sums available to the commission as it deems appropriate (s. 12(2)) and may provide allowances and travel expenses for the members of the commission (s. 11).

### **District Commissions**

The councils of two or more municipalities may, by agreement, establish a district planning commission to exercise jurisdiction over all or such parts of the municipalities as may be described in the agreement (s. 13(1)(a), (b)), and generally such commission is in the same position within its territorial jurisdiction as an ordinary commission (s. 13(2)). Each municipality contributes such proportions of the funds of the commission as may be agreed upon (s. 13(1)(d)) and such funds are placed in a trust account in the name of the commission (s. 13(3)). A council that is a party to such an agreement may delegate to another council that is a party such power to make and enforce zoning by-laws in the delegating municipality as may be agreed upon, except that a council cannot delegate the power to alter the boundaries of zoning districts (s. 14). A council may cease to be bound by an agreement establishing a district commission by passing a by-law for the purpose (s. 15) on compliance with the procedure for passing such by-laws which will be examined later.

### **Community Plan**

Once a council has established a planning commission, it may wish to plan the future development of the municipality in a comprehensive way by adopting a community plan; this may be done by by-law (s. 16(1)). Before doing so, however, it should carry out appropriate studies of the physical, economic and other conditions of the municipality. The plan may be recommended by the commission, but the council may have it prepared itself; in the latter case, however, it must submit the plan to the commission for its views as in the case of other by-laws under the Act. In any event it must comply with the procedure for adopting by-laws under the Act which will be examined later.

A community plan sets forth the intended future development of the municipality, and may include such matters as the proposed sites of public buildings, location of roads, parks, industrial sites and residential areas, proposals for renewal or redevelopment of parts of the municipality, the programming of developments and the nature and contents of by-laws, to name a few (s. 16(1)). As can be seen, a plan is not just a map but a group of proposed projects (s. 16(2)). The council is not obliged to undertake any project envisioned by the community plan (s. 17(2)), but it cannot undertake a project inconsistent with the plan; nor can a school district or other local authority (s. 17(1)). Of course, the council can always amend the plan if it wishes to carry out anything inconsistent with it, but this involves giving the public notice and

holding a public hearing under the procedure for the enactment of by-laws to be discussed later. A community plan, then, is just that; a plan subject to change.

It follows that the mere adoption of a community plan does not prevent a private person or corporation from building or using land in a manner inconsistent with the community plan. If a municipality seriously wishes to carry out a proposal in a community plan or ensure that any such proposal is carried out, it may purchase, lease or compulsorily (s. 54) acquire any land required and any other land that should reasonably be acquired with such land (s. 18). Moreover, while the plan is not directly enforceable, the proposals in it may be implemented by zoning, subdivision and other by-laws.

### Zoning

A zoning by-law divides a municipality into use districts, for example residential, commercial, industrial and green belt districts, which are usually shown on a map of the municipality forming part of the by-law (s. 19). It provides what uses of land, buildings and structures are permitted in each district and regulates such matters as the height, ground area and bulk of buildings that may be erected, how far from the street they must be, what area of floor space, yards, and parking facilities they must have, and the like (s. 19(1)).

A zoning by-law does not apply to existing uses, i.e., a lawful use of land or a building or structure (including one in the course of construction (s. 20(2)) on the council's first publication of its intention to pass a zoning by-law (s. 20(1)), so that such uses may be continued. In general, however, any change of use must conform with the zoning by-law. But there are exceptions. A change of tenants or occupants is not deemed to change the use of land or a building (s. 20(3)). Again, there are provisions for extending such exempted uses to the whole of a building (s. 20(5)), and the commission may permit a change of such a use to one of a similar character (s. 20(6)), but generally such uses are not extended. A building in which there is such a use may not be enlarged or structurally altered except as required by statute (s. 20(7)). Again if such a use is discontinued for four months or such further period as the commission allows, it cannot later be put to that use (s. 20(4)(a)). Further, if the building or structure is damaged to the extent of half its value, it can only be used in conformity with the by-law unless the commission otherwise permits, and the council may acquire such building either by agreement or compulsorily in the manner provided in the

Act (ss. 20(4)(b), 54). Finally, the by-law may empower the council to require the improvement, removal or demolition of any dangerous, dilapidated or unsightly building or to do so itself at the cost of the owner and to acquire the land either by agreement or compulsorily (ss. 19(1)(e), 54).

