

LEGISLATIVE BILL 186

Approved by the Governor February 20, 1978

Introduced by Bereuter, 24; Cullan, 49

AN ACT to amend sections 16-902, 17-1002, 18-1303, 18-1306, 19-907, 19-910, 19-911, 23-114.01, 23-168.01, 23-168.03, 23-174.01, 23-174.03, and 84-152, Reissue Revised Statutes of Nebraska, 1943, relating to planning and zoning; to simplify provisions for the exercise of planning and zoning jurisdiction by political subdivisions; to provide that planning commissions shall receive materials regarding subdivision plats; to provide for membership and terms of office for city and village planning commissions; to confer certain powers on planning commissions, city councils, and county boards regarding the issuance of special use permits; to provide qualifications of boards of adjustment members; to prescribe powers of boards of adjustment; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 16-902, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

16-902. (1) No owner of any real property, located within two miles of the corporate limits of any city of the first class and outside of any organized city or village, shall be permitted to subdivide, plat, or lay out such real property in building lots, streets, or other portions of the same intended to be dedicated for public use, or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto, without first having obtained the approval thereof of the city council of such city. The fact that such real property is located in a different county or counties than some or all portions of the municipality shall not be construed as affecting the necessity of obtaining the approval of the city council of such municipality.

(2) In counties that have both adopted a comprehensive development plan which meets the requirements of section 23-114.02 and are enforcing subdivision regulations, the county planning commission shall be provided with all available materials on any proposed subdivision plat, contemplating public streets

or improvements, which is filed with a municipality in that county, when such proposed plat lies partially or totally within the extraterritorial subdivision jurisdiction being exercised by that municipality in such county. The commission shall be given six weeks to officially comment on the appropriateness of the design and improvements proposed in the plat. The review period for the commission shall run concurrently with subdivision review activities of the municipality after the commission receives all available material for a proposed subdivision plat.

Sec. 2. That section 17-1002, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

17-1002. (1) No owner of any real property located within one mile of the corporate limits of any city of the second class or village and outside of any organized city or village, shall be permitted to subdivide, plat, or lay out such real property in building lots and streets, or other portions of the same intended to be dedicated for public use or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto, without first having obtained the approval thereof by the city council or board of trustees of such municipality. The fact that such real property is located in a different county or counties than some or all portions of the municipality shall not be construed as affecting the necessity of obtaining the approval of the city council or board of trustees of such municipality.

(2) No plat of such real property shall be recorded or have any force or effect, unless the same be approved by the city council or board of trustees of such municipality.

(3) In counties that have both adopted a comprehensive development plan which meets the requirements of section 23-114.02 and are enforcing subdivision regulations, the county planning commission shall be provided with all available materials on any proposed subdivision plat, contemplating public streets or improvements, which is filed with a municipality in that county, when such proposed plat lies partially or totally within the extraterritorial subdivision jurisdiction being exercised by that municipality in such county. The commission shall be given six weeks to officially comment on the appropriateness of the design and improvements proposed in the plat. The review period for the commission shall run concurrently with subdivision review activities of the municipality after

the commission receives all available material for a proposed subdivision plat.

Sec. 3. That section 18-1303, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

18-1303. (1) The commission shall consist of nine members who shall represent insofar as is possible different professions or occupations in the municipality and who shall be appointed by the mayor, by and with the approval of a three-fourths vote of the council. Two of such members may be residents of the area over which the municipality is authorized to exercise extraterritorial zoning and subdivision regulations. All members of the commission shall serve as such without compensation and shall hold no other municipal office except when appointed to serve on the board of adjustment as provided in section 19-908. The term of each member shall be three years, except that three members of the first commission to be so appointed shall serve for the term of one year, three for the term of two years, and three for a term of three years. All members shall hold office until their successors are appointed. All members may, after a public hearing before the council, be removed by the mayor, by and with the consent of a three-fourths vote of the council for inefficiency, neglect of duty or malfeasance in office or other good and sufficient cause. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired term by the mayor.

(2) Notwithstanding the provisions of subsection (1) of this section, the planning commission for any city of the second class or village may have either five, seven, or nine members as the city council or village board of trustees shall establish by ordinance. If a city or village planning commission has either five or seven members, approximately one-third of the members of the first commission shall serve for a term of one year, one-third for a term of two years, and one-third for a term of three years.

