



# The Yukon Legislative Assembly

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Number 33

3rd Session

24th Legislature

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## **HANSARD**

**Friday, November 7, 1980 — 10:00 a.m.**

Speaker: The Honourable Donald Taylor

# Yukon Legislative Assembly

SPEAKER — Honourable Donald Taylor, MLA, Watson Lake  
DEPUTY SPEAKER — Grafton Njootli, MLA, Old Crow

## CABINET MINISTERS

NAME	CONSTITUENCY	PORTFOLIO
Hon. Chris Pearson	Whitehorse Riverdale North	Government House Leader — responsible for Executive, Council Office, Public Service Commission, Finance and Pipeline.
Hon. Doug Graham	Whitehorse Porter Creek West	Minister responsible for Education, Justice, Consumer & Corporate Affairs, Information Resources, Government Services and Workers' Compensation Board
Hon. Dan Lang	Whitehorse Porter Creek East	Minister responsible for Renewable Resources, Tourism and Economic Development
Hon. Geoffrey Lattin	Whitehorse North Centre	Minister responsible for Highways and Public Works, Municipal and Community Affairs, Yukon Housing Corporation, and Yukon Liquor Corporation.
Hon. Meg McCall	Klondike	Minister responsible for Health and Human Resources

## Government Members

### (Progressive Conservative)

Al Falle	Hootalinqua
Jack Hibberd	Whitehorse South Centre
Peter Hanson	Mayo
Grafton Njootli	Old Crow
Donald Taylor	Watson Lake
Howard Tracy	Tatchun

## Opposition Members

### (Liberal)

Iain MacKay	Whitehorse Riverdale South
Alice P. McGuire	Kluane

### (New Democratic Party)

Tony Penkett	Whitehorse West
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### (Independent)

Maurice J. Byblow	Faro
Robert Fleming	Campbell

Clerk Of Assembly  
Clerk Assistant (Legislative)  
Clerk Assistant (Administrative)  
Sergeant-at-Arms  
Editor of Hansard

Patrick L. Michael  
Missy Parnell  
Jane Steele  
G.I. Cameron  
Lois Cameron

## ERRATUM

Wednesday, November 5, 1980 - right column - paragraph 9:

The last two lines should read:  
business. Because it goes on; it went on a hundred years ago, and  
it will be going on long after our friend from Riverdale South has  
left us.

Whitehorse, Yukon  
Friday, November 7, 1980

Mr. Speaker: I will now call the House to order.  
We will proceed with Prayers.

Prayers

Mr. Speaker: We will proceed at this time with the Order Paper.

#### DAILY ROUTINE

Mr. Speaker: Are there any Returns or Documents for Tabling?

#### TABLING OF DOCUMENTS

Hon. Mr. Lattin: Mr. Speaker, I have for tabling the answers to two questions by Mr. Fleming, concerning re-alignment on the Alaska Highway in the Morley River area, and concerning the TV maintenance contracts.

Mr. Speaker: Are there any Reports of Standing or Special Committees?

Petitions?

Receiving or Reading of Petitions?

Are there any Introduction of Bills?

Notices of Motion for the Production of Papers?

Notices of Motion?

Statements by Ministers?

Which brings us to the Question Period. Are there any questions?

#### QUESTION PERIOD

##### Question re: Game/Hunter Education

Mr. Penikett: Mr. Speaker, I have a question for the Minister of Renewable Resources. I am sure all Members were disturbed to hear the report about the mule deer kill. I am sure the Minister was too. In view of the fact that this case may underline the need for more hunter education in the Territory, can the Minister state what requirements there are for prospective hunters to demonstrate that they can do basic identification of the main species of wildlife in the Yukon Territory?

Hon. Mr. Lang: Mr. Speaker, it is my understanding that there is no present requirement for that type of observation to be made.

Mr. Penikett: Could I ask the Minister, Mr. Speaker, if he has had any representations from any groups seeking better or more hunter education by the department, as well as some basic skills testing, required for applications for licences to hunt big game in the Territory?

Hon. Mr. Lang: Mr. Speaker, there are presently a number of programs in the department. One is related to the education of our younger people. The other: over the course of the year, the Wildlife Department does demonstrate the cutting of meat and this type of thing.

There is a definite effort by the department in this respect. If one goes flagrantly against the law, Mr. Speaker, I would suggest that all the education in the word really is not going to stop him.

Mr. Penikett: Might I ask the Minister, then, exactly what steps he contemplates to prevent the repetition of the killing of rare species such as mule deer in the Territory?

Hon. Mr. Lang: Mr. Speaker, as long as the penalty meets the crime and is adequately publicized, I would suggest that it is definitely going to be a deterrent to anybody who would wish to do that type of thing.

##### Question re: Alcohol and Drug Abuse Programs

Mrs. McGuire: I have a question for the Minister of Human Resources. On April 17 of this year I asked the question: will the Department of Human Resources be hiring a person specializing in professional counselling exclusively with teenagers and children, drop-outs or otherwise, who are plagued with alcohol/drug and/or mental problems. The Minister advised us at that time that the matter was under consideration. Can the Minister tell us now if an effective program is in place, or what exactly is the situation on this?

Hon. Mrs. McCall: Mr. Speaker, there is no program in place for teenagers as such, although teenage problems are very much under consideration. It is still something that the department has in the back of its mind though. We know that that is one of the spawning grounds for alcoholism: the teenage years. It is being considered very much just now. I imagine there will be a program implemented.

##### Question re: Income Tax Ordinance

Mr. Byblow: I have a question for the Government Leader. I have had a number of inquiries regarding the repercussions to businesses of the recently imposed Territorial *Income Tax Ordinance*. As I understand the problem, a number of tax incentive programs in the federal *Income Tax Act* are not reciprocal in application to the Yukon ordinance — resulting in, in effect, a tax increase.

Has the Government Leader any progress report on whether this can be alleviated?

Hon. Mr. Pearson: Mr. Speaker, as all Members I am sure are aware, I introduced and gave first reading to an *Ordinance to Amend the Income Tax Ordinance* a couple of weeks ago and it is still sitting on the Order Paper at first reading.

Mr. Speaker, we were made cognizant of this possible alleviation, in respect to some of the tax, if we were to make an amendment to the income tax legislation. We have been trying to determine whether we can do that. It is my intention, Mr. Speaker. I must say I have had tremendous cooperation from the Leader of the Opposition, who, of course, is an expert in this field, and a decision was taken by us that I would leave this bill at first reading, at least until this weekend, to see whether there was anything we could do.

Mr. Speaker, failing that, I will be moving the bill during its second reading, probably next Wednesday. Well, whether we get the information or not, I will have to move the bill next Wednesday, and if we cannot make that amendment, it will be because legally we cannot.

Mr. Byblow: I respect the Government Leader's answer, and attempt to explain the problem. I believe, however, Mr. Speaker, that during debate on the ordinance last year, it was made quite clear that, in effect, there would be no increase in taxation. If this amendment is not possible, would the Government Leader consider re-stating that position?

Hon. Mr. Pearson: Mr. Speaker, I do not think, at least I certainly hope, that I did not say that there would not be any increase in taxation, because I do not know whether there will be increases in taxation. Mr. Speaker, I presume there would not be an increase in the rates of taxation last year, because we had an agreement with the Federal Government that the rates would not increase. We have no intention of increasing the rates ourselves. In fact, we had an agreement with the Federal Government that we would not increase the rates last year. So, Mr. Speaker, it was the rates that I was talking about. That still holds true; the rates have not changed. The question of whether Yukon businesses, or rather, some Yukon businesses, are eligible for this Federal tax is strictly a federal question; it is not a Territorial question at all.

Mr. Speaker: Order please, I should caution the Honourable Members that it is not possible, in the Question Period, to anticipate debate on a matter which is standing on the Order Paper.

Mr. Byblow: With respect to that, Mr. Speaker, I would then, in conclusion, ask the Government Leader if he could update the House on the present status of the *Yukon Income Tax Ordinance*: that is, with respect to its position in federal adoption and implementation.