The Act provides that the by-law may prescribe a system of permits, the terms and conditions on which they may be issued, suspended and revoked and the fees therefor (s. 19(1)(c)). A zoning by-law is usually administered by a system of permits; it ordinarily provides that in order to erect or repair anything a person must obtain a permit, and no permit will be granted unless the proposed work conforms with the by-law.

Some flexibility may be given the by-law by powers given to the commission. Thus the by-law may authorize the commission to permit minor variances from the requirements of the by-law where it considers it necessary to the development of a piece of land (s. 19(1)(h)(i)). Similarly the commission may be authorized to permit a use prohibited in the by-law if such use is similar or compatible to a permitted use in that district or on adjacent land (s. 19(1)(h)(ii)). The commission may also be permitted to give temporary permits for not more than a year for uses otherwise prohibited by the by-law (s. 19(1)(i)). On the other hand, the by-law may give certain restrictive powers to the commission or the council. Thus it may prohibit the erection of a building unless, in the opinion of the council, satisfactory arrangements have been made for electricity, water and other services and facilities (s. 19(1)(d)). Again the by-law may authorize the commission to prohibit the erection of a building or structure on a site that is too marshy or otherwise unsuitable for a proposed purpose (s. 19(1)(g)). Finally, the by-law may prohibit certain uses of lands or buildings unless approved by the commission (s. 19(1)(f)).

Further flexibility in the operation of the by-law is provided by zoning appeal boards. The Act provides that every zoning by-law shall establish a zoning appeal board consisting of five members (s. 22(1)) to hear the complaints provided for under the Act. These are as follows. When a person alleges that he has been refused a permit because of a misapplication of the by-law, he may appeal to the zoning appeal board, which may order that a permit be granted to him if it decides he is entitled to the permit under the by-law (s. 23(1)). Similarly, a person who alleges that another has obtained a permit because of a misapplication of the by-law may appeal to the board to have the permit cancelled (s. 23(2)). Moreover any person who alleges that the strict

application of the by-law would cause him special or unnecessary hardship may appeal to the board which may if it thinks fit permit reasonable variances from the requirements of the by-law (s. 24). Some of the procedures to be followed by zoning appeal boards are spelled out in the Act (ss. 22, 25), but subject to these a board may adopt its own rules (s. 22(6)).

The provisions for enforcing the by-law will be dealt with under "Enforcement".

## **Subdivision Control**

### ***Introduction***

Under the Act, any municipality (i.e., a city, county, town, village or local improvement district) may regulate the subdivision of land within its boundaries. To do so it must have established a planning commission under section 5, and passed a subdivision by-law under section 29. The regulation of subdivisions is not governed solely (or even mainly) by the subdivision by-law. For when a subdivision by-law has been passed in a municipality that has a planning commission, the provisions of the Act relating to subdivisions automatically apply in the municipality. To understand the law regulating the subdivision of land, therefore, it is necessary to examine these provisions of the Act as well as the by-law. The major provisions of the Act relating to subdivisions are sections 27 to 38 though there are other relevant sections; the by-laws will vary from municipality to municipality but some attempt will be made to indicate the types of provisions they may contain.

### ***Lands Subject to Subdivision Control***

When a municipality has established a planning commission and enacted a subdivision by-law, all deeds and other transactions in land afterwards made that have the effect of dividing a piece of land in the municipality into two or more parcels are void until a plan of it is approved by the commission and filed in the registry office (s. 27(1), (5)). For the purposes of the Act, a piece of land that is divided into two or more parcels is called a subdivision (s. 1(k)) and the plan is called a subdivision plan (s. 27).