Sec. 4. That section 18-1306, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

18-1306. (1) It shall be the function and duty of the commission to make and adopt plans for the physical development of the municipality, including any areas outside its boundaries which, in the commission's judgment, bear relation to the planning of such municipality, and including a comprehensive development

plan as defined by section 19-903; to prepare and adopt such implemental means as a capital improvement program, subdivision regulations, building codes, and zoning ordinance in cooperation with other interested municipal departments; consult and advise with public officials and agencies, public utilities, civic organizations, educational institutions, and citizens with relation to the promulgation and implementation of the comprehensive development plan and its implemental programs; have the power to delegate authority to any such group to conduct studies and make surveys for the commission; make preliminary reports on its findings; and hold public hearings before submitting its final reports. The municipal governing body shall not hold its public meetings or take action on matters relating to the comprehensive development plan, capital improvements, building codes, subdivision development, or zoning until it has received the recommendation of the planning commission if such commission in fact has been created and is existent; Provided, that the governing body may set a reasonable time within which the recommendation is to be received.

(2) The commission may, with the consent of the governing body, in its own name, make and enter into contracts with public or private bodies; receive contributions, bequests, gifts, or grant funds from public or private sources; expend the funds appropriated to it by the municipality; employ agents and employees; and acquire, hold, and dispose of property. The commission may on its own authority make arrangements consistent with its program; conduct or sponsor special studies or planning work for any public body or appropriate agency; receive grants, remuneration, or reimbursement for such studies or work; and at its public hearings, summon witnesses, administer oaths, and compel the giving of testimony.

(3) The commission may grant conditional uses or special exceptions to property owners for the use of their property if the municipal governing body has, through a zoning ordinance or special ordinance, generally authorized the commission to exercise such powers and has approved the standards and procedures the commission adopted for equitably and judiciously granting such conditional uses or special exceptions. The granting of a conditional use permit or special exception shall only allow property owners to put their property to a special use if it is among those uses specifically identified in the zoning ordinance as classifications of uses which may require special conditions or requirements to be met by the owners before a use permit or building permit is authorized. The power to grant conditional

uses or special exceptions shall be the exclusive authority of the commission, except that the municipal governing body may choose to retain for itself the power to grant conditional uses or special exceptions for those classifications of uses specified in the zoning ordinance. The municipal governing body may exercise such power if it has formally adopted standards and procedures for granting such conditional uses or special exceptions in a manner that is equitable and which will promote the public interest.

Sec. 5. That section 19-907, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-907. Such Except as provided in section 84-155, the local legislative body shall provide for the appointment of a board of adjustment. 7--and--in--the regulations--and--restrictions--adopted--pursuant--to--the authority of sections 19-904 to 19-906 shall provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained. Any such actions taken by the board of adjustment shall not exceed the powers granted by section 19-908 19-910.

Sec. 6. That section 19-910, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-910. The board of adjustment shall, subject to such appropriate conditions and safeguards as may be established by the legislative body, have only the following powers: (1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures; (2) to hear and decide, in accordance with the provisions of any zoning regulation, requests for interpretation of any map; ~~7--or for decisions upon other special questions upon which the board is authorized by any such regulation to pass;~~ and (3) where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under this act would result in

peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any ordinance or resolution. No such variance shall be authorized by the board unless it finds that: (a) The strict application of the zoning regulation would produce undue hardship; (b) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; (c) the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and (d) the granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice. No variance shall be authorized unless the board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations. In exercising the above-mentioned powers such board may, in conformity with the provisions of sections 19-901 to 19-915, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to effect any variation in such regulation.

Sec. 7. That section 19-911, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-911. Notwithstanding the provisions of sections 19-907 and 19-908, the legislative body of a village may, except as set forth in section 84-155, provide by ordinance that it shall constitute a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of sections 19-901 to 19-906 may provide that as such board of adjustment it may exercise only the powers granted to boards of

adjustment by section 19-910. As such board of adjustment it shall adopt rules and procedures that are in harmony with sections 19-907 to 19-910, and shall have the powers and duties therein provided for the board of adjustment, and other parties shall have all the rights and privileges therein provided for. The concurring vote of two-thirds of the members of the legislative body acting as a board of adjustment shall decide any question upon which it is required to pass as such board.