Hon. Mr. Pearson: Mr. Speaker, it has been adopted, it is implemented, it is in place.

##### Question re: Occupational Health and Safety

Mr. Penikett: I have a question for the Minister of Justice and Labour. I was pleased to read in the Government's Annual Report tabled yesterday that a discussion paper for an *Occupational Health and Safety Ordinance* has been completed.

I would like to ask the Minister if it is his intention during this Session to table in this House copies of that discussion paper mentioned in the Annual Report.

Hon. Mr. Graham: Mr. Speaker, that discussion paper has

been prepared and has been in general circulation for some time. If the Member opposite would like a copy that has been sent to various unions, labour organizations, and businesses around the Territory, I would be only too happy to provide him with one.

**Mr. Penikett:** Thank you, Mr. Speaker, this Member would be happy to get one. I would like to ask the Minister, since he has made this appeal for workers' input, if he could indicate at this point how long the paper has been in circulation, and what kind of response he has had to it as yet?

**Hon. Mr. Graham:** Mr. Speaker, I am not perfectly certain how long the paper has been in circulation. I think it is somewhere in the neighbourhood of four months, though. We have had, to the best of my knowledge, only one reply to that discussion paper.

**Mr. Penikett:** Since we have had some confusion during this Session as to the difference between White Papers, green papers, and blue papers, could the Minister indicate whether the discussion paper that has been circulated is more like a White Paper, or is it more like a green paper? Specifically, can the Minister say if he expects the legislation he is later going to be bringing into the House will be based generally on this discussion paper?

**Hon. Mr. Graham:** Mr. Speaker, I am much like the Member opposite; I also am not too certain what the difference is between a White Paper and a green paper. However, we see this paper strictly as a discussion paper. We hope to get input. At this point in time my department is completely flexible.

#### Question re: Mining Legislation

**Mr. Byblow:** I have a question I will direct to the Minister of Economic Development. Can the Minister advise the House whether, to his knowledge, there is any impending federal legislation to replace the *Yukon Quartz Mining Ordinance*, or the *Placer Mining Ordinance*?

**Hon. Mr. Lang:** Mr. Speaker, there have been discussions, I think, for the last 30 years, on whether these piece of legislation will be amended or would be amended. I am not making any assumptions that those discussions will not stop over the course next number of years.

For the Member's information, I am a member of the Government of Yukon's Legislative Programming Committee but I really do not have that much to do with the Government of Canada's programming committee.

**Mr. Byblow:** It is my understanding, and I can certainly provide the Minister with correspondence relevant to it, that a proposed Yukon minerals bill may very well be before Parliament within the next year. Since something like this is going to have tremendous impact on our resource industries, can the Minister assure the House that his department will immediately insist on coordinating some input into that bill?

**Hon. Mr. Lang:** Mr. Speaker, there is no question in our minds, and we have made it clear to the Government of Canada, that we would definitely like to be advised on any moves in this area, and to have our input into any major changes in legislation that would so drastically affect our economy.

#### Question re: Employee Notice

**Mr. Fleming:** I have a question for the Minister of Justice. Under our present legislation, is there any protection for an employee — that is, in the private sector — that says that the employer must give any advance notice of firing or hiring? The employer is also in the private sector.

**Hon. Mr. Graham:** I will have to take that question under advisement, Mr. Speaker.

**Mr. Speaker:** Perhaps the question seeks a legal opinion, which would be contrary to the rules of the Question Period.

#### Question re: Affirmative Action Program for Women

**Mrs. McGuire:** I have a question for the Minister of Education. I believe the portfolio of the Women's Bureau falls under his department.

Mr. Speaker, on October 9th, 1979, the Minister of Education stated that he would be tabling a document outlining the Government's policies and programs regarding women.

He said the title was "Yukon Plan of Action for Women". This document, Mr. Speaker, has not been tabled in that session, nor has it been tabled since. Would the Minister tell the House if, or when, this document will be made available to the House?

**Hon. Mr. Graham:** No, Mr. Speaker, I am not certain why I have not tabled it to date.

#### Question re: Dawson City Sewer and Water

**Mr. Penikett:** I have a question for our friend, the Minister of Municipal Affairs, regarding the Dawson City sewer and water project. In view of the large cost over-runs involved, can the Minister state what measures he will be taking, to ensure that Dawson taxpayers will not be forced to pay the full cost of the over-runs?

**Hon. Mr. Lattin:** Mr. Speaker, the Dawson sewer and water deficit is of great concern, I am sure, to this House, also to Dawson. At this particular moment we are reviewing the situation with Dawson. We are scrutinizing the operation and we are trying to come up with some figures that we feel will be realistic. I should point out, Mr. Speaker, that at this particular time, probably the biggest results of the deficit today are in the starting-up procedure. We are confident that when the shakedown period of this system is over, the system will function a lot more economically than it does at this particular moment.

**Mr. Penikett:** Given that certain unkind people have questioned the reliability of the new system, can the Minister state whether Dawson City has placed any conditions on its acceptance of the new system, and what steps his department is taking to meet these concerns?

**Hon. Mr. Lattin:** No, I would not say that they had put any conditions on it. We are reviewing it with them and trying to come to some agreement on it, but at this particular time, Mr. Speaker, I think I would be amiss to say any more on it.

**Mr. Penikett:** While the Minister is considering the question, I wonder if I could ask him one further supplementary, on which he might also like to take some advise. It concerns the new drainage ditches in Dawson City, some of which appear to have been placed on the wrong side of the street, inasmuch as water drains on the low side rather than the high. I ask the Minister what steps his officials might be taking to correct this problem, which, in the history of Dawson, has been one both of health and of safety.

**Hon. Mr. Lattin:** Mr. Speaker, I am sure that if we have the drainage on the wrong side of the street, our department will certainly look into it and correct that as fast as possible.

#### Question re: RCMP Agreement

**Mr. Byblow:** I direct my question to the Minister of Justice. Can the Minister confirm whether the present five-year agreement for RCMP policing services expires next year?

**Hon. Mr. Graham:** Mr. Speaker, the present agreement does expire next year, yes.

**Mr. Byblow:** A recent statement, Mr. Speaker, by the Solicitor General, Mr. Kaplan, proposes that the provincial, in this case Territorial, share of the cost of the police services be increased to 75 per cent from what I understand to be 56 per cent presently. Is the Minister aware of this?

**Hon. Mr. Graham:** Mr. Speaker, I am not aware of any statement that he made: that Mr. Kaplan would like to see our share increased to 75 per cent. I have heard proposals all the way up to 90 per cent.

**Mr. Byblow:** I believe that the 90 per cent relates to the municipal portion of police services elsewhere in the country. My question to the Minister would be: since next year's budgetting is being prepared now, and the proposal, if implemented, will cost the Territory substantially more for these services, does the Minister plan any representation to the federal government to present a case for lowering that large increase?

**Hon. Mr. Graham:** Mr. Speaker, I am part of the group of Ministers of Justice and Attorneys General from across the country who will be presenting a proposal to the federal minister. As part of that group, yes, we will have our input.

#### Question re: Affirmative Action Plan for Women (Continued)

**Mrs. McGuire:** I have a supplementary to a question I asked the Minister of Education. Since the Minister has no reason for not tabling the Yukon Plan of Action for Women, other than that he forgot, would the Minister now assure the House that this document will be tabled during this Session?

**Hon. Mr. Graham:** Mr. Speaker, I will do one better than that, I will table it right now.

#### Question re: Native Liaison Position

**Mrs. McGuire:** I have a question to the Minister responsible, regarding the YTG Native Liaison and Advisory position previously held by Mrs. Wabisca, who left the position on a leave of absence. Will the Minister please advise us if the position is still open; and if it does exist, when the position will be filled?

**Hon. Mr. Graham:** I am sorry, Mr. Speaker, I missed the first

part of the question.

**Mrs. McGuire:** Mr. Speaker, I was questioning the Minister of Education, in regard to the YTG Native Liaison and Advisory position previously held by Mrs. Wabisca, who left the position in a leave of absence. My question was: will the Minister advise us if the position still exists; and if it does, has the position been filled?