There are several exceptions to the rule that all land transferred in a municipality that has adopted subdivision control must appear on a plan approved by the planning commission. In the first place, the Act or subdivision by-law does not apply to transfers by will (s. 1(1)). Secondly, if a plan of the subdivision was filed

in the registry office before the subdivision by-law was enacted, it is sufficient if the parcel of land appears on such a plan; approval by the commission is unnecessary (s. 27(1)(a)). Again, it often happens that an owner proposes to divide a piece of land by transferring one or more parcels and keeping the remainder. In such a case the commission may approve a subdivision plan of the whole property, but in many cases the owner will seek approval of a plan of the parcel or parcels he intends to convey only. In such a situation he may sell or otherwise dispose of the remaining part or remnant of land as one piece (s. 27(3)); he cannot further divide the remnant without a plan. In any case where the land conveyed either appears on a plan or is the remainder of a piece of land appearing in a plan, the deed should make reference to the plan as well as to relevant registration data.

The foregoing are absolute exceptions. In addition, the commission is empowered by section 28 to exempt certain pieces of land and transfers that do not ordinarily interfere with community planning. They are listed in the section, but the list of exemptions may be added to by order in council. Ordinarily the commission will exempt any land or transfer falling within the list, but occasionally to do so would interfere with the proper planning of the area and the commission will refuse. The exemption is made by a certificate which may be a separate document, but is often endorsed on a deed, and is dated and signed and sealed by an official designated by the commission. When so exempted, the deed is effective and may be registered even though the land concerned does not appear on a subdivision plan.

### *Tentative Plan*

In most cases, then, when a landowner divides a piece of land in a municipality that has adopted subdivision control, he will have to obtain approval of a plan of the subdivision from the planning commission. The procedure for obtaining this approval is set out in the Act. The Act first provides that a person seeking approval of a subdivision must submit to the commission a tentative plan. However, the commission has power to exempt a person from submitting a tentative plan, so it is best to consult with it before submitting a tentative plan. In many cases the commission can agree to a manner of subdividing the land without a tentative plan.

If the commission requires a tentative plan, at least four copies, or as many as may be required by the commission, must be submitted to it. The plan must be entitled "Tentative Plan", be of the scale and size set out in the subdivision by-law, and be

accompanied by a written application for approval of the plan (s. 30(1), (2)). What this plan must contain is set forth in section 30(2). However, the commission may exempt a person from supplying any information required by that section (s. 31).

Once the commission has received a properly completed tentative plan it must decide within one month whether to approve or reject it (s. 30(3)), though of course it will not usually take that long. If the commission approves the plan, it should not indicate its approval on the plan itself (s. 30(4)) because the tentative plan might then be confused with the final subdivision plan and registered in the registry office in contravention of the Act (s. 30(5)). If the commission rejects the plan, it must notify the person who submitted it in writing stating the reasons for rejecting it (s. 30(3)).

### *Requirements of By-Laws*

The considerations that should govern the commission in rejecting or accepting plans of subdivision are set out in the subdivision by-law (s. 29). Thus the by-law may prescribe the manner in which streets are to be laid out, the size, shape and locations of lots and blocks and other parcels of land within the subdivision, and establish street and building lines. Again, the by-law may provide that approval shall not be given if the land is unsuitable for the intended purposes or if it is unlikely that it will be used for that purpose within a reasonable time. If there is an existing or proposed official community plan or zoning or other by-law passed under the Act, the subdivision by-law may provide that approval is not to be given to a subdivision unless it complies with these enactments. Another common provision is that a subdivision must not prejudice the possibility of subdividing land adjacent to that proposed to be developed. In addition some subdivision by-laws provide that approvals of all or certain subdivision plans will only be given if the subdivider conveys the streets in the subdivision to the municipality. Others provide that approval will be given only if the subdivider (1) conveys a certain amount of land to the municipality to be used for public purposes, or (2) pays a certain sum to be used by the municipality for acquiring and developing lands for public purposes. Finally, the by-law may require the subdivider to pay for, or contribute to the expenses of providing lights, water, transit, streets, curbing, culverts and other facilities. A by-law need not, of course, contain all these provisions, but the foregoing does indicate some of the ways in which a municipality may exercise control over subdivisions.

