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PLANNING AND SUBDIVISION ACT, 2010

Arrangement of Sections

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No. 4 of 2010

PLANNING AND SUBDIVISION ACT, 2010

AN ACT TO COMBINE, CONSOLIDATE AND REVISE THE LAW RELATING TO TOWN PLANNING AND LAW RELATING TO THE DEVELOPMENT OF SUBDIVISIONS AND TO PROVIDE FOR MATTERS CONNECTED THERETO.

[Date of Assent - 16th March, 2010]

Enacted by the Parliament of The Bahamas.

PART I

INTRODUCTORY PROVISIONS

1. Short title and commencement.

- (1) This Act may be cited as the Planning and Subdivision Act, 2010.
- (2) This Act shall come into force on such date as the Minister may appoint by notice published in the Gazette and different dates may be appointed by different notices for the coming into force of particular sections or any part of this Act.

2. Application of Act.

- (1) This Act shall apply to the Island of New Providence and shall extend to —
 - (a) any Family Island or Family Island Local Government District; and
 - (b) the Port Area of Grand Bahama (under the jurisdiction of The Grand Bahama Port Authority Limited as defined in the Hawksbill Creek Grand Bahama (Deep Water Harbour and Industrial Area)

Act (*Ch. 261*), the Freeport Bye-laws Act (*Ch. 29*) and the Freeport (Building Code and Sanitary Code) Bye-laws¹),

on such dates as the Minister may by Order appoint and different provisions of this Act may be so applied on different dates.

- (2) The Minister shall in writing authorise, a public officer to exercise any of the functions of the Director with respect to the approval of development applications in any Family Island or Family Island Local Government District to which the provisions of this Act have been extended and the exercise of those functions shall then operate as if the same had been exercised by the Director.
- (3) The appeal provisions of this Act shall apply *mutatis mutandis* to the decisions made by a public officer pursuant to subsection (2).
- (4) The provisions of this Act apply to all development types and land ownership arrangements including gated communities with or without government assumed rights of way.
- (5) Where this Act has not been extended to any area defined in subsection (1)(a) and (b), section 76 shall not prejudice the application of the existing law to those islands or districts.

3. Purposes of Act.

- (1) The objects and purposes of this Act are to —
 - (a) provide for a land use planning based development control system led by policy, land use designations and zoning;
 - (b) prevent indiscriminate division and development of land;
 - (c) ensure the efficient and orderly provision of infrastructure and services to the built environment;
 - (d) promote sustainable development in a healthy natural environment;
 - (e) maintain and improve the quality of the physical and natural environment;
 - (f) protect and conserve the natural and cultural heritage of The Bahamas;
 - (g) provide for planning processes that are fair by making them open, accessible, timely and efficient;
 - (h) recognize the decision making authority and accountability of the Government in land use planning; and
 - (i) plan for the development and maintenance of safe and viable communities,within the policies, and by the means, provided under this Act.

¹Sub. Leg., Vol. 1, Ch. 29 p. 3

- (2) This Act shall receive such purposive and liberal construction and interpretation as best ensures the attainment of its objects and purposes.

4. Interpretation.

- (1) In this Act —

"**Act**" means the Planning and Subdivision Act, 2010;

"**adopt**" or "**adopted**" means voted on and accepted by the Committee;

"**agreement**" means any agreement entered into between a landowner and a Minister, which may be registered with the Ministry responsible for the Environment and which provisions the Minister is entitled to enforce against the owner and all subsequent owners of the land;

"**antiquity**" has the meaning given under the Antiquities, Monuments and Museum Act (*Ch. 51*);

"**Appeal**" means an appeal to the Subdivision and Development Appeal Board of a decision of the Committee, Director or Minister made under the Act;

"**Approval**" means the approval granted —

- (a) by the Committee under section 37; or
- (b) by the Director under section 7(2);

"**banking business**" has the meaning assigned to that expression in section 2 of the Banks and Trust Companies Regulation Act (*Ch. 316*);

"**building**" includes —

- (a) any part of a building and any addition to any building of whatsoever nature and in whatsoever manner constructed, and any plumbing, electrical or other installation, machinery or plant fixed or attached to any building or property;
- (b) any wall, fence, retaining wall or similar structure —
 - (i) bounded by or fronting on a public or private road or highway, of any height whatsoever; or
 - (ii) bounded by or fronting on property other than a public highway, of a height exceeding four feet six inches;
- (c) any dock, bulkhead, pier and any works for the protection of land against encroachment by, or for the recovery of land from, fresh or salt water; and
- (d) any temporary structure, whether constructed of canvas or of any other material whatsoever, to which members of the public are intended to be admitted, and any bleachers, and fair ground or carnival equipment or machinery used or intended to be used by members of the public.

"building operation" has the meaning given under the Buildings Regulation Act (*Ch. 200*);

"building permit" means a building permit issued under sections 5 and 6 of the Buildings Regulation Act (*Ch. 200*);

"Chairman" means the Chairman of the Town Planning Committee ;

"Committee" means the Town Planning Committee appointed under section 5;

"complete application" means the provision of the prescribed information and material, including the required fee, to the Department in the submission of a development application;

"Department" means the Department of Physical Planning established under section 6;

"develop" means to —

- (a) carry out any works whether of a structural nature or otherwise for the purpose of effecting a material change in the purposes for which any building or land is used;
- (b) construct or commence to construct, or cause or procure to be constructed or commenced, any building or development of land;
- (c) sever, subdivide or adjust lot lines of, any land for the purpose of selling, mortgaging or leasing a portion of land, in a manner other than by way of subdivision approval;
- (d) lay out, or cause to be laid out, a subdivision; or
- (e) alter, repair, restore or build, or cause to be altered, repaired, restored or built, any style of architecture within the area defined in the *First Schedule* and in section 13(2);

"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;

"development application" means an application submitted to the Ministry responsible for the Environment for planning approval of a Site Plan, Architectural Design, Land Use Plan Amendment, Zoning Bye-Law Amendment, Minor Variance, Subdivision or Severance;

"development charges" means monetary charges levied against new development pursuant to this Act to offset the capital costs incurred to support growth related infrastructure and government services;

"Director" means the Director of Physical Planning appointed under section 7;

"excavation" has the meaning given under the Conservation and Protection of the Physical Landscape of The Bahamas Act (*Ch. 260*);

"financial institution" means —

- (a) a domestic bank licensed under the Banks and Trust Companies Regulations Act (*Ch. 316*);
- (b) an insurance company registered under the Insurance Act (*No. 16 of 2005*); or
- (c) any other financial institution approved by the Minister in accordance with the provisions of section 5 of the Guarantee of Loans (Small Businesses) Act (*Ch. 345*).

"gated community" means a form of residential community containing controlled entrances to restrict access and sometimes characterized by a closed perimeter of walls and fences. The internal roads of such form of residential community remain in the ownership of the subdivision as a common element and are not assumed by the Crown;

"land" means incorporeal as well as corporeal hereditaments of every tenure or description, any interest therein, an undivided share in land and includes land covered with water and land underlying the sea surrounding the coast within the limits of the territorial waters of The Bahamas;

"Land Use Plan" means a policy document adopted by the Committee and approved by the Minister showing existing and future planned land uses including lands to be protected from development;

"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;

"licensing authority" means the licensing authority constituted under the Liquor Licences Act (*Ch. 372*);

"low density residential" means single family, semi-detached, duplex and triplex dwelling development;

"material change" means a change in the use or character of any land or building including the use of land separate from development, such as outdoor use or condition of land or outdoor storage and including the severance or subdivision of land for any or no purpose;

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

"Notice of Zoning Compliance" means a notice issued by the Director in accordance with section 9;

"owner", in relation to any land, means a person other than a mortgagee not in possession who, whether in his own right or as trustee or agent for any other person, has the freehold or the legal right to possession of the land and is entitled to receive the economic rent of the land or, where the land is not let at an economic rent, would be so entitled if it were so let and includes a person who is an owner with another person as joint tenant or tenant in common of a freehold estate;

"Preliminary Support of Application" means the preliminary support of a site plan or subdivision application by the Committee, with or without amendments or conditions to the proposal which is further subject to either Site Plan Approval or Subdivision Approval once conditions are met. Preliminary Support of Application does not constitute approval of an application;

"prescribed" means prescribed by regulations under this Act;

"referral agencies" means the governmental and non-governmental agencies to which applications for permission to develop land are routinely referred for technical advice;

"road" means any alley, carriageway, highway, lane, street, thoroughfare, bridge, side walk, or any other way normally open to the use of the public and any abutting land within the road allowance;

"road allowance" means the carriageway or that part of a road which is usually reserved for use by vehicles or pedestrians and also the total road right-of-way or reserve, including all land reserved for the purpose of curbs, side walks, verges, fire hydrants, drainage or other road works and including all land up to the limit of private land ownership;

"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;

"Site Plan Control" means the process used to control development design features pursuant to section 27;

"subdivision" in relation to any land, means —

- (a) the division of a parcel of land, into five or more new lots, parcels or tracts from an existing lot and in the division of which provision is made for the reservation of land for the construction of access roads, rights-of-way or easements if required;

- (b) any conveyance of a part of any lot or block of land by way of a deed or transfer other than by way of severance;
- (c) the granting, assigning or exercising of a power of appointment with respect to a part of any lot or block of land other than by way of severance;
- (d) the mortgaging or charging of a part of any lot or block of land other than by way of severance;
- (e) the entering into an agreement of purchase and sale of a part of any lot or block of land other than by way of severance; or
- (f) the entering into any agreement which has the effect of granting the use of, or right in, a part of any lot or block of land directly or by entitlement to renewal for a period of twenty-one years or more other than by way of severance;

"Subdivision and Development Appeal Board" or **"Board"** means the quasi-judicial appeal board established under this Act;

"tract of land" includes a plot of land, lot, or parcel or other area in which real property is held or into which real property is subdivided, but does not include a Crown owned street or any portion thereof;

"wetlands" has the meaning given in the Ramsar Convention on Wetlands as 'areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six feet including areas which 'may incorporate riparian and coastal zones adjacent to the wetlands, and islands or bodies of marine water deeper than six feet at low tide lying within the wetlands';

"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;

"Zoning Bye-law" means a regulatory document that implements the policies of the Land Use Plan through the zoning of land by way of mapping, written provisions and standards in accordance with section 23 of this Act;

- (2) In this Act, a reference to an Environmental Impact Assessment is a reference to a process that —
 - (a) determines the potential impacts and the degree of such impacts, of a proposed undertaking on the environment; or

- (b) identifies the measures to be established to mitigate against any potential adverse impacts that might occur as a result of the proposed undertaking.
- (3) In this Act, a reference to an Environmental Impact Statement is a reference to a report produced as an output of an Environmental Impact Assessment and shall include —
 - (a) a description of the proposed undertaking;
 - (b) the terms of reference that informed the preparation and details of the Environmental Impact Statement;
 - (c) a description of the potentially affected environment including specific information necessary for the identification and assessment of the potential environmental effects of the proposed undertaking;
 - (d) a description of the practical alternatives to the project;
 - (e) an assessment of the potential impacts of the proposed undertaking and the alternatives on the environment. This would include direct, indirect, cumulative, short, medium and long term effects;
 - (f) identification and description of proposed measures to mitigate impacts of the proposed undertaking and alternatives along with an assessment of those mitigative measures;
 - (g) an indication of the gaps or absences in knowledge and uncertainties which may be encountered in compiling the required information;
 - (h) an indication of whether the environment of any other area beyond the impact area as determined initially is likely to be affected by the proposal or its alternative;
 - (i) the most desirable course of action based on the findings and the exploration and weighing of alternatives;
 - (j) an executive summary of the findings and recommendations of the Environmental Impact Assessment; and
 - (k) a compilation of references along with base data, studies and ancillary materials that informed the Environmental Impact Assessment's process, findings and recommendations.
- (4) The necessary grammatical changes required to make the provisions hereof apply to corporations, partnerships, trusts and individuals and to include the singular or plural meaning where the context so requires, shall in all cases be assumed as though fully expressed.
- (5) Any reference in this Act to any statutes, regulations or bye-laws shall be deemed to be a reference to such statutes, regulations or bye-laws, as amended, restated or replaced from time to time.

- (6) Nothing in this Act shall be construed as being in derogation of any powers under any other Act, or any rules or regulations made thereunder.