**Hon. Mr. Pearson:** Mr. Speaker, that responsibility falls under my portfolio.

Mr. Speaker, it was our considered opinion that while Mrs. Wabisca did work for us as the liaison officer, there was not, sadly, all that much accomplished. She took a leave of absence, and we granted her that leave and protected the position for that time she was on leave. She subsequently decided to terminate her employment.

We are trying to assess at this time whether it would not be opportune for us to fill the position once again. I would very much like to get some kind of a liaison going and this may well be the means to do it. I would suggest, Mr. Speaker, that it is something that is under active consideration at this moment.

**Question re: Yukon Housing Corporation Board**

**Mr. Penikett:** I have a question for the Minister responsible for the Yukon Housing Corporation. I would like to ask the Minister how many positions there are on the Yukon Housing Corporation Board which, to his knowledge, are presently vacant.

**Hon. Mr. Lattin:** Mr. Speaker, at this particular moment there are none. We have just made some appointments to the Board: just concluded this week.

**Mr. Penikett:** That is good news. I wonder if the Minister might enlighten the House at some point and advise us who these three people are.

**Hon. Mr. Lattin:** I will, Mr. Speaker.

**Question re: Weigh Scales**

**Mrs. McGuire:** I have a question for the Minister of Public Works. In view of the fact that we have just as many outside carriers coming into the Yukon without proper licences as we had before the amendment to the *Transport Public Utilities Ordinance*, would the Minister consider future plans for installing weigh scales at the Alaska Cassiar Highway intersection?

**Hon. Mr. Graham:** Mr. Speaker, I do not know where the Honourable Member gets her information as to the number of vehicles or transport units coming into the Territory illegally; however, the Department of Consumer and Corporate Affairs is looking at several alternatives, and if the alternative of establishing a weigh scale somewhere on the Alaska Highway south is seen as an appropriate solution, then we will be making that recommendation to my colleague, the Minister of Public Works.

**Question re: White Pass Financial Problems**

**Mr. Penikett:** I have a question for the Government Leader regarding the Minister of Northern Affairs' upcoming visit to Whitehorse. Can the Government Leader say whether, to his knowledge, the Minister will be announcing some decision with respect to the financial problems experienced by White Pass?

**Hon. Mr. Pearson:** No, Mr. Speaker, I am sorry I cannot.

**Mr. Penikett:** Earlier this year and for some time before that, this Legislature was operating under the assumption that the problem was not only monumental but urgent. Can the Government Leader advise the House if, as far as he knows, that is still the view of the Government of Canada?

**Hon. Mr. Pearson:** Yes, Mr. Speaker, I think it is still the view of all of the participants that it is, in fact, a very urgent matter, and we are assured by all Government levels that it is being treated on an urgent basis.

**Mr. Penikett:** The one condition for a resolution placed by this House was full public disclosure of the financial position of the company.

I wonder if the Government Leader can yet indicate to the House any direction from which this matter might be satisfied?

**Hon. Mr. Pearson:** Mr. Speaker, the company, in confidence did make full disclosure of its finances to the Canadian Transport Commission, when they did their study. That part of the study was, of course, held in confidence, because it was asked for in confidence by the CTC.

Mr. Speaker, it will be a question of us, as a Government, saying to White Pass that our House would like to see these figures, and it is a decision that they would have to make.

**Question re: Tahltan Land Claim**

**Mr. Byblow:** I have a very short question for the Government Leader. On October 16th, the Government Leader announced that he had received a copy of the Tahltan Land Claim. Has he had an opportunity to determine whether his Government will be taking a position on that claim?

**Hon. Mr. Pearson:** No, Mr. Speaker, we have not had an opportunity.

What we did receive was a very, very broad outline. There were no specifics, and I would respectfully suggest that I would like to keep an open mind with respect to the Tahltan claim; we should see the specifics before we do make any decision.

**Mr. Byblow:** With respect to his present knowledge on that particular claim, can he determine whether or not it will hold up the land claims process in general?

**Hon. Mr. Pearson:** Mr. Speaker, I think I have tried to answer that question before, and about all I can say is that I hope not, because it is difficult to tell; it is very hard to say.

**Question re: Land Sale North of Whitehorse**

**Mr. Penikett:** I have a question for the Minister of Municipal Affairs. I asked the Minister Monday if the Government had yet reached a decision on the question of price in relation to the planned sale of 20-acre parcels of land north of Whitehorse.

The Minister replied that he is unprepared to say what the decision is. Could the Minister now say whether the Cabinet has, or has not, made a decision on this question?

**Hon. Mr. Lattin:** Mr. Speaker, no, the Cabinet has not made a decision on it. I might point out, Mr. Speaker, that I have as yet not placed a submission before the Cabinet to consider. We are actively pursuing it. It is something we are very aware of. But at this particular moment we have not, in the department; myself and the department, we have not come up with a figure that we feel we are prepared to bring forward. We are still, in other words, engaged in active consultation.

**Mr. Penikett:** I accept that the Minister has a lot on his plate at the moment, but I wonder if he could tell the House what kind of timetable he has for reaching a decision on this question, and, further to that, how far away these land sales might be?

**Hon. Mr. Lattin:** Mr. Speaker, we have not locked ourselves into any time restraints as to when we are going to bring it forward. As I said before, we are actively pursuing it. I do not want to be rushed on this matter because I realize that it is a very important decision that has to be made. I want to consider all the ramifications before we make that decision.

**Question re: Game Officials**

**Mr. Fleming:** I have a question for the Minister of Economic Development. On October the 27th I asked the Minister a question, regarding threats that may have been made against Game Officers, and also a supplementary which he took under advisement. Is it possible that the Minister can answer those questions today?

**Hon. Mr. Lang:** Mr. Speaker, I recollect that I have something on my desk with respect to the question that was asked. I will bring it in on Wednesday.

**Question re: Pipeline/Inflation Impact**

**Mr. Penikett:** The Government Leader stated this Tuesday that his Government was not in any way planning for rent controls, or food rebates, to low income earners in the event of super inflation during the pipeline period. In view of a recommendation in a report prepared for Foothills that found this to be the most effective way of countering inflation for these groups, can the Government Leader state why he has rejected this alternative?

**Hon. Mr. Pearson:** Mr. Speaker, possibly there was some misinterpretation of what I said. It is an alternative that is always open, and could be used.

It is our considered opinion at this point in time, Mr. Speaker, that it will not have to be used.

**Mr. Penikett:** Given that one of the unfortunate consequences of introducing such a controlled program has been the possibility of shortages, raised by a number of retailers and wholesalers, based on their experience in Alaska, can the Government Leader say if his officials have had any opportunity to consider the problem of shortages of essential foods during a pipeline period, or essentials of any kind. More particularly, has he considered what might initially sound like a ludicrous proposal, but is a realistic option, putting some basic foods in, for example, government liquor stores, should that event occur?

**Hon. Mr. Pearson:** Well, Mr. Speaker, it is not anticipated that we are going to run into problems like shortages of food, but certainly this Territory is flexible enough, it is close enough to its suppliers, that it can react to any such circumstances if they do arise.

**Mr. Penikett:** I am glad to hear of the Government's flexibility today, in view of the vulnerable position that some communities can be in with regard to this kind of situation, as evidenced by the recent fire in Dawson City.

Can the Government Leader say specifically if there is a contingency plan, at the moment, under the emergency measures plans of this Government, to deal with the eventuality or the possibility of a food outlet going out of operation in any of the smaller communities?

**Hon. Mr. Pearson:** Mr. Speaker, there is no contingency plan in place, but I want to assure this House that if it had been necessary, we would have had food on an airplane within an hour to Dawson City as a result of that fire. We have that capability.

**Mr. Speaker:** There being no further questions we will proceed to Orders of the day.

## ORDERS OF THE DAY

### GOVERNMENT BILLS AND ORDERS

**Mr. Clerk:** Second reading, Bill Number 62, standing in the name of the Honourable Mr. Lang.

#### Bill Number 62: Second Reading

**Hon. Mr. Lang:** Mr. Speaker, I move, seconded by the Honourable Member for Tatchun, that Bill Number 62, *An Ordinance to Amend the Game Ordinance (No. 2)* be now read a second time.