Failure to comply with any of the provisions of the subdivision by-law is ground for rejecting a subdivision plan. These provisions, however, should not be rigidly and unreasonably applied. It will frequently happen that a piece of land, because of its shape or for some other cause, cannot reasonably be broken up in accordance with the strict requirements of the by-law. In such a situation common sense should be used; it is the spirit and not the letter of the law that should prevail. The Act allows for this by providing that the commission may permit such reasonable variances from the requirements of the subdivision by-law as, in its opinion, is desirable for the development of a piece of land. Such a variation should not, however, be completely opposed to the intention of the by-law. The Act expressly provides that the variance should be in accord with the general intention of the by-law and, if there is one, of the community plan. The commission may give this permission subject to such terms and conditions as it deems fit (s. 29(4)).

#### *Rural Subdivision Approval*

Section 35 of the Act contains special provisions for subdivisions located elsewhere than in cities, towns or villages. The Provincial Government is responsible for the maintenance of roads in such places and for this reason it is provided that the commission shall not approve a final subdivision plan of land there until the Minister of Public Works has assented thereto in writing, which will usually be endorsed on the plan. The Minister will not assent to a plan unless the Provincial Planning Board has examined it and approved the location of the streets. In addition the Minister will require the construction of the streets under the supervision of an official named by him in accordance with standards approved by him. Only when the Minister has assented may the commission approve the final subdivision plan. The Minister's assent is only given to the final plan, but the practical course to follow is first to submit a tentative plan to the commission. If the commission does not have any objection to the tentative plan, it should be sent to the Department of Public Works along with a letter from the commission to that effect. The Department can then suggest any necessary alterations before the preparation of the final plan. When a plan assented to by the Minister and approved by the commission is filed in the Registry Office, the land shown as streets vests in the Crown.

### *Laying Out of Subdivision*

When the commission has approved the tentative plan, the subdivider may proceed in one or more stages to lay out the streets, the lands to be conveyed to the municipality, and the lots, blocks and other parcels of land in accordance with the tentative plan, using survey monuments of a design and standard acceptable to the commission in such numbers and places as it may require, staking each lot, block or other parcel of land, and have a final or subdivision plan prepared. He should also follow this procedure when he has been exempted from submitting a tentative plan by the commission, except that in that case the land is to be laid out in the manner agreed upon by the commission (s. 33).

### *Subdivision Plan*

The subdivision (or final) plan must be prepared in the manner described in section 34. It is important to note that it should be completed within six months of the approval of the tentative plan or the exemption from submitting it. For at the end of that time the approval or exemption becomes void, and the whole procedure may have to be started again (s. 32). This time limit is necessary because otherwise plans might be put into effect long after other developments in the community make it no longer suitable.

The subdivision plan must be prepared especially for the subdivision, be marked "Subdivision Plan", be certified as to its correctness by a New Brunswick land surveyor and be accompanied by such proof of title to the land as the commission deems advisable (s. 34(4)). Ordinarily, the plan must be signed by the subdivider (s. 34(2)), but it may happen that he has sold or otherwise conveyed lots without getting approval of a subdivision plan and he may no longer be available to sign the plan. In that case the situation may be corrected by a subdivision plan prepared and signed by the purchaser or his successor to validate the title (s. 34(2)). The plan must contain the information set out in section 34(2) and (3) of the Act. In order to make certain that no one will question a plan, once approved, for failure to comply with the requirements of section 34, the Act provides that after approval a subdivision plan is valid notwithstanding such failure (s. 36(4)).