PART II

STRUCTURE AND ADMINISTRATION

5. Town Planning Committee.

- (1) The Governor-General shall appoint a Committee to be called the Town Planning Committee.
- (2) The Committee shall consist of seven members who shall be appointed by notice published in the Gazette and shall hold office at the Governor-General's pleasure and subject to this shall hold office for a period of three years save that where a person is appointed to fill a casual vacancy, he shall hold office for the remainder of the period for which the previous member was appointed.
- (3) No person shall be qualified to be appointed or to hold office as a member of the Committee if he is a Minister.
- (4) The Governor-General shall appoint one of the members of the Committee to be the Chairman.
- (5) In the exercise of the powers conferred upon him by this section the Governor-General shall act on the advice of the Prime Minister.
- (6) Three members of the Committee shall constitute a quorum. Where in respect of any question, the members of the Committee are not unanimous, the opinion of the majority shall prevail and in the event of an equality of votes, the member presiding shall have and exercise the casting vote.
- (7) The Minister may after consultation with the Committee give to the Committee such directions of a general character as to the exercise and performance of its functions under this Act as appear to the Minister to be requisite in the public interest and the Committee shall give effect to such directions.
- (8) The Minister may make Rules governing the procedures of the Committee.
- (9) The Committee shall cause its decisions to be published —
 - (a) on the Official Website of the Government of The Bahamas; and
 - (b) where the decision relates to a Family Island, on the notice board outside the office of each Family Island Administrator or in a prominent place in the district or town committee area in the respective island.

6. Department of Physical Planning.

- (1) There shall be a Department of Physical Planning which shall consist of a Director of Physical Planning and such other officers, who shall be subject to the general direction and control of the Minister.
- (2) The officers of the Department shall provide assistance to the Director in his advisory role to the Minister and the Committee, and shall undertake such research, special projects and other tasks as assigned by the Director in the exercise of his powers and duties under this or any other Act.
- (3) There shall exist two divisions within the Department —
 - (a) a Policy Planning Division; and
 - (b) a Development Review Division.
- (4) The processing of applications by the Department shall follow the time lines set out by this Act for each application.
- (5) The procedures governing the Department shall be prescribed by the Minister.

7. Director of Physical Planning.

- (1) The Governor-General, acting in accordance with the advice of the Public Service Commission, shall appoint an officer to be called the Director of Physical Planning, who, shall be the technical adviser to the Minister and the chief executive officer and technical adviser to the Committee.
- (2) The powers and duties of the Director are as prescribed by this Act and include, without prejudice to the generality of the foregoing, the authority to approve applications that meet planning and zoning standards.
- (3) The Director shall prepare a report for each application for consideration by the Committee.
- (4) The Director shall issue, upon request, Notices of Zoning Compliance in accordance with section 9.
- (5) The Director shall determine the applicability of Site Plan Control on any particular low density residential development based on issues of drainage and servicing and may exempt such development which is absent of such issues from site plan control.
- (6) Subject to general or specific directions of the Minister, the Director shall be responsible for the administration and enforcement of the provisions of this Act.
- (7) Where, by this Act or any statutory instrument made hereunder, the Director is required or permitted or otherwise authorised to perform any function, that function may be performed by any other person who is authorised by the Director in writing to perform those functions.

- (8) The Director shall perform such other functions as are assigned to him under this Act.

8. Register of Applications, Decisions, Notices and Agreements, etc.

The Director shall keep a register containing information with respect to —

- (a) applications for Site Plan, Architectural Design, Land Use Plan Amendment, Zoning Bye-Law Amendment, Minor Variance, Subdivision and Severance;
- (b) decisions rendered by the Committee;
- (c) the revocation or modification of Approval;
- (d) notices served;
- (e) agreements made under this Act;
- (f) buildings of special architectural or historic value; and
- (g) approved subdivisions and severances.

9. Notice of Zoning Compliance.

- (1) Upon request, the Director shall issue a Notice of Zoning Compliance for development proposals that are exempt from site plan control in accordance with sections 7(5) and 27, and —
 - (a) meet all zoning provisions under the Zoning Bye-law for the proposed development; or
 - (b) meet all zoning provisions under the Zoning Bye-law for a change in use that does not involve construction such as an addition to a structure, or the constructing, erecting, placing, relocating, altering or replacing of a building or structure or part thereof.
- (2) Upon request, the Director shall issue a Notice of Zoning Compliance in respect of a business, shop or liquor licence application, confirming the compliance, if any, of the proposed use of the premise to the Zoning Bye-law.
- (3) A Notice of Zoning Compliance shall be issued in a manner to be prescribed.

10. Referral Agencies.

- (1) The Director shall, not later than three months after this Act comes into force and after consultation with referral agencies, formulate and submit for the approval of the Minister an administrative scheme for coordination between the Department and the referral agencies in respect of the expeditious processing of applications.
- (2) An administrative scheme approved by the Minister pursuant to subsection (1) may be revoked or altered by a revised scheme prepared by

the Director after consultation with the referral agencies and submitted to and approved by the Minister.

- (3) Referral agencies shall include any agency requested to provide comments and advice regarding applications for approval by the Committee.
- (4) With justification provided, referral agencies may —
 - (a) identify issues or recommend changes regarding the application;
 - (b) recommend conditions that should be attached to any approval; or
 - (c) recommend that an application should be approved or refused.

11. Subdivision and Development Appeal Board.

- (1) There shall be a Subdivision and Development Appeal Board which shall be appointed by the Governor-General.
- (2) Section 65 shall apply to the procedures of the Subdivision and Development Board.

PART III

LAND USE AND DEVELOPMENT CONTROLS

12. Criteria for which to have regard.

In considering any application the Committee shall take into account, the health, safety, convenience and welfare of the present and future inhabitants and to such of the following criteria as may be relevant—

- (a) conformity to the Land Use Plan, the Zoning Bye-law and the provisions of this Act;
- (b) conformity to the National Land Use Development Policies;
- (c) the suitability of the land for the purpose for which it is to be developed;
- (d) the conservation of natural resources;
- (e) the preservation of environmentally sensitive land, including wetlands;
- (f) flood control;
- (g) the adequacy of utilities and services;
- (h) the restrictions or proposed restrictions, if any, on the land or the buildings and structures proposed to be erected thereon and the restrictions, if any, on adjoining lands;
- (i) the adequacy of community services including schools and clinics;

- (j) the number, width, location and proposed grades and elevations of roads, and the adequacy thereof, and the road links in a proposed subdivision with the established road system in the vicinity, and the adequacy thereof;
- (k) the dimensions and shape of proposed lots in a proposed subdivision;
- (l) the area of land, if any, within a proposed subdivision that, exclusive of roads, is to be dedicated for public purposes;
- (m) the need for coordinated planning of adjoining lands to ensure compatibility of a proposed subdivision road pattern with surrounding neighbourhoods;
- (n) the location and topography of the land;
- (o) the percentage of the land that is to be cleared;
- (p) the height of the surrounding buildings;
- (q) encroachment on the surrounding coastline;
- (r) the population density of the area;
- (s) any previous applications submitted in relation to the particular land.

13. Areas of architectural interest.

- (1) Any proposed architectural design of the exterior of new buildings, the site layout of new buildings and any proposed alterations to the exterior of existing buildings in downtown Nassau within the area defined in the *First Schedule* shall be subject to special architectural policies in the Land Use Plan in order to protect historic building types and styles.
- (2) Any property not included within the area defined in the *First Schedule* and having a frontage or means of access to the streets bordering the area so defined shall be deemed to be within the area so defined.
- (3) Other such areas of special architectural or historical value on any island, including New Providence, 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.
- (4) Notwithstanding subsection (3), where it appears to the Minister to be expedient to make provision for the preservation of any building of special architectural or historic interest and the Minister is satisfied that the execution of any works related to demolition, alteration or extension of the building would seriously affect the character of the building or part thereof, the Minister may, by order, restrict demolition, alteration or extension of the building or part thereof.

- (5) Where an order has been issued under subsection (4), such property shall be added to the register for buildings of special architectural or historic value pursuant to section 8.
- (6) Where an order has been issued under subsection (4) a notice shall be served on the owner and occupier of the building stating that an order has been issued under subsection (4) and that the building has been added to the register for buildings of special architectural or historic value.
- (7) Nothing in an order issued under subsection (4) shall render unlawful the execution of any works which are urgently required in the interest of safety or health or for the preservation of the building.
- (8) A person, being the owner, occupier or agent of the owner or occupant of a building in relation to which an order is issued under subsection (4), who executes or causes or permits the execution of any works in contravention of the order shall be liable on summary conviction to a fine of ten thousand dollars or to imprisonment for three months. .
- (9) The provisions of this section shall be construed to be in accordance with the provisions of the Antiquities, Monuments and Museum Act (*Ch. 51*) and any other relevant Act.

14. Environmental Impact Statements.

- (1) An Environmental Impact Statement is required to be submitted to the Department as part of any proposed type of development which is —
 - (a) likely to give rise to significant effects on the environment by virtue of its nature, size or location;
 - (b) of national importance;
 - (c) proposed for sensitive lands or for lands with natural importance;
 - (d) significant in terms of size or complexity;
 - (e) of a nature that may have potentially adverse environmental effects;
or
 - (f) a development of regional impact.
- (2) An Environmental Impact Statement shall be prepared in accordance with standards prescribed by the Minister.
- (3) Without prejudice to the generality of section 75, the Minister may make Regulations providing for —
 - (a) the procedures for determining the scope of works to be carried out for an Environmental Impact Statement;
 - (b) the minimum contents of an Environmental Impact Statement;
 - (c) the qualifications, skills, knowledge or experience required of persons conducting and authoring an Environmental Impact Statement;

- (d) the procedures for public participation in the Environmental Impact Statement process; and
 - (e) the type and extent of consideration by the Department, including the criteria and procedures and timing for review, of an Environmental Impact Statement.
- (4) An Environmental Impact Statement shall be circulated to relevant referral agencies for review and comment as part of the circulation of an application.
 - (5) The Committee shall consider the findings of an Environmental Impact Statement and the comments received from referral agencies with respect to an Environmental Impact Statement in its deliberation of an application for Preliminary Support of Application or Approval.

15. National Land Use Development Policies.

- (1) The Governor-General may, from time to time, adopt National Land Use Development Policies on matters relating to land use planning that are of national interest.
- (2) A decision of the Committee, Minister or Subdivision and Development Appeal Board in respect of the exercise of any authority that affects a planning matter shall be consistent with all National Land Use Development Policies.

16. Land Use Plan.

- (1) There shall be a Land Use Plan for each island of The Bahamas, consistent with all National Land Use Development Policies, which shall be prepared by or for the Department and which shall include such information as detailed in this section.
- (2) A Land Use Plan shall —
 - (a) contain written statements in respect of goals, objectives and land use policy established primarily to manage and direct physical change and the effects on the social, economic and natural environment and such other matters as may be prescribed;
 - (b) contain land use designations to allocate land for residential, industrial, commercial, agricultural, conservation, institutional, recreational, tourism and other purposes as specified in the plan;
 - (c) designate areas which, for reasons of flooding, erosion, subsidence, instability, aircraft safety, other hazards, conservation or other environmental considerations including wetlands, should not be developed;
 - (d) define the location of existing and planned roads and utility corridors including a road hierarchy system;

- (e) contain policies to prevent and minimize the occasion of land use conflicts between incompatible activities including the conflicts associated with residential development encroaching on pre-existing agricultural livestock operations;
 - (f) include such maps, schedules, tables and descriptive matter as may be necessary to illustrate the written statements with such degree of particularity as may be appropriate;
 - (g) make provision for the development of infrastructure, public buildings, open spaces and other public sector investment works;
 - (h) make provision for the preservation of buildings, sites and other features for architectural, cultural or historical reasons; and
 - (i) contain such other matters as the Minister may direct.
- (3) A Land Use Plan may —
- (a) contain a description of the measures and procedures proposed to attain the objectives of the plan;
 - (b) contain a description of the measures and procedures for informing and obtaining the views of the public in respect of a proposed amendment to the Land Use Plan, proposed revision of the Plan or in respect of a proposed Zoning Bye-law; and
 - (c) address the matters set out in the *Second Schedule*.
- (4) A Land Use Plan may define Secondary Planning Areas as areas of comprehensive development that should be developed or redeveloped as a whole or in phases as part of a whole where more detailed directions for land use, infrastructure, transportation, environment, urban design or similar matters are required beyond the general framework provided by the Land Use Plan.
- (5) All development, approvals and zoning shall be in conformity with a Land Use Plan save for legal non-conforming land uses.
- (6) A Land Use Plan shall serve as a guide to development and shall be available for viewing or purchase by the public at the offices of the Department of Physical Planning and shall be posted on the Official Website of the Government of The Bahamas.
- (7) Land Use Plan maps for each island, as required under subsection (2), shall be maintained and kept up to date incorporating all amendments for use as a comprehensive planning tool for future planning considerations.
- (8) The provisions of this section apply, *mutatis mutandi*, to an amendment to the Land Use Plan.
- (9) At any time before a Land Use Plan for the whole of an island has been approved by the Minister, a Land Use Plan or Secondary Plan relating to any part of an island may be prepared and the provisions of this section

shall apply to such a plan as they apply to a plan relating to the whole of an island.