**Mr. Speaker:** It has been moved by the Honourable Minister of Economic Development, seconded by the Honourable Member for Tatchun, that Bill Number 62 be now read a second time.

**Hon. Mr. Lang:** Mr. Speaker, as all Members know, the reason for the amendments to the *Game Ordinance* is the result of our discussions with Senator Steuart on the COPE Land Claim. You recall that over the course of the last year our Government had taken a very strong stand on this land claim to our northern coast. I am pleased to report to the House, Mr. Speaker, that our stand on behalf of Yukon appears to have been successful.

At the outset I want to make it clear that a number of issues on the present agreement-in-principle have yet to be resolved, and we are acting in good faith that Senator Steuart and the Government of Canada will resolve the remaining issues to our satisfaction to the best interest of Canada, and will also be taking into account some concerns of the people of the Delta.

Mr. Speaker, the amendments before you allow us to create a group trapping area for the people who traditionally have used the area. This amendment will allow those people on the Delta who are within 150 kilometers of our border to apply for a trapper's licence. The area in question has not been formally designated, since it will require discussions with the people concerned, but it will take in a portion of the North Slope water shed. I must stress that it will not interfere with the group trapping area used by the Old Crow Indian people, nor for that matter the area that the Fort McPherson Indian Band uses as a group trapping area.

Mr. Speaker, an important principle in the enshrining of this legislation is that holders of non-resident trapping licences will have to abide by the laws of general application.

Secondly, they will be permitted to hunt only in that area designated as the group trapping area.

Some people may question our capability to enforce this legislation, but as all Members know, it is our intention to put a conservation officer in Old Crow this coming year, and this area will be part of his or her responsibility.

I believe we are coming forward with a constructive method of resolving this issue, and at the same time, protecting this Legislature's right to make wildlife laws, something I believe is very important.

Also, it has to be stressed that it was of paramount importance in our minds to come up with a solution that would ensure the conservation of our wildlife in this area. I believe we have achieved this all-important goal, Mr. Speaker, and I would say that a lot of credit for the work that has gone on over the course of the last six months has to go to Mr. Phelps, who is responsible for negotiating land claims on behalf of the Government of the Yukon Territory.

I would like to conclude by saying, Mr. Speaker, I think we have taken a very constructive initiative and one that will work to the betterment of all of us.

**Mr. Njootli:** I would like to respond and elaborate on the principle of the bill, Mr. Speaker, because the purpose of the bill, I believe, is to allow extra-Territorial citizens to hunt game in my constituency. What I might say today will reflect on some aspects of the future land claims, and the difference between the extra-Territorial citizens: more specifically the Inuvialuit and Eskimos and the Old Crow Indian people, with respect to the land in question.

Mr. Speaker, you know very well that I have a large electoral riding and it is the most north-western riding in the whole of Canada; it is some 60,000 square miles. In this riding, Mr. Speaker, we find large numbers of caribou and moose, all kinds of fur-bearing animals, and this bill will allow the many Eskimos and Indians from the communities of Aklavik, Fort McPherson, Inuvik, and Arctic Red to come into my people's hunting grounds. In this traditional area, if I may call it that, these communities can increase the hunting and trapping population in my constituency in northern Yukon by some 800 to 1,000 trappers and hunters.

Mr. Speaker, I am pleased to know that this Government is intending to construct a building in the Village of Old Crow for the purpose of Wildlife enforcement. This will allow the necessary surveillance, and I am sure that this person will carry out his or her duties to the utmost. I recommend strict guidelines for this person, when he or she carries out this important task in this area.

Mr. Speaker, the Eskimos and the Indians of the Northwest Territories can sell wild meat on commercial markets. Not too long ago they had an ad in the *Vancouver Sun*, which emphasized that caribou steaks are available from the communities of the Northwest Territories. I do not believe in that type of wildlife destruction. Mr. Speaker, I am an advocate of conservation — particularly in my riding, the last of Canada's wilderness. I believe in subsistence hunting, trapping, and fishing: the enforcement of regulations should meet this train of thought. Mr. Speaker, I believe in this Government and its policies.

I believe that Land Claims, which very well brought this bill into this Assembly, should be settled soon. This Government, by introducing this bill, has brought a major breakthrough to that objective. I know for sure that the general public would like to see an expeditious land claim settlement. This I am sure will boost the Yukon's economic situation.

Mr. Speaker, we all know that this Government has a legal jurisdiction over wildlife, and I believe that the basic responsibility of the Yukon Wildlife Branch is to protect wildlife in Yukon. Old Crow people need this protection. They need this protection because if the caribou and/or the fur-bearing animals migrate inland and they never go back to the North Slope, Mr. Speaker, we will find the Eskimos coming and moving in to follow this possible migration of wildlife. I say this, Mr. Speaker, because it has happened before.

One example: the Eskimos never lived in Yukon's North Slope. Yukon's North Slope was merely a passageway for those people from Alaska to the high Arctic.

The Eskimos did this about 5,000 years ago, compared to the 30,000 years of existence of the people in the Old Crow area. The Eskimos, Mr. Speaker, retreated back to the mainland in recent times when the missionaries came; when the Hudson's Bay Company came. Soon they came south more and more, towards these services. These new services from the outside were not — I repeat, Mr. Speaker — were not on Yukon's North Slope. They were on the Mackenzie Delta. I am going to go on and on, Mr. Speaker, because the principle of this bill concerns my riding. My riding means quite a lot to me, and to my people.

Further, Mr. Speaker, the Eskimos and my people used to fight a lot of battles. They fought fiercely over the land: the Yukon's North Slope. The Eskimos lost the war, because their harpoon did not reach as far a distance as our bows and arrows, and also because they fought in a strange environment: on land, and not on the Arctic Ocean, on land where the trees were found.

I want to establish the fact, Mr. Speaker, that not only do the Eskimo people not deserve the special right to hunt and trap in the Yukon, but when I was up on the North Slope, Mr. Speaker, I never saw an Eskimo in the entire region.

I am sure the people in question will try to obtain other special rights. These other special rights are not known to us yet. They are in the negotiating stage. But I am sure they will try to obtain

further special rights in the Yukon.

Mr. Speaker, the Eskimos like to eat their food raw. I like mine well-done. They lived on ocean fish and whales. I used to, and still am, living on the caribou and the moose and the fish of inland lakes: lake trout. The Eskimos are short and they are bulky. I am tall and weigh 180 pounds, just right for a six-footer. Yes, Mr. Speaker, there is a great difference between my people and the Inuvialuit.

How both of these people can use the same region to hunt and trap together just beats me, Mr. Speaker. So, if and when these questions arise in the future in this regard, I ask this House, Mr. Speaker, to keep these thoughts in mind.

Again, I submit to you that I agree in principle to this bill, firstly because it opens dialogue with COPE in the modern times. Secondly, because it puts a spark to the speed of the land claims negotiations, which, of course, is the Government's policy. Thirdly, because this special right granted to outside Yukon residents to hunt in the constituency can be monitored at the Old Crow level.

Mr. Speaker, I think this bill will surely pass this House and I hope it does. I speak now because, as you know, I am your Deputy Speaker and Chairman of the Committee of the Whole, and therefore I cannot deal with it at Committee stage.

I think that at this time, before I stop speaking, I would like to thank you for your time on second reading of this bill.

Mr. Penikett: I move, seconded by the Member for Campbell, that debate on Bill Number 62 be adjourned.

Mr. Speaker: It has been moved by the Honourable Member for Whitehorse West, seconded by the Honourable Member for Campbell, that debate on second reading of Bill Number 62 be adjourned.

*Motion agreed to*

Mr. Speaker: May I have your further pleasure?

Hon. Mr. Lattin: Mr. Speaker, I move, seconded by the Honourable for Hootalinqua, that Mr. Speaker do now leave the Chair and that the House resolve itself into Committee of the Whole.