Written application for approval of a subdivision plan must be submitted to the commission along with several copies of the plan. One of these must be a print on opaque linen, another a duplicate copy of transparent linen or other material acceptable to

the commission; there must also be three other copies or such number as may be required by the commission (s. 34(1)). The commission approves a plan by means of a stamp or certificate which is dated, signed by a person designated by the commission and sealed with the seal of the commission. In many cases only part of the subdivision will be approved; the commission must be careful to see that the part approved is marked in red on the subdivision plan (s. 36(3)). On approval the commission keeps a copy of the plan and returns the others to the subdivider (s. 36(2)). The plan may then be filed in the county registry office within six months of the date of approval; after this time the approval becomes null and void (s. 37(1)) and the registrar should not accept it. A person seeking to have a subdivision plan filed should send the copies returned by the commission to the registry office (s. 37(2)). The registrar then endorses the registration data on the face of each copy, retains the opaque linen print, sends the duplicate copy to the commission, one copy to the board of assessors of the municipality where the land is situated (and two to the Minister of Public Works if the Minister has assented to the plan); the remaining copies are sent to the owner (s. 37(4)). Once the plan is filed, conveyances, whether made before or after filing, that are in accordance with the plan are valid unless, of course, they are objectionable for some other cause.

The commission may use the duplicate plan for making copies for the commission, the council or their employees but not for other persons, and the duplicate must be stamped "For Official Use Only" (s. 37(5)).

### *Change of Boundaries*

One type of subdivision is given special treatment. It will often happen that a man will transfer a small part of his land to his neighbour simply to make a minor adjustment of the boundaries or to permit him to have a little more room. In such a case the commission may require that the plan show the lot added to, as well as the one from which the land is taken, but the commission may exempt such plan from any of the requirements of ordinary subdivision plans (s. 34(5)).

### *Amendments*

Finally, if it is desired to amend a filed subdivision plan, this can be done by following the same procedure as for original plans, except that the amending plan must refer to the plan amended (s. 38(1)). However, if the amendment affects the dimension

and location of public streets or land reserved for public purposes, the council of the municipality must give a notice and follow the procedure described in section 48 of the Act and all landowners affected by the amendment must consent in writing (s. 38). If the amendment is to a plan assented to by the Minister of Public Works, he must also assent to the amendment, and if this involves the relocation of streets, title to new streets passes to the province and that to abandoned streets reverts to the owner (s. 35(6)).

### Other By-Laws

The Act empowers a council to enact several other types of by-laws: building by-laws, urban renewal by-laws, deferred widening by-laws, controlled access by-laws and development by-laws. A building by-law, as the name implies, is one that prohibits construction except in accordance with prescribed standards (s. 26). Very frequently a municipality will adopt the standards of the National Building Code, a model code prepared by a committee of the National Research Council, and this is expressly provided for in the Act. The by-law is administered by a system of permits. Since 1965 the Act itself makes provision for the control of construction; section 68A prohibits the erection, construction or placing of a building or structure where a commission has been established without the approval of the commission.

Under an urban renewal by-law, a council may restrict to existing uses the land, buildings and structures in any part of the municipality designated as an urban renewal area and prohibit the issuance of building permits in the area except for maintenance repairs (s. 38A). However, the council may permit construction in any such area if, in its opinion, the construction will conform with its plans for urban renewal or the owner of the land, building or structure concerned enters into an agreement to the satisfaction of the council (s. 38A(2)). The Act empowers the council to acquire land in an urban renewal area, either by agreement or expropriation (ss. 38A(5), 54). An urban renewal by-law remains effective for a maximum of three years (s. 38(7)).

Where a council intends to widen or divert any existing street or construct a new street, it may enact a deferred widening by-law under which it sets out the dimensions it proposes to give the street, establishes a building line and describes the land it proposes to acquire for the purpose (s. 39). On notice of council's intention to pass such a by-law being given as provided in the Act, no one may build, alter or repair anything on land falling within the proposed boundaries or building line of the street for a period

of three months, and if the by-law, when passed, is registered in the county registry office this prohibition becomes permanent (s. 40). Some qualifications to the prohibition are provided in the Act. The council may permit maintenance repairs and may agree with an individual to permit him to build in the prohibited area if he agrees to make the land available to the council when necessary and to such financial provisions as may be set forth in the agreement. Moreover, a person whose land is affected by such a by-law, may offer it for sale to the council, and if the land is free of buildings it ceases to be bound by the by-law after the expiration of one year from the offer unless the council purchases it (s. 42(2)). The council may acquire land required for the purposes of the by-law either compulsorily (s. 54) or by purchase or lease (s. 42(1)).