17. Preparation of Land Use Plan.

- (1) In the course of the preparation of a Land Use Plan, the Director shall take reasonable steps to consult with any person with an interest in the matters for which proposals may be made in the plan including, but not limited to, the management of water and other natural resources, Crown Lands, natural and cultural heritage, environmental protection, agriculture, industry, tourism, commerce, urban development and transportation.
- (2) Before the finalization of the Land Use Plan, the Director shall ensure that —
 - (a) adequate information and material, including a copy of the proposed plan, is made available to the public, in the prescribed manner, if any;
 - (b) at least one open house is held for the purpose of providing the public an opportunity to review and ask questions about the information and material made available under this section;
 - (c) at least one public meeting is held for the purpose of providing the public an opportunity to make representations to the Minister in respect of the proposed plan; and
 - (d) notice is given of the dates, locations and times of the open house and public meeting in two successive issues of two newspapers in wide circulation in The Bahamas, on the Official Website of the Government of The Bahamas, and on the notice board outside each office of the Family Island Administrator or in a prominent place in the district or town committee area in the island where the open house and public meeting is to be held.
- (3) The Minister shall have regard to written submissions or verbal representations made to the Minister or the Department in the deliberation of the Land Use Plan.
- (4) Upon finalization of the Land Use Plan, the Director shall —
 - (a) submit a copy to the Minister for approval and shall make copies available for public inspection at such places as the Director considers appropriate including the offices of the Department; and
 - (b) cause notice of the draft Land Use Plan to be published —
 - (i) on the Official Website of the Government of The Bahamas; and
 - (ii) where the draft Land Use Plan relates to a Family Island on the notice board outside the office of each Family Island

Administrator and in a prominent place in the district or town committee area in the respective island.

- (5) Any person may, within two months after the publication of the notice referred to in subsection (4), make representations in writing on the draft Land Use Plan to the Director.
- (6) Within two months after the expiry of the period prescribed by subsection (5) for the making of representations on a draft Land Use Plan, the Director shall consider the representations made and forward a report to the Minister on same together with the Director's comments.

18. Approval of Land Use Plan.

- (1) After consideration of a draft Land Use Plan and the Director's report and comments submitted pursuant to section 17, the Minister shall approve the plan, with or without modifications, or reject the plan and shall so act within six months of receipt of such documents.
- (2) Notice of the approval of a Land Use Plan shall be published —
 - (a) on the Official Website of the Government of The Bahamas; and
 - (b) where the approved Land Use Plan relates to a Family Island, on the notice board outside each office of the Family Island Administrator or in a prominent place in the district or town committee area in the respective island.

19. Status of Approved Land Use Plan.

- (1) When a Land Use Plan is approved the Committee shall, in considering any application for development approval, be guided by and give principal consideration to the prescriptions of the Land Use Plan.
- (2) When a Land Use Plan has been prepared by the Department but is not yet approved, subsection (1) of this section shall apply as if the Land Use Plan had been approved.
- (3) An approved Land Use Plan, subject to any updates pursuant to a review under section 20, shall remain in effect unless and until it is rescinded and superseded through the approval of a more current Land Use Plan.

20. Review of Land Use Plan.

- (1) At least once every five years, after the date on which a Land Use Plan for any island is approved by the Minister, the Director shall review the Plan and submit a report on such review to the Minister.
- (2) The provisions of sections 17 and 18 regarding public participation and timing shall apply *mutatis mutandis* to a Land Use Plan review.
- (3) Section 39 shall apply *mutatis mutandis* to a Land Use Plan review

21. Secondary Plans.

- (1) A Secondary Plan shall be prepared for Secondary Planning Areas defined in a Land Use Plan in order to —
 - (a) ensure the better planning and regeneration of selected areas;
 - (b) provide a process and a framework for addressing planning issues affecting or characterizing specific areas;
 - (c) strengthen existing developed areas and to facilitate, where desirable, appropriate and orderly redevelopment;
 - (d) ensure the orderly, efficient and appropriate development of large tracts of vacant or underutilized land;
 - (e) ensure that desirable characteristics of an area are protected and enhanced.
- (2) A Secondary Plan prepared under subsection (1) shall be implemented pursuant to an amendment to the Land Use Plan, in accordance with the provisions of section 39.

22. Local Study Area.

- (1) The Minister may identify any area of The Bahamas as a Local Study Area needing special planning consideration due to age, dilapidation, overcrowding, unsuitability of buildings or uses or for any other environmental, social or community economic development reason.
- (2) When a Local Study Area has been established under subsection (1), a report shall be prepared by the Director identifying special planning policies which shall be implemented pursuant to an amendment to the Land Use Plan, in accordance with the provisions of section 39.
- (3) When the Minister is satisfied that the issues affecting the Local Study Area have been resolved, the Minister may dissolve the Local Study Area.

23. Zoning Bye-law.

- (1) The Committee shall adopt a Zoning Bye-law for each island of The Bahamas which shall be prepared by or for the Department under the direction of the Director and approved by the Minister, which, through mapping, written provisions and standards, zones all land and —
 - (a) allows for existing uses as either permitted or legal non-conforming uses;
 - (b) prohibits the use of land, for, or except for, such purposes as may be set out in the bye-law;
 - (c) prohibits the erecting, locating or use of buildings or structures for, or except for, such purposes as may be set out in the bye-law;

- (d) prohibits the erection of any buildings or structures on land that is subject to flooding or on land with steep slopes, or that is rocky, low-lying, marshy, unstable, hazardous, subject to erosion or to natural or artificial perils;
 - (e) prohibits any use of land and the erecting, locating or use of any buildings or structures on land —
 - (i) that is contaminated; or
 - (ii) that contains a sensitive groundwater feature or a sensitive surface water feature;
 - (f) prohibits any use of land and the erecting, locating or use of any buildings or structures within any area defined as —
 - (i) a significant wildlife habitat, wetland, woodland or area of natural or scientific interest,
 - (ii) a significant corridor, coastline or shoreline of the ocean or a lake, or
 - (iii) a significant natural corridor, feature or area;
 - (g) prohibits the use of land and the erecting, locating or use of any buildings or structures on land that is the site of a significant archaeological resource;
 - (h) regulates the type of construction and the height, bulk, location, size, floor area, spacing, character and use of buildings or structures to be erected or located within any defined area or areas, and the minimum frontage, depth and area of the parcel of land and the proportion of the area thereof that any building or structure may occupy;
 - (i) regulates loading or parking facilities associated with any buildings or structures to be erected or located within any defined area or areas; and
 - (j) recognizes and incorporates all zoning orders issued by the Minister.
- (2) A generalized zoning code shall be adopted by the Committee for any island not yet governed by a Zoning Bye-law, which shall be prepared by or for the Department under the direction of the Director and approved by the Minister, which, through written provisions and standards, provides generalized zoning regulations to be applied at the time of application for development and in conformity with the governing Land Use Plan.
 - (3) A Zoning Bye-law must have regard for the provisions of the Conservation and Protection of the Physical Landscape of The Bahamas Act (*Ch. 260*).
 - (4) The excavation, landfill operation, quarrying, mining or harvesting as regulated under section 3 of the Conservation and Protection of the

Physical Landscape of The Bahamas Act (*Ch. 260*) shall be deemed to be uses of land for the purposes of subsection (1).

- (5) A Zoning Bye-law shall conform to the Land Use Plan.
- (6) A Zoning Bye-law may prohibit the use of land or the erection or use of buildings or structures unless municipal services are available to service the land, buildings or structures.
- (7) The zoning of all land shall be defined by the use of maps to be attached to the Zoning Bye-law and such maps shall form part of the Zoning Bye-law.
- (8) A Zoning Bye-law map shall be updated on a regular basis by the Department to reflect zoning approved by the Committee.
- (9) Existing Zoning Orders, including the —
 - (a) Town Planning Zoning (No. 1) Order, 1956²;
 - (b) Town Planning Zoning (No. 2) Order, 1959³;
 - (c) Town Planning Zoning Order, 1963⁴;
 - (d) Town Planning Zoning (No. 2) Order, 1963⁵;
 - (e) Town Planning Zoning (No. 3) Order, 1965⁶;
 - (f) Town Planning Zoning Order, 1970;
 - (g) Town Planning Zoning (Arawak Cay) Order, 1973⁷;
 - (h) Town Planning Zoning Order, 1988⁸;
 - (i) Town Planning Zoning Order, 1990⁹;
 - (j) Town Planning (Green Cay) Zoning Order, 1998¹⁰;
 - (k) Town Planning Zoning Order, 1999¹¹;
 - (l) Town Planning (Finley Cay) Zoning Order, 2001¹²;
 - (m) Town Planning (O'Brien's Cay) Zoning Order, 2001¹³;

²Sub. Leg. Vol. 5, Ch. 255, p. 3

³Sub. Leg. Vol. 5, Ch. 255, p. 4

⁴Sub. Leg. Vol. 5, Ch. 255, p. 5

⁵Sub. Leg. Vol. 5, Ch. 255, p. 7

⁶Sub. Leg. Vol. 5, Ch. 255, p. 9

⁷Sub. Leg. Vol. 5, Ch. 255, p. 13

⁸Sub. Leg. Vol. 5, Ch. 255, p. 38

⁹Sub. Leg. Vol. 5, Ch. 255, p. 15

¹⁰Sub. Leg. Vol. 5, Ch. 255, p. 17

¹¹Sub. Leg. Vol. 5, Ch. 255, p. 19

¹²Sub. Leg. Vol. 5, Ch. 255, p. 30

¹³Sub. Leg. Vol. 5, Ch. 255, p. 32

- (n) Town Planning (Pasture Cay) Zoning Order, 2001¹⁴;
 - (o) Conservation and Protection of the Physical Landscape of the Bahamas (Quarrying and Mining Zones) Order, 1997¹⁵; and
 - (p) Town Planning Zoning Order, 2007,
- shall be recognized in, and form part of, the Zoning Bye-law for the respective islands to which they apply.
- (10) Zoning categories shall be established to form part of a Zoning Bye-law and may include —
 - (a) residential: low, medium and high density;
 - (b) commercial: downtown, shopping centre, general, local and automobile;
 - (c) industrial: heavy, general and prestige;
 - (d) institutional;
 - (e) cemetery;
 - (f) rural;
 - (g) agricultural;
 - (h) open space: parkland, private open space, environmental protection; and
 - (i) hotel and resort area.
 - (11) A provision of a Zoning Bye-law is without effect to the extent of any conflict with —
 - (a) the Land Use Plan;
 - (b) any Act or any regulation made under such an Act; or
 - (c) an instrument of a legislative nature, including an order, licence or approval, made or issued under an Act or regulation.
 - (12) Without restricting the generality of subsection (11), there is a conflict between a Zoning Bye-law and the Land Use Plan, an Act, a regulation or instrument if the Zoning Bye-law frustrates the purpose of the Land Use Plan, Act, regulation or instrument.
 - (13) The provisions of sections 17 and 18 regarding the preparation and approval of a Land Use Plan shall apply *mutatis mutandis* to the preparation and approval of a Zoning Bye-Law.