Mr. Speaker: It has been moved by the Honourable Minister of Municipal and Community Affairs, seconded by the Honourable Member for Hootalinqua, that Mr. Speaker do now leave the Chair and that the House resolve into Committee of the Whole.

*Motion agreed to*

*Mr. Speaker leaves the Chair*

## COMMITTEE OF THE WHOLE

Mr. Chairman: I call Committee of the Whole to order.

We will be discussing Bill Number 57, after a short break.

*Recess*

Mr. Chairman: I call the Committee of the Whole to Order at this time.

*On Clause 299(1)*

Hon. Mr. Lattin: Mr. Chairman, I just wanted to point out to my friend across the way, that if his vehicle does get towed away, this new provision allows for us to notify him. I am sure he will be very happy with this and I am sure he will support it.

Mr. Penikett: The Members thank the Chairman very much. If the Minister thinks that I am ever going to be happy about any method by which they tow my truck away, he has another think coming.

While we are dealing with Clause 1 as a whole, let me ask something by way of a general question, that concerns the people who are going to be doing the towing away, and issuing tickets, and so forth. We have in this section 1(1) a reference to authorizing a peace officer or any designated officer. Now if I remember correctly, there has been some confusion as to the definition of a peace officer. That confusion may no longer exist but I want to be reassured on that point.

It seems to me there was a period of time during which the city's by-law officers' authority to do certain things under Territorial legislation was in doubt.

That, combined with the reluctance of the RCMP, for the most part the other police force in the Territory, to engage in such socially useful activities as issuing parking tickets, created a problem, I think, in terms of policing. One of my observations, during my time on city council here in Whitehorse, was that passing laws

or by-laws which you had no way of enforcing was about as useful an exercise as, for example, trying to borrow money from the Leader of the Opposition. I should not say that; perhaps I should say, getting the Government Leader to join the NDP. It was about as useful an exercise as that because the problem of enforcement is a serious one, and I do not think we should delude ourselves about it. It becomes more serious the lower the level of government you go to.

It seems to me it is one thing for the Territory to be able to get its laws enforced, if it wishes to have them enforced, with its police contract with the RCMP. It is a much more difficult proposition for a municipal body, even one as large as Whitehorse, to have its by-laws enforced, particularly if there is not a great public demand for them. I can think of a number of by-laws in respect to vehicles and streets and so forth which are not ignored, but which are not enforced aggressively, just because a by-law enforcement group of four or five men cannot possibly look after all these things.

I think that the problem of traffic and parking and so forth is difficult enough, and I think that the City is a long way from solving its own problems, and it is not really the Territory's business to tell them how to do it; but I would really appreciate hearing from the Minister some indication as to whether the status of the peace officer — particularly the by-law enforcement officers' status as peace officers — is being cleared up, and if we can be sure that, given the authority we are going to give here, that there will be adequate and effective policing of it.

Mr. McWilliam: Mr. Chairman, yes, I believe I can assure the Member that the status has been clarified. In addition to the *Motor Vehicles Ordinance*, we also have provision in Clause 402, which deals with appointing enforcement officers as peace officers. So it has been clarified.

Mrs. McGuire: In subsection (1) it says that, if a person's vehicle is impounded, for whatever reason, the person is notified, and there is a time limit of thirty days within which to pay the impoundment fees, or it could be sold to collect that fee. What happens in a case where the owner is not found for a long period of time or, say, for the duration?

Mr. McWilliam: Mr. Chairman, the provisions dealing with impoundment and disposal are primarily contained in the *Motor Vehicles Ordinance*. The significant change in this section is to provide a requirement for the council to have to notify the person to whom the vehicle is registered. They send that to his last known address. If he has subsequently moved, then the procedures for disposal of vehicles under the *Motor Vehicles Ordinance* would take place.

Mrs. McGuire: You mean the procedure of selling the vehicle takes place even if they cannot find the owner?

Mr. McWilliam: Yes, Mr. Chairman, that is laid out in the *Motor Vehicles Ordinance*. After a certain period of time the vehicle can be sold.

Hon. Mr. Pearson: Mr. Chairman, for the information of the Honourable Member: this provision is in the *Motor Vehicles Ordinance*, and it deals primarily with, and is primarily there, because of a problem that arose in the Territory, when there was no legal way to dispose of abandoned vehicles.

The RCMP and this Government found themselves the dubious holders of a number of abandoned vehicles, and legislation was then promulgated to allow for this. The safeguards in the *Motor Vehicles Ordinance* are quite extensive as well. If the owner of the vehicle is available to be found, certainly he will be found.

*Clause 299(1) agreed to*

*On Clause 299(2)*

*Clause 299(2) agreed to*

*Clause 299 agreed to*

*On Clause 300*

Mr. Penikett: The idea of any municipal body in this Territory trying to control insects other than by spraying is a fascinating one. We have trouble catching the dogs; you would have a real good time trying to catch the mosquitoes and black flies.

I want to ask a serious question about the animal things, because, as ludicrous as it may sound, given the municipal boundaries of this city, it seems to me you could have some conflicts in jurisdiction between the *Game Ordinance* and the municipal by-laws, as far as animals are concerned.

We tend to be lenient in this area about cats. We tend to basically regard them as benign furry little creatures who are allowed to

wonder at will, remain unlicensed and go where they want. Dogs are regarded with much more passion; people seem to love them or hate them and in some cases they seem to do both. In any case, they appear to have one of the attributes of rabbits, in that the numbers never seem to decrease, no matter what corrective measures are taken.

We have had municipalities in this Territory that have had capital punishment for dogs, and it still has not done anything to significantly decrease their numbers.

A lot of time — and I do not overstate this — a lot of time, perhaps as much as ten per cent of the time of most municipal bodies, I would expect, is taken up in dealing with dogs, and how to deal with dogs or how not to deal with them.

But there are other animals around and we have had some serious problems recently, it seems to me, with horses, on both the south Alaska Highway and north Alaska Highway. We have a game farm nearby, and I suppose it is not too ludicrous to suggest you could have a problem with elk, especially if the Minister responsible for Renewable Resources brings many more of them into the Territory.

You could have a problem, theoretically, and let us deal with this quite properly, with moose, with caribou, even within the city limits. My mother-in-law had some difficulties with a black bear within the city limits just this spring, and had to dispose of it. She may have technically fallen afoul of some law in doing that. There are also going to be some problems, I would guess, with other animals, from time to time.

The problem of horses, I guess, is the more serious one; everyone knows about it. I gather there have been demands placed upon this Municipal Council in the City of Whitehorse to do something about horses. Once again I go back to the problem of the poor by-law enforcement officers. I really do not know how, with the best will in the world they can do very much. I wonder if the Minister thought about this problem when this section was being drafted.

**Hon. Mr. Lattin:** Not particularly, Mr. Chairman. I realize it is a problem, and I believe, Mr. Chairman, that as long as we have these animals around, we are always going to have areas of contention and problems. I think the only thing that we can do is to use a common sense approach to it and solve it as the occasion warrants.

**Mr. Penikett:** Let me ask a specific question. It seems to me that the municipalities quite properly are dealing with dogs, but they are really not equipped to deal with much else. Was any consideration given, when you were re-writing this ordinance, to reserving for the Territory the control of other species, which we might be able to deal with better?

**Mr. McWilliam:** As the Minister indicated, this section does not purport to be a panacea for all problems; however, I would object to the statement that there is no provision for dealing with other animals. I would suggest that the way that that could be handled, which was considered when we were drafting it, is to provide that a municipality, in its by-laws, can set up various zones within the municipality where they can have regulations to cover, for example, horses.

Paragraph (g) in 301, I would suggest, deals with that: in most of the smaller communities where there are problems with livestock, we are able to make adequate provision for enforcing the by-law there as well.

**Mrs. McGuire:** I cannot seem to find in here and probably it is a subsection here somewhere, but there is nothing here that says that a council may by by-law state a maximum number of dogs that a person can own, in a city or village or whatever. I know there are other jurisdictions that have that provision.