Sec. 8. That section 23-114.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-114.01. (1) In order to avail itself of the powers conferred by section 23-114, the county board shall appoint a planning commission to be known as the county planning commission. The members of the commission shall be residents of the county to be planned, and shall be appointed with due consideration to geographical and population factors. Since the primary focus of concern and control in county planning and land-use regulatory programs is the unincorporated area, by July 1, 1979, a maximum of two members of the commission shall be residents of incorporated areas; provided, that this requirement shall not apply to joint planning commissions. As members of the commission, they shall serve without compensation except for reasonable expenses in an amount to be fixed by the county board and shall hold no county or municipal office, except that a member may also be a member of a city, village, or other type of planning commission. The terms of each member shall be three years, except that approximately one-third of the members of the first commission shall serve for a term of one year, one-third for a term of two years, and one-third for a term of three years. All members shall hold office until their successors are appointed. Members of the commission may be removed by a majority vote of the county board for inefficiency, neglect of duty, or malfeasance in office or other good and sufficient cause upon written charges being filed with the county board and after a public hearing has been held regarding such charges. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired term by individuals appointed by the county board.

(2) The county planning commission shall prepare and adopt as its policy statement a comprehensive development plan and such implemental means as a capital improvement program, subdivision regulations, building codes, and zoning resolution; consult and advise with public officials and agencies, public utilities, civic

organizations, educational institutions, and with citizens with relation to the promulgation of implemental programs; have the power to delegate authority to any of these named groups to conduct studies and make surveys for the commission; and make preliminary reports on its findings and hold public hearings before submitting its final reports. The county board shall not hold its public meetings or take action on matters relating to the comprehensive development plan, capital improvements, building codes, subdivision development, or zoning until it has received the recommendations of the planning commission.

(3) The commission may with the consent of the governing body, in its own name, make and enter into contracts with public or private bodies; receive contributions, bequests, gifts, or grants of funds from public or private sources; expend the funds appropriated to it by the county board; employ agents and employees; and acquire, hold, and dispose of property. The commission may on its own authority make arrangements consistent with its program; conduct or sponsor special studies or planning work for any public body or appropriate agency; receive grants, remuneration, or reimbursement for such studies or work; and at its public hearings, summon witnesses, administer oaths, and compel the giving of testimony.

(4) In all counties in the state, the county planning commission may grant conditional uses or special exceptions to property owners for the use of their property if the county board of commissioners or supervisors has officially and generally authorized the commission to exercise such powers and has approved the standards and procedures the commission adopted for equitably and judiciously granting such conditional uses or special exceptions. The granting of a conditional use permit or special exception shall only allow property owners to put their property to a special use if it is among those uses specifically identified in the county zoning regulations as classifications of uses which may require special conditions or requirements to be met by the owners before a use permit or building permit is authorized. The power to grant conditional uses or special exceptions shall be the exclusive authority of the commission, except that the county board of commissioners or supervisors may choose to retain for itself the power to grant conditional uses or special exceptions for those classifications of uses specified in the county zoning regulations. The county board of commissioners or supervisors may exercise such power if it has formally adopted standards and procedures for granting such conditional uses or special exceptions in a

manner that is equitable and which will promote the public interest.

Sec. 9. That section 23-168.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-168.01. (1) The county board shall appoint a board of adjustment which shall consist of five members, plus one additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason, each to be appointed for a term of three years and be removable for cause by the appointing authority upon written charges and after public hearing. No member of the board of adjustment shall be a member of the county board of commissioners or county board of supervisors. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member only of the board of adjustment shall be appointed by the county board from the membership of the county planning commission, and the loss of membership on the planning commission by such member shall also result in his immediate loss of membership on the board of adjustment and the appointment of another planning commissioner to the board of adjustment.

(2) The board of adjustment shall adopt rules in accordance with the provisions of any resolution adopted pursuant to this act. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed with the county clerk and shall be a public record.

Sec. 10. That section 23-168.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-168.03. The board of adjustment shall, subject to such appropriate conditions and safeguards as may be established by the county board, have only the following powers:

(1) To hear and decide appeals where it is alleged by the appellant that there is an error in any

order, requirement, decision, or refusal made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures;

(2) To hear and decide, in accordance with the provisions of any regulation, requests for interpretation of any map; ~~or for decisions upon other special questions upon which the board is authorized by any such regulation to pass;~~ and

(3) Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the adoption of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any zoning regulations, but no such variance shall be authorized unless the board of adjustment finds that: (a) The strict application of the resolution would produce undue hardship; (b) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; (c) the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and (d) the granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice.