24. Zoning Orders.

- (1) The Minister may by Order prescribe —

¹⁴Sub. Leg. Vol. 5, Ch. 255, p. 35

¹⁵Sub. Leg. Vol. 4, Ch. 260, p. 3

- (a) areas within which new buildings or development shall be permitted only for the purposes specified in the Order;
- (b) areas within which no new buildings or development shall be permitted for the purposes specified in the Order;
- (c) areas which may be used, or prohibited from use, for any purpose specified in the Order or environmentally protected from any use or development;
- (d) areas within which buildings shall be permitted of a size, height, character or other design criteria specified in the Order;
- (e) areas to be identified for the purposes of agriculture, forestry or fisheries;
- (f) development controls for downtown Nassau including but not limited to the area covered by the *First Schedule*; and
- (g) development controls for the area of New Providence generally bounded by the hill south of Shirley Street, Blue Hill Road, Wulff Road and Collins Avenue, such boundary to be further defined by the Minister by such Order;
- (h) development controls for areas which prior to the commencement of this Act were subject to approval in accordance with section 3 of the Private Roads and Subdivision Act (*Ch. 256*) and section 3 of the Private Roads and Subdivisions (Out Islands) Act (*Ch. 257*),

and such Orders shall be in conformity with the Land Use Plan and any National Land Use Development Policies.

- (2) No person shall use or develop any land in any area prescribed in an Order under subsection (1) other than in accordance with the Order.
- (3) No notice or hearing shall be required prior to the making of an Order under this section but the Minister shall give notice of any such Order within thirty days of the making thereof in such manner as the Minister considers proper.
- (4) The Minister may, by Order, amend or revoke, in whole or in part, any Order made under this section.
- (5) Notwithstanding subsection (4), no amendment to an Order shall be approved by the Minister that does not conform to the Land Use Plan or to any National Land Use Development Policies.
- (6) An Order made under this section has the same effect as a Zoning Bye-law made under section 23.
- (7) In the event of a conflict between an Order made under this section and a Zoning Bye-law made under section 23 and any amendment thereto, the Order shall prevail to the extent of such conflict but in all other respects the bye-law shall remain in full force and effect.

- (8) Where an area is subject to an Order pursuant to this section, no approval shall be granted which is inconsistent with the Order.
- (9) A person who acts in contravention of subsection (2) shall be liable on summary conviction to a fine of ten thousand dollars or to imprisonment for three months.

25. Restrictive Covenants.

- (1) Where a restrictive covenant forms part of a deed or conveyance for a parcel of land, the subsequent zoning of such land is applied separate and distinct from restrictive covenants and may —
 - (a) further restrict the uses permitted by the restrictive covenant;
 - (b) add to the list of uses permitted by the restrictive covenant; or
 - (c) change the restrictions and uses permitted.
- (2) All restrictive covenants registered on land subsequent to the land being zoned shall be in conformity with the zoning and shall not further restrict nor permit uses or restrict the ability of the land to be developed.
- (3) The Committee shall have the authority to extinguish the effect of a restrictive covenant through zoning regulation upon evidence that, in the Committee's opinion, either —
 - (a) no actual and substantial benefit would accrue to the landowner who seeks its enforcement;
 - (b) actual or substantial detriment would accrue to the greater public good in its enforcement; or
 - (c) the purpose of the restrictive covenant is primarily for the restriction of competition.
- (4) A person who acts in contravention of this section shall be liable on summary conviction to a fine of ten thousand dollars or imprisonment for three months.

26. Legal non-conforming use.

- (1) No zoning shall apply to prevent the use of any land, building or structure for any purpose prohibited or not permitted by the zoning if such land, building or structure was lawfully used for such purpose before the zoning was in place, so long as such legal non-conforming use continues to be used for that purpose in accordance with subsection (2).
- (2) A legal non-conforming use may continue notwithstanding the zoning provided that —
 - (a) if such use is discontinued it shall not be recommenced and any further use of the land, building or structure shall conform with the

zoning or shall be subject to Zoning Bye-law Amendment Approval;

- (b) if a building or structure so used has, in the opinion of the Committee, been damaged to the extent of at least half of the whole building or structure, exclusive of foundation, the building or structure shall not be repaired or restored or used except in conformity with the zoning, if zoned, or shall be subject to Zoning Bye-law Amendment Approval;
 - (c) if the land or business or buildings are sold or leased for any purpose including an intended continuation of the legal non-conforming use, the use shall not continue and shall lose its legal non-conforming status and any further use of the land, building or structure shall conform to the zoning, if zoned, or shall be subject to Zoning Bye-law Amendment Approval.
- (3) A legal non-conforming use of a part of a building may be extended throughout the building, except that, where a portion of the building was constructed subsequent to the date the use became non-conforming, the use shall not be extended into that portion without approval by the Committee for a Minor Variance.
 - (4) No parcel of land containing a legal non-conforming use shall be further developed to expand such legal non-conforming use by way of an addition to the existing structure or new development on the site without approval by the Committee for a Minor Variance.
 - (5) The Committee may require that any land, building or structure containing a legal non-conforming use shall be maintained and kept in a condition appropriate to the area in which it is located, in accordance with standards prescribed for such area zoning in the Zoning Bye-law.
 - (6) A person who acts in contravention of this section shall be liable on summary conviction to a fine of ten thousand dollars or imprisonment for three months.

27. Site Plan Control.

- (1) All development shall be subject to site plan control unless exempt by the Director pursuant to section 7.
- (2) No person shall undertake any development subject to site plan control unless the Committee has approved plans showing the location of all buildings and structures to be erected and —
 - (a) existing grading and proposed alteration in elevation or contour of the land and provision for the adequate disposal of storm, surface and waste water from the land and from any buildings or structures thereon;

- (b) servicing facilities for the provision of water, sewerage, electrical connections, telecommunication connections and any other servicing needs;
 - (c) off-street vehicular loading and parking facilities, access driveways and ramps, including emergency access routes, curbing and the surfacing of such areas and driveways;
 - (d) walkways, including the surfacing thereof, and all other means of pedestrian access;
 - (e) central storage and collection areas and other facilities and enclosures for the storage of garbage and other waste material;
 - (f) facilities designed to have regard for accessibility for persons with disabilities;
 - (g) facilities for the lighting of the land or of any buildings or structures thereon;
 - (h) walls, fences, hedges, trees, shrubs, or other ground cover or facilities for the landscaping of the lands or the protection of adjoining lands;
 - (i) drawings showing plan, elevation and cross-section views for each building to be erected, which drawings are sufficient to display —
 - (i) the massing and conceptual design of the proposed building;
 - (ii) the relationship of the proposed building to adjacent buildings, streets and exterior areas to which members of the public have access; and
 - (iii) matters relating to exterior design, including without limitation the character, scale, appearance and design features of buildings.
- (3) The following matters relating to buildings described in subsection (2) are not subject to site plan control —
- (a) interior design;
 - (b) the layout of interior areas;
 - (c) the manner of construction and standards for construction.

28. Holding Zone.

- (1) The Committee may, by use of the holding symbol “H” in conjunction with any zoning designation, specify the use to which lands, buildings or structures may be put at such time in the future as the holding symbol is removed by amendment to the Zoning Bye-law once certain specified conditions have been met in accordance with subsection (2).
- (2) The holding symbol may be employed to ensure that one or more of the following criteria are met —

- (a) consideration is given to a site's location, physical features, environmental sensitivity, agricultural or aggregate potential, adjacent land uses, and relationship to roads, road intersections and watercourses;
 - (b) the adequacy of land assembly to accommodate the development;
 - (c) development does not proceed until services and utilities are available to service the development; and
 - (d) agreements respecting the design and servicing of the proposed development are entered into.
- (3) During the interim period when the holding symbol is in place, uses permitted on the affected lands are limited to existing uses and uses specified in the holding bye-law.
 - (4) Sections 40(3) and 40(4) do not apply to a Zoning Bye-law Amendment passed by the Committee to remove a holding symbol.

29. Bonus Zoning.

- (1) The Committee may authorize increases in the height and density of development otherwise permitted in a Zoning Bye-law in return for the provision of facilities, services or other matters such as additional open space, community facilities, preservation of heritage buildings or structures, the preservation of natural features or any other public benefit deemed suitable by the Committee.
- (2) The extent of the permitted bonus, up to a maximum of twenty-five percent that would otherwise be permitted, shall be established based on the compatibility of the proposed development with existing adjacent development and on the extent to which the development advances the goals and objectives of the Land Use Plan and any National Land Use Development Policies.
- (3) Where an owner of land elects to provide facilities, services or matters in return for an increase in the height or density of development, the Committee may require the owner to enter into one or more agreements with the Minister.
- (4) A bonus zoning agreement may —
 - (a) include plans or maps;
 - (b) provide for the time within which the conditions of the bonus zoning agreement may be discharged with or without the concurrence of the owner;
 - (c) provide that, upon completion of the development or phases of the development, the bonus zoning agreement, or portions of it, may be discharged by the Minister;

- (d) provide that, where the development does not commence or is not completed within the specified time in the bonus zoning agreement, the bonus zoning agreement or portions of it may be discharged by the Minister without the concurrence of the property owner;
 - (e) include any terms respecting bonus zoning and the external appearance of structures.
- (5) A bonus zoning agreement is in effect until discharged by the Minister.

30. Temporary Use bye-law.

- (1) The Committee may authorize the temporary use of land, buildings or structures for any purpose set out therein that is otherwise prohibited by the Zoning Bye-law.
- (2) A Temporary Use Bye-law passed in accordance with subsection (1) shall define the area to which it applies and specify the period of time for which the authorization shall be in effect.
- (3) A Temporary Use Bye-law passed in accordance with subsection (1) shall be for a period not exceeding two years.
- (4) The temporary use permitted by the Temporary Use Bye-law shall not be a use that is incompatible with surrounding land uses.

31. Parkland, recreational and open space dedication.

- (1) As a condition of approval of an application for Subdivision Approval or Site Plan Approval the Committee shall require in the case of land for residential uses, not less than five percent of the total land area to be developed for parkland, including a public park, open space and other recreational purposes.
- (2) Lands acceptable for parkland dedication shall not include —
 - (a) land required for drainage;
 - (b) land required for valley and stream corridor or shoreline or coastline protection;
 - (c) land susceptible to flooding;
 - (d) a public cemetery;
 - (e) a public dump;
 - (f) land unsuitable for reasons of public health or public safety;
 - (g) environmentally sensitive areas of land.

32. Development Charges.

- (1) A Development Charges Bye-law may be adopted by the Committee and if approved by the Minister shall allow for development charges to be

levied against land to pay for the capital cost of services required by development of such land.

- (2) Development charges may be imposed only for development that requires —
 - (a) Zoning Bye-law Amendment Approval;
 - (b) Subdivision Approval;
 - (c) Site Plan Approval;
 - (d) Severance Approval; or
 - (e) Minor Variance Approval.
- (3) Notwithstanding subsection (2), an approval for —
 - (a) the enlargement of an existing dwelling unit;
 - (b) a non-profit institution;
 - (c) an hospital;
 - (d) non-profit housing;
 - (e) a temporary building or structure; or
 - (f) an agricultural building or structure,does not satisfy the requirement for the levying of development charges and is thereby exempt from development charges .
- (4) Development charges may be levied to cover the increased capital costs required for —
 - (a) development related capital growth studies;
 - (b) fire stations, including vehicles and equipment;
 - (c) transportation needs, including roads, structures, side walks, street lights, traffic signals, and trails;
 - (d) public works operations, including works yards, vehicles, equipment and services related thereto;
 - (e) parks, including parkland and trail development and equipment and services related thereto;
 - (f) recreation, including major indoor recreational facilities, furnishings and equipment and services related thereto;
 - (g) libraries, including equipment and services related thereto and including materials acquired for circulation, reference or information purposes; and
 - (h) any other development related services as may be prescribed.
- (5) Development charges may not be levied to cover the increased capital costs required for —
 - (a) the provision of cultural or entertainment facilities, including museums, theatres and art galleries;

- (b) the provision of tourism facilities, including convention centres;
 - (c) the acquisition of land for park purposes;
 - (d) the provision of a hospital or other health care facility; or
 - (e) the provision of infrastructure for the general administration of government.
- (6) Without prejudice to subsection (3), no land, except Crown land and Treasury land, may be exempt from development charges.
- (7) A Development Charges Bye-law shall be issued in a manner to be prescribed.