**Mr. McWilliam:** That could be handled throughout the by-law in a number of different ways. I would suggest that the first one that a municipality would look at is considering the use of kennels, and if they define under the by-law how many animals you have to have before you are considered to be a kennel owner, that would be one way of dealing with it.

**Mr. Fleming:** I have problems with these types of by-laws in small areas mostly, not so much in the City of Whitehorse. The same thing again; they have always had that problem with the smaller towns, because of how it will work in conjunction with the RCMP. For instance, today, if the RCMP get a complaint from an individual in that town that there is something running at large somewhere or other, the RCMP can act on it.

Now I am wondering, here, if we are doing more or less the same

thing as we have done in our regulations on the *Liquor Ordinance*, where the RCMP can be asked to control something, but over here there may be some land they cannot control, which is Federal, and in this case, no law there.

For instance, I guess we should try and get an example of an animal running at large somewhere in Teslin: horses running at large on the airport. Now the Manager of the airport or someone makes the complaint. Now the RCMP will go up there and do whatever is to be done; I think that is probably a fairly easy route to go. Now I am looking at this ordinance as bringing those laws down, giving them more or less to the town to make a by-law, and then they are the ones who are really responsible; also of course the RCMP, if they phone them and ask them to do it. I am just wondering if that is not going to create quite some havoc between the RCMP, the town, the owners of properties, and stuff like that.

**Mr. McWilliam:** I do not believe that the problem that Mr. Fleming has brought up will be a serious one.

The RCMP have indicated their willingness, where requested, to enforce municipal by-laws. The problem in some of the smaller communities has been that there has been no by-law, or law, there, for them to enforce.

**Mr. Penikett:** I remain concerned about the problem of enforcement. If I can, I would like to give to the Minister two examples, and ask what might be the case in each. A moose is wounded and found within the city boundaries of Whitehorse. Somebody calls somebody to deal with it. Now, presumably, the Game Department could deal with it, the RCMP could deal with it, or the City By-law Officer could deal with it. Is it reasonable to expect that, had any citizen asked any one of those officers to do it, that they would all be peace officers within the meaning of this ordinance, and would be empowered to deal with it properly?

I have just looked at Clause 402, the clause referred to by the witness. In the same instance, say it was a horse that was wounded and lying near the road, just out by Takhini Hot Springs, or some such place, and I guess that could happen. Could anybody in authority ask a policeman to deal with it, or a Game Officer or whoever came along, including a by-law enforcement officer? Are they all peace officers for this purpose? Can we be sure there will not be any buck-passing, or any reluctance, on the part of anybody as to who should deal with that kind of problem?

**Mr. McWilliam:** I believe that, in answer to that question, I should point out that it is the municipal council's responsibility to designate individuals as peace officers. If they have so designated all their by-law enforcement officers as peace officers, then there will be no problem. In some of the smaller communities, where there is no requirement for an ongoing enforcement officer, they would obviously not be exercising their power, and would be looking to RCMP or the Game Officer to perform that function for them.

**Mr. Penikett:** I admire Mr. McWilliam's intelligence, but he is carefully avoiding answering the question I really want answered.

What I want to know is can the municipality designate the RCMP officers within its boundaries, and the game officers within its boundaries, as peace officers, for the purpose of this ordinance?

**Hon. Mr. Pearson:** Mr. Chairman, the RCMP are peace officers. They are designated as peace officers by other legislation. They will be peace officers pursuant to this legislation, because they are designated peace officers.

The same with designated game officers; if they are peace officers then they are peace officers. But the municipality has a responsibility, if it wants to assume it, or has the capability, of as well designating its own peace officers.

Now, Mr. Chairman, if there is an injured horse on the side of the street and someone phones up the RCMP, on a personal basis, the RCMP member might well say, "Well, I do not want to handle it; phone the municipal peace officer. We have no control over that kind of thing." But in the final analysis, I think it is the responsibility of any peace officer, if the problem is brought to their attention.

**Mr. Penikett:** I thank the Honourable Leader for his answer, for his clarifying it in my mind, but the police officer may be personally reluctant. Let me ask him this, not as a point of law but as a point of contract between this Government and the RCMP: would it not be deemed as an unreasonable request if a citizen stopped an RCMP officer and said, "I want you to deal with this problem." He cannot just simply say, "It is a municipal by-law and you have got by-law enforcement officers; go to them."

**Mr. McWilliam:** I believe the question was addressed to the



Government Leader; however, that is correct. It would not be unreasonable to request any peace officer to carry out a function that the municipality has provided the legal authority to, by by-law.

**Mr. Fleming:** My question is just the opposite: the board or the aldermen or the mayor, for instance, in this ordinance you are giving so much power that you are almost making them peace officers.

I am wondering if they are not considered peace officers somewhere along the line, seeing as it looks to me, and maybe if it is explained that it is not I may agree, but in the ordinance there are so many places that give them the power to actually fine, or whatever: impose a certain amount of fines or whatever, and to do certain things, it seems to me, which should only be done by a peace officer.

**Mr. McWilliam:** I think that Mr. Pearson answered most of the concern there. A peace officer is an individual who has received that appointment under some statute: for example, the RCMP, or in some cases, perhaps a Game Officer has been appointed as a peace officer. What this legislation does is allow the municipality, if it feels it is necessary to have additional enforcement officers under its own control, to provide for them to also become peace officers. So it is discretionary, upon the municipality.

**Mr. Falle:** I would like to ask the Minister if this legislation covers such things as a wild horse running around a community. Who do the people of the community ask to get this horse out of the community. Does this legislation give us the power to ask a certain person, or designate a certain person, to do a job like that? I know it crosses over into wildlife and domestic life, but I see it as a basic thing, and I would like to get some clarification on that.

**Mr. McWilliam:** Yes, this legislation provides for the municipality to be able to appoint enforcement officers to carry out the effect of its animal control by-law within a municipality. They would then be able to control problems like horses.

**Mr. Byblow:** From this discussion about the relationship between the municipal council and its by-laws, and the RCMP, I am wondering if the occasion could arise where there would be the demand for a contract to be struck between the municipal council and the RCMP, for the purposes of enforcement and carrying out the terms of the by-laws that have been established. I think that the point that has been brought out by Mr. Fleming is that in the smaller municipalities you are not going to be in a position to pay an enforcement officer, so you are going to have to rely on the existing agencies. Will that, because of the increased load, set up the need for an actual contract, whereby the RCMP will be paid by the municipality for this?

**Mr. McWilliam:** That is correct. You could have a contract or an agreement between the municipality and the RCMP. However, at the present time, it would be under the Territorial Police Services Agreement.

**Mrs. McGuire:** On a point of order, Mr. Chairman: in going back over a few pages I missed in Committee here, I have run across a sentence on page 145. It is near the top of the page in (6). It says, "...an appeal from the decision of that person may be had to the council of the municipality ...".

**Mr. Chairman:** Has the Honourable Member unanimous consent to re-open clause 294(6)?

**Some Members:** Agreed.

On Clause 294(6)

**Mr. McWilliam:** Mr. Chairman, this just provides that, where council has designated one of their employees to be responsible for issuing licences to taxi cab drivers, if he refuses to issue or renew a licence, there is an appeal from that to council.

**Hon. Mr. Pearson:** Mr. Chairman, to answer the Honourable Member's question directly: yes, that is correct legislative drafting. The word "had" is used properly there.

Clause 294(6) agreed to

Clause 300 agreed to

On Clause 301

**Mr. Penikett:** I just want to be perfectly clear about this. We seem to have now what some people call an open-range system for horses right now, in most of the Territory. What we are doing in this legislation, if I understand it correctly, is giving the power to a municipality to decide that that shall no longer be the case inside a municipality. If they wish to regulate the movement of domestic animals within the municipality, they can. So we could have, for

example, at the perimeters of this city, people who, within the city limits, will be under domestic restraints as regards their livestock, and people outside the boundaries could be under a much more liberal regime. Is that correct?