The council may also enact by-laws to restrict access to certain highways and prohibit construction on abutting property that might interfere with such highways (s. 43(1)). However, any property from which access to a public highway is blocked shall retain a right of access to be approved by the commission unless alternative access to another public thoroughfare is provided (s. 43(2)).

All these by-laws are enforced by means of the enforcement procedures discussed later.

Finally, the council may consolidate any of the by-laws under the Act and any other by-laws regulating the development or use of land or construction of buildings or structures into one by-law called a development by-law.

### **Enactment and Review of By-Laws**

The Act provides for compliance with certain procedures for the enactment, amendment or repeal of by-laws under the Act. The major purposes of these procedures are (1) to require the council to consult the commission, (2) to ensure publicity, and (3) to keep the provincial planning authorities informed of all developments relating to community planning.

The first of these purposes is served by section 46. It requires the council of a municipality where there is a commission to request the commission's views before passing a by-law not recommended by the commission or before changing any by-law recommended by the commission, and no such by-law may be passed by the council until the views of the commission have been given or forty-two days have elapsed since it was consulted; if the

commission does give its views, its recommendation may only be overridden by a majority of the total membership of the council.

Sections 47 to 49 provide that the public be informed of important changes in the community planning laws of a municipality. A by-law amending or replacing a by-law establishing a commission or providing that a municipality shall cease to be governed by a district planning commission is not valid unless the council complies with the procedure provided in section 47, which includes the fixing of a day for the consideration of the by-law and the publication of two notices of the council's intention of passing the by-law in a newspaper circulated in the community, the first of such notices to be given not less than twenty-one and not more than thirty clear days before the day fixed for the consideration of the by-law and the second not more than four and not less than seven clear days before that day. If the by-law is one providing that a municipality shall cease to be governed by a district planning commission, the council intending to pass such by-law must also notify the other councils concerned at least ten days before the publication of the first newspaper notice. The by-law need not be voted upon on the day fixed in the notice, but the council may reserve its decision from time to time; however, the by-law must be passed within three months of the first notice; otherwise it is invalid.

Similar notices must be published whenever the council wishes to pass a community plan, zoning, urban renewal or deferred widening by-law, or any amendment or repeal thereof (s. 48). In these cases, however, the notices must also set forth a description of the area affected by the by-law, a time and place for inspecting the by-law, the time and place fixed for the consideration of the by-law, the person to whom objections may be sent; the notices should also set forth the reasons for an amendment or repeal of a by-law but this latter provision is not compulsory. Before any by-law mentioned in this paragraph is passed the council must also arrange for a public hearing at the time and place set forth in the notice for hearing objections. The council must before passing the by-law, hear and consider written objections to it and hear any person wishing to be heard on such written objections at the public hearing. The council need not vote on the by-law on the day fixed in the notice but may postpone the decision from time to time for a period not exceeding four months from the notice.

The council is required to keep the Director of the Planning Branch of the Department of Municipal Affairs informed about planning developments in the municipality by sending him copies

of proposed planning by-laws and agreements creating district commissions, notices of by-laws and the views of the commission, but failure to comply with this requirement does not invalidate a by-law. The Director may make such comments thereon as he deems fit (s. 50). All planning by-laws must be reviewed every five years and a full report thereon must be made to the Director (s. 53).