33. Development Agreements.

- (1) The Minister may enter into an agreement, containing such terms and conditions as the Minister thinks fit, with the owner as a condition of approval of an application or with any other person with vested interest in the land for the purpose of regulating the development of land proposed by the application.
- (2) Without restricting the generality of subsection (1), terms and conditions may be included in an agreement —
- (a) covering any matter in respect of which conditions may be imposed on an approval;
 - (b) providing for contribution (whether of works, money or land) by the owner towards the provision of services, facilities (including the future maintenance thereof) and amenities in the area in which the proposed development is to be carried out;
 - (c) for the provision of security by the owner for ensuring due compliance with the approval and agreement.
- (3) An agreement made under this section shall endure with the land and may be enforced by the Crown against persons deriving title of the land subsequent to the entering into of the agreement.

34. Performance Bond.

- (1) The Committee shall require, as a condition imposed on a development approval under this Act or as a term of an agreement made under section 33, that the owner provide a bond as security for the performance of any condition subject to which a development approval was granted or for the performance of an agreement.
- (2) The Committee may enforce a bond, entered into by an owner as a condition of approval or entered into by a person with whom the Minister has made an agreement under section 33, by all legal and equitable remedies.

35. Property Standards Bye-law.

- (1) A Property Standards Bye-law may be adopted by the Committee and approved by the Minister which shall allow for prescribing standards for the amenity, maintenance and occupancy of property.
- (2) A Property Standards Bye-law may prohibit the occupancy or use of such property that does not conform to the standards and may require property below the standards prescribed in the bye-law to be repaired and maintained to comply with the standards or for the site to be cleared of all buildings, structures, debris or refuse and left in a graded and levelled condition.
- (3) A Property Standards Bye-law may restrict the use or occupancy of any property that does not conform to the standards set out in that Bye-law.
- (4) Conditions may be specified within the Property Standards Bye-law to which the property owner must conform in the repair and maintenance of the property.
- (5) Upon being served notice, the owner, of any property which does not conform to the standards, shall effect the repair and maintenance of such property to conform to the standards.
- (6) Such notice as provided for in subsection (5) shall be as prescribed and shall specify the steps to be taken for repair and maintenance of the property and the time-line allowed for such repair and maintenance.
- (7) The Minister may have the repair and maintenance work executed in the case of non-compliance by the owner and may recover from the owner the expenses incurred for any steps taken in such executed work.
- (8) Provisions of a Property Standards Bye-law may cover standards for such matters as yards, surface conditions, accessory buildings, structures, retaining walls, trees, safe passage, sewage and drainage, garbage disposal, signs, fences, swimming pools, landscaping, hoarding and pest prevention.
- (9) The provisions of this section shall be construed to be in accordance with the provisions of the Out Islands Dilapidated Buildings Act (*Ch. 253*), the Derelict Motor Vehicles (Disposal) Act (*Ch. 223*) and the Public Works Act (*Ch. 26*).
- (10) A Property Standards Bye-law shall be issued in a manner to be prescribed.

PART IV

APPROVAL AUTHORITY

36. Approval required for development.

- (1) Notwithstanding the provisions of any other Act to the contrary, no person shall commence or carry out any development of land, except in accordance with the approvals required under this Act.
- (2) Specifically, no person shall proceed to develop without having first applied for and obtained, if applicable —
 - (a) Land Use Plan Amendment Approval by the Committee;
 - (b) Zoning Bye-law Amendment Approval by the Committee;
 - (c) Minor Variance Approval by the Committee;
 - (d) Notice of Zoning Compliance by the Director;
 - (e) Site Plan Approval by the Committee;
 - (f) Architectural Design Approval by the Committee for buildings or land that lie within the area defined in the *First Schedule* and in section 13(2);
 - (g) Subdivision Approval by the Committee; or
 - (h) Severance Approval by the Committee.
- (3) All applications for development in an area for which a zoning order has been made pursuant to section 24 of this Act shall be submitted to the Director for approval.
- (4) For the purpose of clarity —
 - (a) the term ‘develop’ in this section has the meaning given in section 4;
 - (b) no person having obtained Preliminary Support of Application for Site Plan or Preliminary Support of Application for Subdivision shall develop land without further obtaining Site Plan Approval or Subdivision Approval by the Committee under sections 42 and 51 respectively; and
 - (c) no person having obtained approval by the Committee to develop land under this section shall so develop the land without further obtaining a valid building permit issued under the Buildings Regulation Act (*Ch. 200*) for construction purposes.
- (5) The following operations or uses of land shall be deemed for the purposes of this Act to involve the development of land —

- (a) the carrying out of building, engineering, mining or other operations in, on, over or under any land within the curtilage of a dwelling house;
 - (b) the carrying out of building, engineering, mining or other operations in, on, over or under any land used for agriculture or forestry or the subdivision of any such land;
 - (c) the use as two or more separate dwelling units of any building previously used as one dwelling unit; and
 - (d) the accumulation of derelict vehicles, scrap metal, refuse, spoil, mineral tailings, sludge, effluent or waste or discarded material of any kind on land, notwithstanding that any such material had previously been deposited thereon.
- (6) The following operations or uses of land shall not be deemed for the purposes of this Act to involve the development of land —
- (a) the carrying out of works for the maintenance, improvement or other alteration of any building, if the works affect only the interior of the building or do not materially affect the external appearance of the building;
 - (b) the carrying out by or on behalf of the Government any works required for the maintenance of a road, if the works are carried out on land within the boundaries of the road;
 - (c) the carrying out by or on behalf of the Government or any statutory undertaker of any works for the purpose of inspecting, repairing or renewing any sewers, water mains, pipes, cables or other apparatus, including the breaking open of any road or other land for that purpose;
 - (d) the use of any building or land within the curtilage of a dwelling house for any purpose ancillary to the use of the dwelling house as such; and
 - (e) the use of any land for the purposes of agriculture or forestry, including afforestation but not including the breeding or keeping of livestock.
- (7) Notwithstanding the provisions of this section, the classes of development specified in the *Third Schedule* are permitted and may be undertaken without the permission of the Committee, but such development shall be subject to any conditions or restrictions imposed by any Regulations made under this Act or by any other legislation.
- (8) An application for development approval shall be made in accordance with this Act.
- (9) In addition to the information required in an application form the Director may request in writing that the applicant provide such further information

as may be necessary to determine the application and, where this is done, the application shall be treated as having been made on the date when the further information requested from the applicant is received by the Department.

- (10) After consideration of an application and examination of the plans submitted therewith, the Director may refer the plans to the applicant for amendment and, where this is done, the application shall be treated as having been made on the date when the amended plans are resubmitted by the applicant.
- (11) Where the applicant does not furnish the further information requested by the Director pursuant to subsection (9) or does not provide amended plans pursuant to subsection (10) within a reasonable time, the Director may give the applicant notice that the application cannot be determined without the further information or amended plans and will be suspended within fourteen days of the date of the notice unless the further information or amended plans is received by the Department within this time-frame.
- (12) Where the applicant does not furnish the further information requested by the Director pursuant to subsection (9) or does not provide amended plans pursuant to subsection (10) within the fourteen days specified in subsection (11), the Director shall suspend the application and so advise the applicant in writing.
- (13) Notwithstanding subsections (11) and (12), upon request by the applicant, the Minister may rescind the suspension of the application and order the Director to resume the processing of the application for the consideration of the Committee.

37. Powers of Committee.

- (1) The Committee shall hold public hearings to hear and decide on applications for development made pursuant to section 36.
- (2) Upon application being made for any of the matters provided for in section 36 and after consideration of such information, particulars and plans as may be required or prescribed, including the Land Use Plan, the Zoning Bye-law, any Environmental Impact Statements and having regard to the matters set out in section 12, the Committee may —
 - (a) grant Land Use Plan Amendment Approval, Zoning Bye-law Amendment Approval, Architectural Design Approval, Severance Approval or Minor Variance Approval with or without conditions or amendments;
 - (b) grant Preliminary Support of Application for Site Plan or Preliminary Support of Application for Subdivision with or without conditions or amendments;

- (c) grant Site Plan Approval or Subdivision Approval only once conditions of Preliminary Support of Application have been met;
 - (d) refuse approval giving reasons in writing for the basis of the refusal; or
 - (e) defer consideration of the application to a determined date pending further information or clarification to be furnished by the applicant or the Department.
- (3) Without restricting the generality of subsection (2), conditions may be imposed on the granting of Approval or Preliminary Support of Application —
- (a) for regulating the development or use of the land or requiring the carrying out of works on such land, so far as appears to the Committee to be expedient for the purposes of, or in connection with, the development authorized by the Approval or Preliminary Support of Application;
 - (b) for requiring the removal of any buildings or works authorized by the approval, or the discontinuance of any use of land so authorized, at the end of a specified period, and the carrying out of any works required for the reinstatement of land at the expiration of that period;
 - (c) for requiring the commencement or completion of any phase of development before a specified date on or before the completion of any other development phase being carried out or to be carried out;
 - (d) for requiring the provision of proper services including water, electricity and roads before the sale, lease or other disposition of any land for which Subdivision Approval has been granted;
 - (e) for requiring the owner to enter into agreements or post bonds in relation to the works required to be undertaken as part of the approval;
 - (f) for limiting the amount of excavation and hill cutting for roads or driveways;
 - (g) for obtaining approval for any excavation or landfill, quarrying or mining of land or for the harvesting of protected trees, under the Conservation and Protection of the Physical Landscape of The Bahamas Act (*Ch. 260*);
 - (h) for requiring the preservation of existing mature vegetation and tree cover;
 - (i) for requiring notice to be included in each conveyance of a lot in a subdivision advising of the condition requiring the preservation of existing mature vegetation and tree cover;
 - (j) for requiring beach access to be provided or maintained; or

- (k) for any purpose considered necessary by the Committee.
- (4) Where Approval or Preliminary Support of Application is granted subject to conditions and any one or more of the conditions are not met within the time limits imposed by the Approval or Preliminary Support of Application, the Approval or Preliminary Support of Application thereby either lapses or may be revoked.
- (5) The decision of the Committee shall be final and binding unless appealed to the Subdivision and Development Appeal Board within twenty-one days after the making of the decision in accordance with section 65 of this Act.
- (6) Without prejudice to the provisions of this Act as to the duration, revocation or modification of planning approval, any approval given under this Act shall, except in so far as the approval otherwise provides, endure with the land and is not transferable.

38. Notice of decision.

If the Committee gives or refuses to give Approval or Preliminary Support of Application, the Committee shall, within seven days of its decision, give written notice of the decision, containing the prescribed information, to —

- (a) the applicant;
- (b) each person or referral agency that made a written request to be notified of the decision; and
- (c) any other person or agency as may be prescribed.

39. Land Use Plan Amendment Application.

- (1) Upon application by the landowner, the Committee may consider an application for Land Use Plan Amendment Approval made under section 36 for any new land use not permitted in the Land Use Plan.
- (2) Within twenty-one days after a complete application for a Land Use Plan Amendment has been submitted to the Department, the Director shall give notice to the public of the application and the date on which the public meeting to consider the application is to be held.
- (3) A public meeting shall be held by the Department —
 - (a) within two months after the complete application is received by the Department and;
 - (b) at least fourteen days after the notice of the public meeting is given pursuant to subsection (2),to present the Land Use Plan Amendment application to the public and to facilitate discussion between the public and the Department regarding any issues or concerns of the application.

- (4) A public meeting shall not form part of the public record for applications and shall be informal and solely for the purpose of informing and answering questions from the public.
- (5) Within twenty-one days after a public meeting is held for a Land Use Plan Amendment application there shall be a public hearing and the Director shall give notice to the public of the application and the date on which the public hearing is to be held.
- (6) The hearing of a Land Use Plan Amendment application shall be held by the Committee within four months after the complete application is received by the Department and at least fourteen days after the notice of public hearing is given in accordance with subsection (5).

40. Zoning Bye-law Amendment Application.

- (1) Upon application by the landowner, the Committee may consider an application for Zoning Bye-law Amendment Approval made under section 36 for any new land use or any intensification or alteration in the present use not currently existing on the property or not permitted in the Zoning Bye-law.
- (2) Notwithstanding subsection (1), no Zoning Bye-law Amendment shall be approved by the Committee that does not conform to the Land Use Plan.
- (3) Within twenty-one days after a complete application has been submitted to the Department there shall be a public hearing and the Director shall give notice to the public of the application and the date on which the public hearing is to be held.
- (4) The hearing of an application shall be held by the Committee within two months after the complete application is received by the Department and at least fourteen days after the notice of the public hearing is given in accordance with section (3).