**Hon. Mr. Pearson:** Yes, Mr. Chairman, that is absolutely correct.

Clause 301 agreed to

On Clause 302

**Mr. Byblow:** Clause 302(1)(c), in effect, deals with the area of quarrying, does it not?

**Hon. Mr. Lattin:** Yes, it seems so to me, Mr. Chairman. I might point out, in this particular section, that these are general enabling provisions on items that are of local concern. In previous legislation, it had not been spelled out; there have been a lot of arguments to define them, and we have put this in so that we can attend to these particular sections that were not normally municipal matters previously. It is just for clarification, and that is correct on 301(c).

**Mrs. McGuire:** On subsection (e), "...the cutting of trees on lands within the municipality...requires a permit...", is that on private land as well, like your own lot?

**Mr. McWilliam:** What you are dealing with there is public lands.

**Mr. Byblow:** I have just a general question, sort of relating to all of these sections that we are going through. Because it is going to take, in the case of the smaller municipalities, quite some time to develop regulations or by-laws in these various areas that we are dealing with, simply because there does not exist, and may not exist, a regulation pertaining to a matter, what is the jurisdiction of that kind of thing, then? To use (e) for example, or (d): what if someone wants to take river-bed gravel, and there is no specific by-law, or if somebody wants to cut some timber, and there is no regulation pertaining to that? What is the jurisdiction of that?

**Mr. McWilliam:** These are permissive powers for a municipality. If they do not choose to exercise them then there is no restriction over, for example, the taking of timber.

**Mr. Fleming:** I might ask the question of the Minister or the witnesses, whether, if the municipalities do not have those by-laws, the Territorial laws would not override them?

**Mr. McWilliam:** That is correct. I should have added in my previous answer that they would still be subject to any Territorial legislation that is in effect.

Clause 302 agreed to

On Clause 303

**Mr. Penikett:** I just have one question about this, Mr. Chairman. I know that in a small cabinet there is, or at least ought to be, pretty good coordination between the departments. I just wondered if Section 303 in this ordinance which makes reference to the *Curfew Ordinance* — if that has any implications for Bill Number 54, which has also been introduced in this Session?

**Mr. McWilliam:** I am sorry Mr. Chairman, I am not aware of what Bill Number 54 is.

**Mr. Penikett:** I can tell you what it is. My name for it is the *Dirty Hippie, Drunken Indian, and Do Not Park Your Pickup Truck At the Airport Ordinance*, but the Government calls it the *Petty Trespass Ordinance*.

**Mr. McWilliam:** No, I do not believe there is any conflict, Mr. Chairman.

**Mr. Penikett:** Sorry, perhaps this is not the time to raise it. I just wondered if 54 was supposed to supersede this, because it seems to me that it deals with public places and young people in those public places, and there might be some overlap.

**Hon. Mr. Pearson:** Mr. Chairman, there could well be overlap if the municipality happens to have a curfew, and it is after the curfew. That is about the only time that there could be overlap.

The petty trespass legislation does not have any time constraints in it.

Clause 303 agreed to

On Clause 304

**Mr. Penikett:** Mr. Chairman, I like pigeons. I think some of the greatest cities in the world have an abundance of them. They not only decorate some of the most magnificent old buildings in the world, but they tend to discolour them, too, and deposit a product on those buildings which I gather has little commercial value.

I have noticed in this city that there is one building of not very

great age, that seems to be particularly appealing to this species. They do not, as yet, seem to be doing a great deal of harm. There seems to be someone feeding them, I gather, which is why they hang around this place. I do not know if they are owned by that person, in any meaningful sense, but they certainly seem to have taken up residence in downtown Whitehorse.

I wonder whether, if these particular birds become such a nuisance, we are really required to regulate them, or are we just covering our bets here?

**Hon. Mr. Pearson:** Mr. Chairman, it must be well understood it is not we who are going to regulate them. We feel very strongly that we must give a municipality the power to regulate them, if the elected members of that municipality deem that it is necessary that it be done.

In my own personal opinion, I cannot think of a community in the territory right now where it is necessary, but it is conceivable. It has happened other places, and it is conceivable that it could happen here.

**Mr. Fleming:** I am a little concerned. I do not really believe that pigeons, or ravens, or seagulls, or any of those types of birds, should be done away with.

I would not want to be involved in passing a law that would ever allow it, either. I am wondering, since it appears that this ordinance does allow a municipality to override the laws that now exist, saying you cannot shoot or kill ravens and so forth; does this ordinance give them a right to change that, or not?

**Hon. Mr. Lattin:** No, Mr. Chairman.

**Mr. Penikett:** Well, Mr. Chairman, I hope it just never comes to the point where we have to see municipalities hiring bounty hunters to go after the pigeons. I know there are some cities where they hire guys with shotguns just to clean them off the roofs. If I remember correctly, New York City had to hire hired killers to go chase the alligators in the sewer system. People had bought these alligators as pets from the pet stores and, after a certain size, they go to the point where they were eating too much and they were flushed down the toilet. The next thing you know they took up residence in the sewers. I gather they thrived there, which, perhaps, says something about our waste disposal systems.

But the only question I have about these particular birds, since they seem to be brought up for special attention, is why that reference to pigeons is not in 301, but rather is put in a separate section, 304?

**Mr. McWilliam:** The ordering of this was just in line with the traditional legislation. We have, at the present time, in the *Municipal Ordinance*, a section similar to this, and it is being dealt with in the same fashion.

**Mr. Byblow:** Yes, it is certainly curious why section (a) deals only with pigeons and all the other sections deal with people. I certainly agree with the Honourable Member for Campbell that, short of eliminating the birds, I am not sure how you control their perching, roosting, or nesting.

Nevertheless, I am wondering if, in the course of the sections in 304, because they deal with regulations pertaining to public nuisance, abatement of noise, disturbance of the quiet, peace, rest and enjoyment, comfort and convenience of the municipality, if we do not have some overlap with the *Petty Trespass Ordinance* here.

**Hon. Mr. Pearson:** No, there is no overlap. Mr. Chairman, we are not talking about regulations here. We are talking about by-laws. These are not regulations. The Honourable Member said that these are regulations. They are not. They are by-laws of a community.

They have nothing to do whatever with the public trespass legislation at all.

*Clause 304 agreed to*

*On Clause 305*

**Mrs. McGuire:** I am sorry, I did not get my page turned over fast enough to 155 where there is a typo in (h), where it says, "sparks, ash, soot, cinders, fumes or ther"...

**Mr. Penikett:** In the word preceding "effluvia," which means their stinky stuff, it should be "their," rather than "ther." It is a typo Mrs. McGuire is calling your attention to. The witness should be consulted, as there is another possibility: instead of "their effluvia" it could be "other effluvia."

**Mr. McWilliam:** It is indeed a typo, it is supposed to be "other".

**Mr. Chairman:** Mr. McWilliam, would you like to clarify this section by reading right through.

**Mr. McWilliam:** The paragraph would read, "require the owners or occupiers of real property, or their agents, to eliminate or reduce the fouling or contaminating of the atmosphere through the emission of smoke, dust, gas, sparks, ash, soot, cinders, fumes, other effluvia; and for prescribing measures and precautions to be taken for such purpose; and for fixing limits not to be exceeded in respect of such emissions,"

**Mr. Fleming:** This subsection (g), I really have a problem with that. Is this a new way of, more or less, to fining people and the penalty is paid, of course, by cash? This seems to be a new way of being able to do that very thing; you can add this type of thing because your property becomes untidy or unsightly and the fireweed is growing all over it, that you can add more to the taxes all of a sudden. Can that possibly be considered as a tax?

**Hon. Mr. Lattin:** No, Mr. Chairman, I do not think that would be considered a tax. I think it would be a charge against the property, but it is not a tax.

**Mr. Fleming:** Mr. Chairman, I have not quite got that clear yet. I do not want to hold it up but I would like to have that really clear, because it says "...prohibit the owners or occupiers of real property from allowing property to become untidy or unsightly..." and then it goes on down to the bottom and says, "...the thirty-first day of December in any year, shall be added to and form part of the taxes..." Maybe the Government Leader could explain it to me.