No variance shall be authorized unless the board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

In exercising the above-mentioned powers, the board may, in conformity with the provisions of this act, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as shall be proper, and to that end shall have the power of the officer or agency from whom the

appeal is taken. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to effect any variation in such regulation.

Sec. 11. That section 23-174.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-174.01. Every county in which is located a city of the primary class shall have power within the county, except within the area over which zoning jurisdiction has been granted to any city or village, and such city or village is exercising such jurisdiction, to regulate and restrict (1) the location, height, bulk and size of buildings and other structures, (2) the percentage of a lot that may be occupied, (3) the size of yards, courts and other open spaces, (4) the density of population, and (5) the locations, and uses of buildings, and structures, and land for trade, industry, business, residences and other purposes. Such county shall have power within the county, except within the area over which zoning jurisdiction has been granted to any city or village, and such city or village is exercising such jurisdiction, to divide the county zoned into districts of such number, shape, and area as may be best suited to carry out the purposes of this section, and to regulate, restrict, or prohibit the erection, construction, reconstruction, alteration or use of buildings, structures, or land within the total area zoned or within districts; Provided, that all such regulations shall be uniform for each class or kind of buildings throughout each district, even though regulations for one district may differ from those applicable to other districts. Such zoning regulations shall be designed to secure safety from fire, flood, and other dangers and to promote the public health, safety, and general welfare, and shall be made with consideration having been given to the character of the various parts of the area zoned and their peculiar suitability for particular uses and types of development, and with a view to conserving property values and encouraging the most appropriate use of land throughout the area zoned, in accordance with a comprehensive plan. Such zoning regulations may include reasonable provisions regarding nonconforming uses and their gradual elimination.

Sec. 12. That section 23-174.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-174.03. No owner of any real estate located in an area in a county in which is located a city of the primary class, except within the area over which subdivision jurisdiction has been granted to any city or village, and such city or village is exercising such jurisdiction, shall be permitted to subdivide, plat, or lay out said real estate in building lots and streets, or other portions of the same intended to be dedicated for public use or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto, without first having obtained the approval thereof by the county board of such county, and no plat or subdivision of such real estate shall be recorded in the office of the register of deeds or have any force or effect unless the same be approved by the county board of such county. Such a county shall have authority within the area above described (1) to regulate the subdivision of land for the purpose, whether immediate or future, of transfer of ownership or building development, except that the county shall have no power to regulate subdivision in those instances where the smallest parcel created is more than five acres in area, (2) to prescribe standards for laying out subdivisions in harmony with the comprehensive plan, (3) to require the installation of improvements by the owner or by the creation of public improvement districts, or by requiring a good and sufficient bond guaranteeing installation of such improvements, and (4) to require the dedication of land for public purposes.

Subdivision shall mean the division of a lot, tract, or parcel of land into two or more lots, sites, or other divisions of land for the purpose, whether immediate or future, of ownership or building development, except that the division of land shall not be considered to be subdivision when the smallest parcel created is more than five acres in area.

Subdivision plats shall be approved by the county planning commission on recommendation by the planning director and county engineer and shall be submitted to the county board for its consideration and action. The county board may withhold approval of a plat until the county engineer has certified that the improvements required by the regulations have been satisfactorily installed or until a sufficient bond guaranteeing installation of the improvements has been posted with the county or until public improvement districts are created.

Sec. 13. That section 84-152, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-152. ~~By--July---1,---1977~~ Since counties containing larger municipalities are typically experiencing population and economic growth which promotes increased urban and rural land-use conflicts, the county government of a county that contains some or all portions of a city of the first class ~~shall--have--prepared is~~ strongly encouraged to prepare a comprehensive development plan that meets the requirements of section 23-114.02, ~~adopted~~ adopt zoning and subdivision regulations covering all portions of its regulatory jurisdiction, and ~~begun~~ begin such an organized and staffed program to enforce such zoning and subdivision regulations that as the State Office of Planning and Programming, acting under authority granted by section 84-156, ~~determines would determine~~ to be adequate.

Sec. 14. The State Office of Planning and Programming shall not contract with or provide assistance to any municipality or county to prepare comprehensive development plans or land-use regulatory proposals, unless such assistance shall first be requested in writing by the municipality or county.

Sec. 15. That original sections 16-902, 17-1002, 18-1303, 18-1306, 19-907, 19-910, 19-911, 23-114.01, 23-168.01, 23-168.03, 23-174.01, 23-174.03, and 84-152, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 16. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.