41. Minor Variance Application.

- (1) Upon application by the landowner, the Committee may consider an application for Minor Variance Approval to the Zoning Bye-law as it applies to the subject property, subject to the imposition of such conditions as, in the Committee's opinion, the application warrants.
- (2) A Minor Variance Approval made in accordance with subsection (1) may be authorized by the Committee only if such variance to the Zoning Bye-law is in the opinion of the Committee —
 - (a) in keeping with the general intent and purpose of the Land Use Plan and the Zoning Bye-law;
 - (b) minor in nature; and

- (c) desirable for the appropriate development or use of the land, building or structure.
- (3) Notwithstanding subsections (1) and (2), no Minor Variance shall be approved by the Committee that does not conform to the Land Use Plan and Zoning Bye-law.
- (4) Within twenty-one days after a complete application has been submitted to the Department there shall be a public hearing and the Director shall give notice to the public of the application and the date on which the public hearing is to be held
- (5) The hearing of an application shall be held by the Committee within two months after the complete application is received by the Department and at least fourteen days after the notice of the public hearing is given in accordance with subsection (4).

42. Site Plan Application.

- (1) Upon application by the landowner, the Committee may consider an application for Site Plan Approval made under section 36 for any specific development other than an application for a subdivision made under this Act unless exempt in accordance with section 7(5).
- (2) For the purpose of clarity —
 - (a) all development, other than development subject to subdivision approval, shall be subject to site plan approval unless otherwise exempt by the Director in accordance with section 7(5); and
 - (b) low density residential development not part of a subdivision development approval shall be subject to site plan approval limited to drainage and servicing issues only, consistent with subsections (5)(a) and (5)(b) unless exempt by the Director in accordance with section 7(5).
- (3) Notwithstanding subsection (1), no Site Plan application shall be approved by the Committee that does not conform to the Land Use Plan and Zoning Bye-law.
- (4) A Site Plan application shall be in accordance with the requirements of section 27.
- (5) A Site Plan application shall be subject to two levels of approval if granted by the Committee—
 - (a) Preliminary Support of Application for Site Plan in the first instance whereby the approval may be subject to conditions to be met; and
 - (b) Site Plan Approval whereby the application is granted full approval after all conditions have been met by either having been fulfilled in

full or by monies paid to the Public Treasury to cover the cost of such unfulfilled conditions to the satisfaction of the Committee.

- (6) Within twenty-one days after a complete application has been submitted to the Department there shall be a public hearing and the Director shall give notice to the public of the application and the date on which the public hearing is to be held.
- (7) The hearing of an application shall be held by the Committee within two months after the complete application is received by the Department and at least fourteen days after the notice of the public hearing is given in accordance with subsection (6).

43. Architectural Design Application.

- (1) Upon application by the landowner, the Committee may consider an application for Architectural Design Approval made under section 36 for buildings or land that lie within the area defined in the *First Schedule* and in section 13(2) or are considered monuments under the Antiquities, Monuments and Museum Act (*Ch. 51*).
- (2) In accordance with section 36, the Committee may control, regulate or modify the architectural design of any new building or control, regulate or prohibit any alteration to the exterior of any existing building within the area defined in the *First Schedule* and in section 13(2).
- (3) Notwithstanding subsection (1), no architectural design application shall be approved by the Committee that does not conform to the Land Use Plan and Zoning Bye-law.
- (4) Within twenty-one days after a complete application has been submitted to the Department there shall be a public hearing and the Director shall give notice to the public of the application and the date on which the public hearing is to be held.
- (5) The hearing of an application shall be held by the Committee within two months after the complete application is received by the Department and at least fourteen days after the notice of the public hearing is given in accordance with subsection (4).

44. Subdivision Application.

- (1) Upon application by the landowner, the Committee may consider an application for Subdivision Approval made under section 36 for any subdivision of land of more than four new lots from an existing lot.
- (2) For the purpose of clarity, no person shall lay out or construct a subdivision and no land shall be subdivided, other than by severance, for the purpose of conveying the parcels so created or for the purpose of their registration or for the purpose of a mortgage or lease, without the approval

of the Committee for Preliminary Support of Application for Subdivision Approval in accordance with the provisions of this Act.

- (3) Notwithstanding subsection (1), no subdivision application shall be approved by the Committee that does not conform to the Land Use Plan and Zoning Bye-law.
- (4) Subdivision Approval shall be given in accordance with this section and with Part V.
- (5) A subdivision application shall be subject to two levels of approval, if granted by the Committee —
 - (a) Preliminary Support of Application for Subdivision in the first instance whereby the approval may be subject to conditions to be fulfilled; and
 - (b) Subdivision Approval whereby the application is granted full approval after all conditions have been met by either having been fulfilled in full or by monies paid to the Government to cover the cost of such unfulfilled conditions to the satisfaction of the Committee.
- (6) Within twenty-one days after a complete application has been submitted to the Department there shall be a public hearing and the Director shall give notice to the public of the application and the date on which the public hearing is to be held.
- (7) The hearing of an application shall be held by the Committee within two months after the complete application is received by the Department and at least fourteen days after the notice of the public hearing is given in accordance with subsection (6).

45. Severance Application.

- (1) Upon application by the landowner, the Committee may consider an application for Severance Approval made under section 36 for severing not more than four new lots from an existing lot, adding land to an existing lot or lot line adjustments, rights-of-way or easements.
- (2) Within twenty-one days after a complete application has been submitted to the Department there shall be a public hearing and the Director shall give notice to the public of the application and the date on which the public hearing is to be held.
- (3) The hearing of an application shall be held by the Committee within two months after the complete application is received by the Department and at least fourteen days after the notice of the public hearing is given in accordance with subsection (2).

46. Lapse of Preliminary Support of Application.

- (1) Preliminary Support of Application for Site Plan or for Subdivision shall lapse at the end of a period of two years from the date of its grant; accordingly, Site Plan Approval or Subdivision Approval must be granted within this period.
- (2) Approval of an application, including Site Plan Approval or Subdivision Approval, shall lapse at the end of a period of one year from the date of its grant unless development is substantially commenced within this period.
- (3) For the purposes of this section, development shall be taken to have substantially commenced on the date on which any of the following operations comprised in the development has commenced —
 - (a) the work of construction in the course of the erection of a building;
 - (b) the digging of a trench that is to contain the foundation or part of the foundation of a building;
 - (c) the laying of any underground main pipe to the foundation or part of the foundation of a building or to any trench that is to contain the foundation or part of the foundation of a building;
 - (d) any operation that is in the course of the laying out or construction of a road or part of a road;
 - (e) any change in the use of the land where that change constitutes development.
- (4) Notwithstanding subsections (1) and (2), Preliminary Support of Application or Approval lapses if—
 - (a) the Director has, under this section, given the owner of the development a notice of lapsing of Preliminary Support of Application or Approval; and
 - (b) the development was not substantially commenced prior to the lapsing date.
- (5) Prior to the lapsing date and upon written request to the Director, an extension of the lapsing date may be granted for a period of one year.
- (6) Upon request pursuant to subsection (5), the lapsing date is taken to have been extended until the request has been decided by the Director.
- (7) The notice of lapsing pursuant to this section must —
 - (a) be served upon the owner no more than six months but at least three months before the lapsing date; and
 - (b) state each of the following —
 - (i) the particulars of the property subject to the notice;
 - (ii) the date of the Preliminary Support of Application;
 - (iii) the lapsing date;

- (iv) that the approval will lapse on the lapsing date unless substantial development is commenced by the lapsing date; and
 - (v) that the owner may make a request in writing to the Director prior to the lapsing date to extend the lapsing date for a period up to one year.
- (8) One notice of lapsing shall be required to be given under this section.
- (9) A notice of lapsing pursuant to this section shall become null and void upon commencement of substantial development prior to the lapsing date.

47. Development in accordance with approval.

- (1) All development shall be carried out in accordance with the approval, including any conditions imposed by the Committee.
- (2) The Director may, without requiring the applicant to submit a new application, approve minor variations to an approved development which does not alter or affect the terms and conditions of the approval granted by the Committee in any material respect or violate the Zoning Bye-law.

48. Penalty for development without approval.

- (1) The Committee shall require a person who acts in contravention of section 36 to cease such action and —
 - (a) cause such building to be demolished;
 - (b) effect alterations in the building or land to the satisfaction of the Committee; or
 - (c) restore such building or land to its original use and condition, as circumstances may require, and within such reasonable time, not being less than fourteen days, as may be determined by the Committee.
- (2) A person who fails to comply with the requisition of the Committee under subsection (1) within the time limit imposed by the Committee shall be liable on summary conviction to a fine of ten thousand dollars or to imprisonment for three months.

PART V

SUBDIVISIONS

49. Sale of land in new subdivision.

- (1) No lots shall be sold, agreed to be sold, conveyed, agreed to be conveyed, demised or agreed to be demised in any subdivision that has not received Subdivision Approval by the Committee in accordance with the provisions of this Act.
- (2) Prior to the consideration of any application for subdivision approval by the Committee, all owners or developers of land subject to an application for subdivision approval shall submit in writing, and affix signatures thereto, their understanding and agreement with the content and meaning of subsection (1).

50. Subdivisions General.

- (1) The Committee shall endorse street names for all new roads in a subdivision subject to the approval of the Minister responsible for Public Works pursuant to the Public Works Act (*Ch. 26*).
- (2) Specifically, but without restricting in any way whatsoever the generality of section 37, for all subdivision applications —
 - (a) every proposed road shall be of such width as required in the Land Use Plan;
 - (b) all proposed lots shall conform to the standards of the Zoning By-law; and
 - (c) submitted plans shall indicate —
 - (i) existing grading and proposed alteration in elevation or contour of the land and provision for the adequate disposal of storm, surface and waste water from the land and from any buildings or structures thereon;
 - (ii) servicing facilities for the provision of water, sewerage, electrical connections, telecommunication connections and any other servicing needs;
 - (iii) location of sidewalks and all other means of pedestrian access;
 - (iv) facilities for the lighting of the roads;
 - (v) existing vegetation; and
 - (vi) any other details as required by the Committee or as may be prescribed.

- (3) Every tract of land in a subdivision shall be distinguished on the survey plan of the subdivision by a particular number.

51. Approval of subdivision.

Preliminary Support of Application for Subdivision given under section 37 shall be given Subdivision Approval by the Committee at such time as all conditions have been met by either having been fulfilled in full or by monies paid to the Public Treasury to cover the cost of such unfulfilled conditions to the satisfaction of the Minister.

52. Registration of subdivision.

Where the Committee has granted Subdivision Approval, the Director shall record such approval on the register kept under section 8.

53. Access roads to be provided in subdivision.

- (1) Without limiting the scope of this Part, no person shall lay out any subdivision unless —
- (a) provision is made for the reservation of areas for the construction of access roads to each proposed lot;
 - (b) provision is made for each tract of land in the subdivision to front onto an existing road that is permitted direct access; or
 - (c) provision is made for the owner of a lot in a subdivision to have access to a public road.
- (2) A maximum of twenty-five lots may front on any system of road network or cul-de-sac with only a single access/egress road.
- (3) An owner of a subdivision shall complete construction of the subdivision roads and convey the road allowance of the completed roads to the Government within a period of one year from the date of Subdivision Approval unless the subdivision is to be developed as a private gated community.