There are a number of special provisions relating to zoning. Where written objection to a proposed amendment or repeal of a zoning by-law signed by the assessed owners of at least one-third of the area within three hundred feet of the property or properties affected by the amendment or repeal is presented to the council at least two days before the public meeting, the amendment or repeal can only be enacted by three quarters of the whole council (s. 49). Secondly, a zoning by-law may provide that requests for amendments to the by-law must be accompanied by a fee not exceeding fifty dollars, though the council may return all or any part of the fee (s. 52(1)). The by-law may also establish procedures for applications for amendments, set forth times when such applications will be considered and establish conditions and standards under which changes in zoning districts will be made (s. 52(2)). Provision is also made for temporary zoning by resolution for four months from the time the first notice of intention to pass a zoning by-law is published (s. 21). Finally, where a person applies for a change from one type of zoning district to another to effect a specific proposal, the council may restrict the use of the land concerned to the use set forth in the proposal and set time limits within which the proposal must be carried out. Changes to the proposal can only be made with the consent of two-thirds of the commission. Where such a proposal is not carried out within the time prescribed, the land in question reverts to the zoning district at which time the council should give notice in a newspaper of the reversion (s. 19A).

### **Enforcement**

The Act contains a number of sections for enforcing the provisions of the Act and by-laws, resolutions and regulations made under it. Failure to comply with these provisions may result in a fine (s. 71), or land, buildings or structures used or altered in contravention thereof may be restored to their original condition at the expense of the owner (s. 72). Furthermore, a judge of the Supreme Court may, on action brought by the council, restrain the doing of anything in contravention of such provisions (s. 70). For the purpose of enforcing such provisions any person authorized by

the council may, at any reasonable time, enter any land or building in the municipality (s. 69), and if he is refused entry, he may obtain an order from the magistrate to do so, failure to respect which will result in a fine (s. 71).

The Act also sets forth a procedure for the expropriation of land in every case where the council is permitted to acquire land under the Act, and where a council decides on compulsory acquisition the servants or agents of the municipality have similar rights of entry as persons authorized by the council to enforce community planning laws (s. 54).

### Provincial Planning

The Act also makes provision for community planning at the provincial level. The Lieutenant-Governor in Council may, and has, established a Provincial Planning Board (s. 63). Subject to the rules spelled out in the Act, the Board makes its own rules. Its powers and duties are in general to study and encourage community planning throughout the province (s. 65). It may also, subject to the approval of the Lieutenant-Governor in Council, make regulations setting up building lines, regulate outdoor places of amusement, tourist camps and similar accommodations, billboards and other advertising devices (s. 66(1)), and control the subdivision of land in a manner similar to that provided in subdivision by-laws (s. 66(1)(e), (4) (9)). The enforcement provisions already discussed apply to these regulations, the Director of the Planning Branch having similar powers in this connection as councils in relation to the enforcement of by-laws. Regulations of the Board do not apply, however, in any city, town or village or any area where a commission has been established and a zoning by-law has been passed. In addition the Board may make model by-laws for adoption by county councils respecting building lines, the regulation of outdoor places of amusements, tourist camps and other accommodations, billboards and other advertising devices, zoning, building, private sewage, chimneys and flues, removal of sand, gravel and other deposits, removal of dilapidated or unsightly buildings and structures, and objectionable uses of lands or buildings. These model by-laws may be adopted by a county council for any area other than a city, town or village or an area in respect of which a zoning by-law has been passed (s. 67), and the enforcement provisions already discussed apply.

Finally under section 68 the Board may, with the approval of the Lieutenant-Governor in Council, exercise direct jurisdiction over planning in any municipality when it is satisfied that it is in

the public interest to do so. Subject to these conditions, it may order any council to prepare and adopt a community plan, a zoning or subdivision by-law or enter into an agreement for district planning within a time fixed by the Board. Again, where the Board is satisfied that a council is not conforming to its community plan, or is not enforcing such plan or a zoning or subdivision by-law adopted by it, or is not conforming to a district planning agreement it has entered into, it may order the council to do so. On failure of a council to comply with any such order, the Board, on publishing a notice thereof in the Royal Gazette, may exercise all the powers conferred on the council by the Act, and appoint five of its members to act as a commission for the municipality. The Board may at any time revert these powers in the council. Finally the Board may abolish any commission or quash any by-law made under the Act. To date none of the broad powers described in this paragraph have been used.