54. Conditions of subdivision approval.

- (1) Subdivision Approval shall be granted where—
- (a) the owner has —
 - (i) furnished the Minister responsible for Public Works with bond insurance or a bond in a sum fixed by the Minister, made in the prescribed form and executed by one or more sufficient sureties approved by the Minister or by one surety if the surety is a financial institution and approved by the Minister; and

- (ii) entered into an agreement with the Minister responsible for Public Works for the proper construction of roads to and in the subdivision according to the specifications approved by the Committee and for the supply of electricity, an electricity substation, water, telephone or other utilities to and throughout the subdivision, as may be required by the Committee within such period as may be fixed by the Committee; or
- (b) the owner has, to the satisfaction of the Minister responsible for Public Works, constructed roads to and in the subdivision according to the approved specifications and has completed to the satisfaction of the said Minister all such works as may be necessary for surface water drainage, the supply of electricity, water or other utility to and throughout the subdivision, as may have been required by the said Minister; and
- (c) the owner has completed all grading of lots, being not less than two feet above the highest ground water level, road reserves, within the subdivisions in accordance with a lot grading plan pre-approved by the Minister responsible for Public Works; and
- (d) the owner has reserved the required area for parkland dedication within the subdivision for public open space in accordance with section 31; and
- (e) the owner, to the satisfaction of the Committee, in addition to the area referred to in paragraph (d), has reserved in its natural undisturbed state all sensitive areas for open space including –
 - (i) areas of significant wildlife habitat, wetlands, woodlands and areas of natural or scientific interest;
 - (ii) significant corridors, coastline or shoreline of the ocean or a lake;
 - (iii) significant natural corridors, features or areas; and
 - (iv) such other areas as may be required by the Committee.
- (2) It shall be a condition of every bond executed under subsection (1) that the bond shall be void upon the owner of the subdivision if the construction of the roads and all works necessary to provide electricity, water or other required utilities to and throughout the subdivision, have been completed to the satisfaction of the Minister responsible for Public Works within such period as may be fixed by the Committee.
- (3) A minimum of five percent of the escrow account for the completion of any road shall be held by the Minister responsible for Public Works for a period of one year after completion.

55. Public open space in subdivision.

Any land reserved in a subdivision for a public park or open space shall not be conveyed to any person without the prior approval of the Minister.

56. Owner to mark out tracts on ground.

Every owner of any subdivision that has received Subdivision Approval by the Committee, shall —

- (a) after the roads have been formed and graded;
- (b) after all the required utilities and services have been installed; and
- (c) within a period prescribed,

mark out on the ground each tract of land within the subdivision with markers approved by the Minister responsible for Public Works and each tract so marked, shall have the dimensions and alignment indicated on the survey plan of the subdivision approved by the Committee.

57. No building before markers placed and road formed and graded.

No person shall commence to erect a building or other structure on any tract, in a subdivision granted Subdivision Approval by the Committee until —

- (a) the tract has been marked out on the ground with markers approved by the Minister responsible for Public Works as provided for in section 56;
- (b) the proposed road which is to lead from the tract to a public road has been formed and graded to the satisfaction of the Minister responsible for Public Works; and
- (c) all utilities and services required by the Subdivision Approval have been provided and are available for hook up to each lot in the subdivision.

PART VI

PRIVATE ROADS

58. Approval of Minister required to alter existing private road.

- (1) No person shall improve, widen, narrow, replace or in any manner alter, any existing private road unless that person has submitted to the Minister responsible for Public Works —
 - (a) documentary proof of ownership of the road;

- (b) eight copies of a survey plan of the road, showing the proposed improvement, widening, narrowing or alteration to or replacement of the road; and
 - (c) specifications with respect to the improvement, widening, narrowing, alteration to or replacement of the road,
- and has received the written approval of the said Minister to proceed with the improvement, widening, narrowing, replacement or alteration of the road.
- (2) All road works approved under subsection (1) shall be formed, graded and paved with proper and sufficient materials to the satisfaction of the Minister responsible for Public Works.
 - (3) Section 46(2) shall apply *mutatis mutandis* to subsection 1.

59. Agreements respecting private roads.

The Minister responsible for Public Works may enter into an agreement with any person or association to construct, maintain and operate private roads including private water or sewage works or any other private services or works within the road allowance.

PART VII

GENERAL

60. Penalty for obstruction.

A person who obstructs a person acting in the execution of this Act or any warrant issued thereunder, shall in any case in which no other provision is made by this Act, be liable on summary conviction, to a fine of five thousand dollars.

61. Offences and penalties.

- (1) Any person who contravenes the provisions of Part V of this Act shall be liable on summary conviction to a fine of twenty thousand dollars or imprisonment for one year.
- (2) A person who contravenes a provision of this Act to which no other penalty applies shall be liable on summary conviction to a fine of ten thousand dollars.
- (3) For the purposes of subsections (1) and (2), a person shall be deemed to have commenced the development of land without required development approval and thereby contravened a provision of this Act until the contrary is proved, the burden of which shall lie on any person charged, if that person commenced the laying out of roads, the laying out of water pipes,

the clearing of or levelling of land, the filling of any land or swamps, the construction of any building or any preparatory work which might indicate an intention thereby to improve the land or increase its value or make it in any way ready for any type of development, except those to which sections 36 (6) and 36 (7) apply.

62. Title to property.

- (1) Any conveyance made after the Act comes into effect regarding lots not granted prior Subdivision Approval shall be null and void.
- (2) Notwithstanding subsection (1), where the beneficial owner of a lot in a subdivision prior to the commencement of this Act, conveyed or agreed to convey land within the subdivision but failed to obtain —
 - (a) the approval of the Town Planning Committee in accordance with section 8 of the Private Roads and Subdivision Act (*Ch. 256*); or
 - (b) the approval of the Minister in accordance with section 4 of the Private Roads and Subdivision Act (*Ch. 256*); and section 4 of the Private Roads and Subdivision (Out Islands) Act (*Ch. 257*),

such agreement to convey or conveyance shall not be null and void due to the failure to obtain the approval under subparagraph (a) or (b) and any person who obtained title to a lot within the subdivision shall not be prejudiced by the failure of the owner of the subdivision to obtain the necessary approval under sub-paragraph (a) or (b).

63. Prosecution

- (1) Any person who commits an offence under this Act shall be tried summarily.
- (2) Notwithstanding the provision of section 213 of the Criminal Procedure Code Act (*Ch. 91*), a charge or complaint relating to an offence against this Act may be laid within two years from the time when the matter of such charge or complaint arose.

64. Power of Magistrate.

- (1) Upon the conviction of a person for an offence against this Act, the magistrate may, in addition to or in lieu of any penalty which may be imposed, make such order as the circumstances of the case may require.
- (2) An order made under subsection (1) shall state the time, not being less than fourteen days, within which such order shall be complied.
- (3) If a person fails to comply with an order made under subsection (1), the Minister may, by his servants, enter upon the premises in respect of which such order has been made and carry out the terms of the order and the

owner shall be liable for all expenses incurred in carrying out the terms of the said order.

65. Appeal to Subdivision and Development Appeal Board.

- (1) An appeal shall lie to the Subdivision and Development Appeal Board —
 - (a) from any decisions by the Committee relating to a development application;
 - (b) where the Committee fails to make a decision within four months of receiving a complete development application;
 - (c) against a decision of the Minister regarding the approval of a Land Use Plan or Zoning Bye-law;
 - (d) against an Order of the Minister made under the provisions of section 24;
 - (e) against a decision of the Committee to extinguish the effect of a restrictive covenant;
 - (f) against a decision of the Committee by any person who has an interest in the matter.
- (2) The Subdivision and Development Appeal Board shall set the appeal down for hearing and shall cause notice of the same to be published in a manner to be prescribed.
- (3) The decision of the Subdivision and Development Appeal Board shall be final and binding unless an appeal is made to the Supreme Court in accordance with section 66.
- (4) No development or building may proceed on any land which is the subject of an appeal of a decision of a development application by the Committee under this Act.
- (5) The Minister may make Rules governing the procedure for appeals.

66. Appeal to Supreme Court.

- (1) Any party to the proceedings before the Subdivision and Development Appeal Board who is aggrieved by the decision of the Board may appeal to the Supreme Court on a point of law, but not on any matter of fact or on the merits of any decision made by the Board, within twenty-one days after the making of the decision by the Board.
- (2) On an appeal under this section the Supreme Court may make such order, including an order for costs, as it thinks fit.
- (3) No development or building may proceed on any land which is the subject of an appeal of a decision of the Subdivision and Development Appeal Board under this Act.
- (4) The decision of the Supreme Court shall be final and binding.

67. Appeal from Stipendiary and Circuit Magistrate.

- (1) An appeal shall lie to the Supreme Court against any decision by the Stipendiary and Circuit Magistrate under the provisions of this Act.
- (2) The provisions of the Criminal Procedure Code Act (*Ch. 91*) relating to the procedure on appeal shall apply, with the necessary modifications, to appeals under this section.

68. Expenses.

All expenses incurred in carrying out the provisions of this Act shall be paid out of the Consolidated Fund by warrant in the usual manner.

69. Power of Minister in respect of roads and subdivisions.

- (1) Where —
 - (a) any road not already conveyed to the Crown, including any road in a subdivision, is in such a state of disrepair as is likely to interfere with the normal use thereof or occasion damage to vehicles making use thereof;
 - (b) an owner of a road in a subdivision not already conveyed to the Crown has failed to commence or to complete the construction of any road required to be constructed in that subdivision; or
 - (c) an owner of a subdivision has failed to complete all such works as may be necessary for the supply of electricity, electricity sub-station, water, telephone or other utility to and throughout the subdivision,

the Minister responsible for Public Works may issue to the owner thereof a notice requiring that owner by such time as is specified therein to commence and to complete the carrying out of such work of drainage, grading, gravel filling or paving or work of such other nature as may be necessary to remedy the state of disrepair of the road or to commence the construction of the road or to commence or complete the construction of the road or to complete the works necessary for the supply of electricity, water or other utility.

- (2) If the person to whom any notice is issued under this section fails to comply therewith within the time specified in the notice, the Minister responsible for Public Works may have the necessary work carried out in such manner and within such time as he thinks fit and may recover, in accordance with section 70, the expenses incurred by him in so doing and, without prejudice to the right of the said Minister to exercise those powers, such person shall, in respect of his failure, be guilty of an offence and liable on summary conviction to a fine of twenty thousand dollars or imprisonment for six months.

- (3) Any notice required to be issued to any person for the purpose of this section may be issued —
- (a) by delivering it to that person personally;
 - (b) by leaving it at the usual or last known residence of the person;
 - (c) by sending it in a prepaid registered letter addressed to the person at his usual or last known postal address;
 - (d) in the case of an incorporated body, by delivering it to the secretary or other employee of the body, at the registered office or principal place of business of the body, or by sending it in a prepaid registered letter addressed to that office or place of business; or
 - (e) in the case where it is impossible or not practicable to ascertain the postal address or residence of the person to whom it should be issued, by causing the said notice to be published on two occasions, the second occasion not being earlier than seven days after the first publication —
 - (i) on the Official Website of the Government of The Bahamas; and
 - (ii) where the last known place of residence was on a Family Island, on the notice board outside the office of the Family Island Administrator or in a prominent place in the district or town committee area in the respective island.
- (4) All expenses incurred by the Minister responsible for Public Works in carrying out the provisions of this section shall be paid out of the Consolidated Fund.
- (5) The powers of the Minister responsible for Public Works under this section shall apply in relation to any subdivision whether laid out before or after the coming into operation of this Act.

70. Recovery of expenses.

- (1) Notwithstanding section 18 of the Magistrates Act (*Ch. 54*), where the Minister responsible for Public Works has incurred expenses under section 69 for the payment of which an owner is liable, those expenses together with interest at seven percent per annum from the date of service of a demand for the expenses may be recovered, in a court of summary jurisdiction irrespective of the amount, by the Minister from the person who is the owner of the subdivision when the works are completed or if he ceased to be the owner of the subdivision before the date when a demand for the expenses is served, either from him or from the person who is the owner at the date when the demand is served, and, as from the completion of the works, the expenses and interest accrued and due thereon shall until recovered be a first charge on all of his property wheresoever situate.

- (2) Section 15(2), (3) and (4) and section 16 of the Buildings Regulation Act (*Ch. 200*) shall, as they apply to the recovery of expenses and the enforcement of a charge mentioned in those sections, apply *mutatis mutandis*, to the expenses and the charge mentioned in subsection (1) subject to the modification that references in the said sections to premises shall be construed and have effect for the purposes of this Act as references to property.

71. Right to enter premises.

- (1) Subject to the provisions of this section, the Director and any person authorised by the Director shall, on producing, if so required, some authenticated document showing his authority, have a right to enter any premises at all reasonable hours —
- (a) for the purpose of making an inspection for the consideration or administration of an approval, or condition of approval, or any design criteria in relation to zoning;
 - (b) for the purpose of ascertaining whether there is, or has been, on or in connection with the premises, any contravention of the provisions of this Act.
 - (c) for the purpose of ascertaining whether or not circumstances exist which would authorise or require the Minister to take any action, or execute any work, under this Act; and
 - (d) on behalf of the Minister, for the purpose of taking any action, or executing any work authorised or required by this Act to be taken or executed by the Minister.
- (2) If it is shown to the satisfaction of a magistrate on sworn information in writing that —
- (a) admission to any premises has been refused or that the premises are unoccupied or the occupier is temporarily absent, or that the case is one of urgency; and
 - (b) there is reasonable ground for entry into the premises for any such purpose as aforesaid,
- the magistrate may by warrant under his hand, authorise the Director by himself or by any person authorised by the Director to enter the premises, if need be, by force.
- (3) The Director or any person authorised by the Director entering any premises by virtue of this section or of a warrant issued thereunder, may take with him such other persons as may be necessary.
- (4) Every warrant granted under this section shall continue in force until the purpose for which the entry is necessary has been satisfied.

- (5) After inspection, the Director, or any person authorised by the Director, is satisfied that, in some respect the property does not conform to the standards prescribed by the Zoning Bye-law or is in contravention of any provision of this Act or any regulations made under this Act, he shall serve or cause to be served on the owner of the property a notice containing particulars of the non-conformity, the terms and conditions which must be met, the consequences of not meeting such terms and conditions within the time specified in the notice and the right to appeal such terms and conditions.
- (6) When the owner, upon whom the notice has been served in accordance with this section, is not satisfied with the terms or conditions of the notice, he may appeal to the Committee by sending notice of appeal by registered mail to the Chairman of the Committee within fourteen days after service of the notice, and, in the event that no appeal is taken, the order shall be deemed to have been confirmed.
- (7) Where an appeal has been made, the Committee shall hear the appeal and may confirm the requirements of the notice, or may modify or quash it or may extend the time for complying with the notice provided that, in the opinion of the Committee, the general intent and purpose of this Act is maintained.

72. Service of notices, etc.

Any notice, order or other document which is required or authorised by or under this Act to be served on a person, shall be served —

- (a) by hand delivering it to that person;
- (b) by leaving it, or sending it in a prepaid registered letter addressed to him, at his usual or last known residence; or
- (c) in the case of an incorporated or unincorporated body, by delivering it to their secretary or clerk at their registered or principal office or by sending it in a prepaid registered letter addressed to them at that office.

73. Liability.

- (1) No action shall lie against the Crown, a Minister, the Director, the Town Planning Committee or members thereof, the Subdivision and Development Appeal Board or members thereof or any person acting under the authority of a Minister or the Director in respect of any loss or damage whatsoever suffered by any person through the exercise, in good faith, by a Minister, the Director or by such person of the powers conferred upon them by this Act.
- (2) Where only Preliminary Support of Application for Site Plan or Preliminary Support of Application for Subdivision is granted without the

further granting of Site Plan Approval or Subdivision Approval by the Committee under sections 42, 44 and 51 respectively, the Crown shall not be liable for any loss suffered as a result of commencement of development or preparations for commencement of development undertaken.

74. Act binds the Crown.

This Act binds the Crown, but nothing contained in this Act shall be deemed to impose any fee upon any Ministry or department of the Government.

75. Regulations.

The Minister may make Regulations prescribing —

- (a) the form and content of applications and approvals of the Director, Committee or Minister to be given under the provisions of this Act;
- (b) any fee to be paid under this Act;
- (c) the giving of security by an owner for the provision of roads and the supply of electricity, electricity sub-station, water, telephone and other utilities in a subdivision;
- (d) the referral agencies to be given notice of applications and the form and content of such notice;
- (e) the form and content of reports from the Director for applications for consideration by the Committee;
- (f) the form and content of notices of applications to be given to the public;
- (g) the form and content of Land Use Plans;
- (h) the matters the Committee shall have regard for in their consideration of an application for development, a Zoning Bye-law Amendment application or a Land Use Plan amendment application;
- (i) the form, content and mode of issue of notices of decisions by the Committee and Minister;
- (j) the appeal periods and appeal processes of decisions by the Committee and Minister;
- (k) any other matter for the better carrying out of the purposes of this Act.

76. Repeal of Ch. 255, Ch. 256, Ch. 257 and Sub Leg. Vol. 2, Ch. 60 p.3.

Subject to section 2, the Town Planning Act (*Ch. 255*), the Private Roads and Sub-divisions Act, (*Ch. 256*), the Private Roads and Sub-divisions (Out Islands)

Act (*Ch. 257*) and the Conservation and Protection of the Physical Landscape of The Bahamas (Quarrying and Mining Zones) Order, 1997 are hereby repealed.

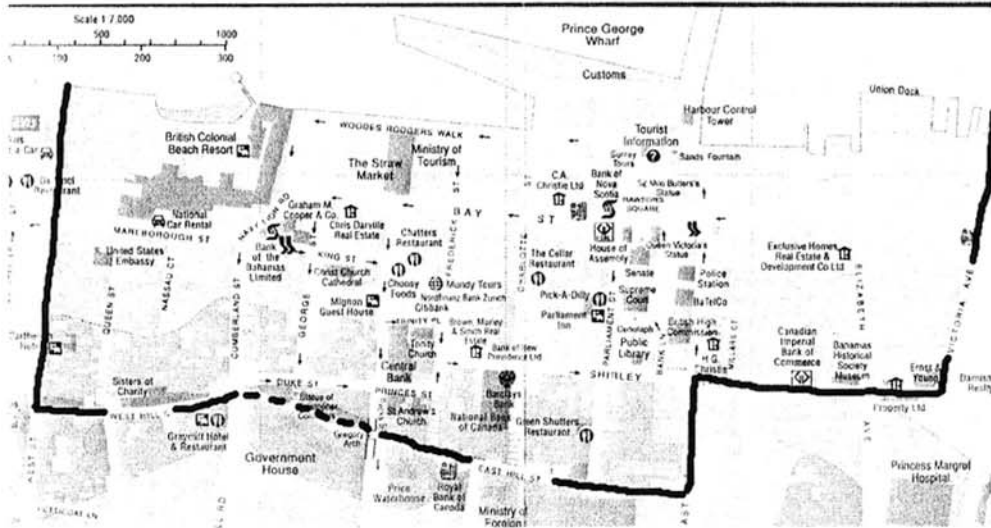
77. Saving and transitional provisions.

- (1) Any statutory instrument made under the Town Planning Act (*Ch. 255*), the Private Roads and Sub-division Act (*Ch. 256*) and the Private Roads and Sub-divisions (Out Islands) Act (*Ch. 257*) and in force at the date of the coming in to operation of this Act shall continue in force and shall be read and construed with such adaptations and modifications as are necessary to bring them into conformity with this Act.
- (2) Any approval issued by the Committee or Minister under the repealed Acts and in force at the date of commencement of this Act shall be deemed to be an approval granted by the Committee or Minister under this Act and shall continue in force.
- (3) Where an application, survey plan or other document has been submitted under any provision of the Town Planning Act *Ch. 255* (*now repealed*), the Private Roads and Subdivisions Act (*Ch. 256*) (*now repealed*) or the Private Roads and Subdivisions (Out Islands) Act (*Ch. 257*) (*now repealed*) for the approval or other decisions of the Minister or the Committee and no such approval or other decision has, at the date of the coming into operation of this Act, been granted or given by the Minister or the Committee, the Minister or Committee shall at that date consider any application, survey plan or other document in his possession as if it had been submitted to him under the corresponding provisions of this Act.

FIRST SCHEDULE

(sections 13, 24, 36 and 43)

MAP OF AREA DEFINED



SECOND SCHEDULE

(section 16)

MATTERS TO BE DEALT WITH BY LAND USE PLANS

PART I – ROADS

1. Reservation of land for roads and establishment of public rights-of-way including public rights-of-way to and over beaches.
2. Closing or diversion of existing roads and public and private rights-of-way.
3. Construction of new roads and alteration of existing roads.
4. The line, width, level, construction, access to and egress from and the general dimensions and character of roads, whether new or existing.
5. Providing for and generally regulating the construction or execution of works incidental to the making or improvement of any road, including the construction of bridges, culverts, gullies, open drains, fencing, barriers, shelters, the provision of artificial lighting, and seats and the planting and protecting of grass, trees and shrubs on or adjoining such road.

PART II – BUILDING AND OTHER STRUCTURES

6. Regulating and controlling, either generally or in particular areas, all or any of the following matters —
 - (a) the size and height of buildings and fences;
 - (b) building lines, coverage and the space around buildings;
 - (c) the objects which may be affixed to buildings;
 - (d) the purposes for and the manner in which buildings may be used or occupied including in the case of dwelling houses, the letting thereof in separate tenements; and
 - (e) the prohibition of building or other operations on any land, or regulating such operations.
7. Regulating and controlling the design, colour and materials of buildings and fences.
8. Allocating any particular land, or all land in any particular area, for buildings of a specified class or classes or prohibiting or restricting either permanently or temporarily, the making of any building or any particular class or classes of buildings on any specified land.

9. Limiting the number of buildings or the number of buildings of a specified class which may be constructed, erected or installed, on, in or under any area.

PART III – COMMUNITY PLANNING

10. Providing for the control of land by zoning or designating specific uses.
11. Regulating the layout of housing areas including density, spacing, grouping and orientation of houses in relation to roads, open spaces and other buildings.
12. Determining the provision and siting of community facilities including shops, schools, churches, meeting halls, play centres and recreation grounds in relation to the number and siting of houses.

PART IV – AMENITIES

13. Allocation of lands as open spaces whether public or private.
14. Allocation of land for burial grounds and crematoria.
15. Allocation of lands for —
- (a) communal parks;
 - (b) game and bird sanctuaries;
 - (c) the protection of marine life; and
 - (d) national parks and environmental protected areas.
16. Preservation of buildings, caves, sites and objects of artistic, architectural, archaeological, historical or cultural interest or value.
17. Preservation or protection of forests, woods, trees, shrubs, plants and flowers, river courses and gullies.
18. Protection of the coastal zone, zoning of marine parks, special resource and special use areas.
19. Prohibiting restricting or controlling, either generally or in particular places, the exhibition, whether on the ground, or any building or any temporary erection, whether on land or in water, or in the air, of all or any particular forms of advertisement or other public notices.

PART V – PUBLIC SERVICES

20. Facilitating the establishment, extension or improvement of works by statutory or other undertakers in relation to power, lighting, water supply, telecommunications, sewerage, drainage, sewage disposal, refuse disposal or other public services.

PART VI - TRANSPORT AND COMMUNICATIONS

21. Facilitating the establishment, extension or improvement of systems of transport whether by land, water or air.
22. Allocating sites for use in relation to transport, and the reservation of land for that purpose.
23. Providing for the establishment, extension or improvement of telegraphic, telephonic, wireless or radar communications, the allocating of sites for use in relation to such communication, and the reservation of land for that purpose.

PART VII – MISCELLANEOUS

24. Providing for and regulating the making of agreements for the purpose of a development plan by the Minister with a local authority or with owners and other persons, and by a local authority with such persons and by such persons with one another.
25. Subdivision of land and in particular, but without restricting the generality of the foregoing —
 - (a) regulating the type of development to be carried out and the size and form of plots;
 - (b) requiring the allocation of land for any of the public services referred to in Part V or for any other purposes referred to in this Schedule for which land may be allocated;
 - (c) prescribing the character and type of public services or other works which shall be undertaken and completed by any applicant for permission to subdivide as a condition of the grant of such permission; and
 - (d) coordinating the subdivision of contiguous properties in order to give effect to any scheme of development appertaining to such properties.
26. Making any provisions necessary for —
 - (a) adjusting and altering the boundaries and areas of any towns;
 - (b) enabling the establishment of satellite towns and new towns; and
 - (c) effecting such exchanges of land or cancellation of existing subdivision plans as may be necessary or convenient for the purposes aforesaid.

THIRD SCHEDULE

(section 36)

DEVELOPMENT PERMITTED WITHOUT APPROVAL

1. Garden huts, other than garages, in approved subdivisions and not used for human habitation or for the conduct of any activity of a commercial nature.
2. Gates, fences and walls not exceeding 4 feet in height.
3. Agricultural out buildings not used for human habitation and enclosures and works on agricultural holdings that are requisite for, or incidental to, the use of land for the purposes of agriculture but not including the subdivision of land for agricultural purposes.
4. Repairs to roads, bridges and harbour installations.
5. Repairs to services and public infrastructure.
6. Internal alterations to buildings not involving changes to the basic structure or façade of the buildings.