**Hon. Mr. Pearson:** Mr. Chairman, this is a penalty, but what happens is if the person has not paid the penalty, if the municipality has incurred the cost on behalf of the person, the person has not paid the penalty, then, Mr. Chairman, it becomes part of their taxes and it becomes collectable under the collection procedures of the taxes, that is all. It is a penalty.

**Mr. Falle:** Mr. Chairman, are we back on 304.

**Mr. Chairman:** Yes, we are.

**Mr. Falle:** The more I read this the more I do not like it. Basically, I do not like this pigeon thing, I feel we are picking on pigeons.

Well, you are going around shooting those poor pigeons and setting a bounty on them. It seems ridiculous.

**Hon. Mr. Pearson:** Mr. Chairman, I cannot let that lay. There is no suggestion here anywhere that anybody can go around shooting pigeons.

*Clause 304 agreed to*

*On Clause 305*

**Mr. Byblow:** Does the witness know if there is any Territorial regulation that presently restricts the distance from a community that firearms can be discharged?

**Mr. McWilliam:** Yes, Mr. Chairman, in the City of Whitehorse, for example, there are distances in municipal boundary.

**Hon. Mr. Lang:** Also, for an example, you cannot discharge a firearm, I think, within a mile of either side of the Takhini Hot Springs Road where there are people living. So there are areas that have been designated and I believe that is actually through the *Area Development Ordinance* outside the municipality.

**Mr. Tracey:** Mr. Chairman, I believe it is one mile from any community.

**Hon. Mrs. McCall:** ...or any inhabited place, like Forty Mile; there is a caretaker there, Mr. Chairman, you cannot discharge a firearm within a mile.

**Mr. Byblow:** The only reason for my question is that if a municipality is established and firearm discharge is eliminated or prohibited under a Territorial ordinance from within that municipality, then it would raise a question as to the need for this section.

**Hon. Mr. Pearson:** Mr. Chairman, in this particular municipality, I do know that there is a rifle range; it is established by by-law.

*Clause 305 agreed to*

*On Clause 306(1)*

**Mr. Fleming:** In this section a building includes any fence, scaffolding, structure, or erection, and I was just wondering: for instance, in front of my own place and many of the rest of us, we have a monstrous pole which comes right up the middle of our driveway with a bunch of power lines hanging on it. Could it be possible this could be used to have those removed or put in certain places?

**Mr. McWilliam:** I do not believe that a pole would be included

under "erection" there. This is intended more for partially completed buildings et cetera.

*Clause 306(1) agreed to*

*On Clause 306(2)*

*Clause 306(2) agreed to*

*On Clause 306(3)*

**Mr. Penikett:** I do not know how different this provision is from the existing ordinance, but I would like to have the Minister say something about his intentions in this regard. It is all very well for us to say that a municipality may exercise this power, but I know from personal experience that it is not easy.

I can think of one case in this city where there was a fairly flagrant case of squatting by, not a resident, but a business. The business had sufficient clout in this community that not only did it manage to force the city to support their application for land on which they were squatting, but they stood in absolute defiance of any suggestion that this section might ever come into force. I do not know what they could have done in terms of holding it up in the courts, but they certainly were in a position, economically, to be able to say to the city, "You try this and we will take it as far as it can go."

So, I do not know how often it has been used. I suspect it could quite easily be used in the case of a building that has only partially been completed, and somebody ran out of money, and it has become a fire trap or something. But I want to know what the Minister has in mind, as far as this section is concerned, because in the instance I have just given previously, I think it would be very hard for a municipality to act unless they were sure that they had the cooperation, the consent and the support of the senior government.

**Mr. McWilliam:** To avoid commenting on the political question of whether they would have the support of the Territorial Government or not, I would just comment on some of the other things that Mr. Penikett has raised.

This section deals with public nuisances, which means buildings which are dangerous to public safety or health. The example that he raised would not apply under this section. We dealt with, yesterday, a previous section under building standards, where a building could be removed or brought up to standard if it was in violation of a by-law. That would be the section which they would appropriately use.

*Clause 306(3) agreed to*

*On Clause 306(4)*

*Clause 306(4) agreed to*

*On Clause 306(5)*

*Clause 306(5) agreed to*

*On Clause 306(6)*

*Clause 306(6) agreed to*

*On Clause 306(7)*

**Mr. Penikett:** It does not come up here, but it seems to me, when I was reading this bill before, that some of these powers that can be exercised here can be exercised in cases where a building does not have — I think it was called an "occupancy permit" but I am not sure whether or not that is the correct terminology. I understand what an occupancy permit is, in the case of a new building that has to be inspected and approved before it can be inhabited. But is it contemplated that some consent might be required, after the fact, for occupancy of a building that is already up and in use?

**Mr. McWilliam:** The sections dealing with building standards give the municipality the authority to establish a system of occupancy permits. As Mr. Penikett has pointed out, that would deal with new buildings, or those buildings where there has been sufficient structural renovations that they are going to require an additional approval. I do not think it would be applicable in this case.

**Mr. Penikett:** I understand what Mr. McWilliam is saying. So I can understand that the normal — even though I do not have the specific clause on it that I should be talking about it under — the normal tradition of grandfathering would occur in terms of existing buildings. For example, a non-conforming use could continue to exist, but you could not aggravate that non-conforming use.

**Mr. McWilliam:** That is correct, Mr. Chairman.

**Mr. Chairman:** It now being 30 seconds to 12 o'clock, the Committee will recess until 1:30. But before we recess, is the section

going to clear?

**Some Members:** Agreed.

*Clause 307(7) agreed to*

*Recess*

**Mr. Chairman:** I call Committee to order.

**Mr. Byblow:** Mr. Chairman, a question has come up on section (7); I would ask for unanimous consent to reopen it and perhaps clarify for the record.

**Hon. Mr. Lattin:** Mr. Chairman, he asked if we could reopen it. It is not my decision.

**Mr. Chairman:** Reopen what?

**Mr. Byblow:** Reopen section (7) just for one clarification.

**Mr. Chairman:** Unanimous consent?

**Some Members:** Agreed.

**Mr. Chairman:** Granted. Proceed.

*On Clause 306(7)*

**Mr. Byblow:** Okay, recognizing that these entire sections deal with granting provision to municipalities to make by-laws, and that this is not a final situation; 306(7) does give a council the permission to go to the courts and require a person to give up possession of land, for an offence whereby he does not remove a building.

Now, I would just like, for the record, if that is the case, and recognizing of course that this may not happen, it is still up to the municipality to do it; but does the full meaning of that clause allow for the repossession of land for an offence of property on the land?

**Mr. McWilliam:** Thank you, Mr. Chairman. It is very nice to know in advance that a question is going to come up. I would first like to comment that this is an existing provision and there have been no problems such as the Member foresees. I would also point out to him that it refers to possession of the land. Possession, in legal terms, would refer to control of the land. This, if the judge permits, would give the municipality the ability to control the land, for the period that is necessary to correct the deficiency. It does not mention ownership there.

**Mr. Byblow:** Okay, so just for clarification then: it is possession without ownership, and subsequent disposition.

**Mr. McWilliam:** That is my understanding, Mr. Chairman.

*Clause 306(7) agreed to*

*On Clause 306(8)*

*Clause 306(8) agreed to*

*On Clause 306(9)*

*Clause 306(9) agreed to*

*On Clause 306(10)*

*Clause 306(10) agreed to*

*On Clause 306(11)*

**Mr. Penikett:** I am a little foggy on the law in these cases, Mr. Chairman, but I would be interested, since I know the Minister is something of an expert in these matters, to know what the situation is in the Territory, where on certain traditional mining claims people may have erected buildings as part of their assessment work: that such buildings may now, in some cases, begin to fall under municipalities — particularly in the case of Dawson where the boundaries could be expanded under this ordinance — but which buildings may not be identified very clearly in the Land Titles Office in the Territory, but may be registered or identified in documents dealing with the federal Mining Recorder Office?

**Hon. Mr. Lattin:** That is kind of an interesting question, Mr. Chairman. Maybe Mr. McWilliam can elaborate on it.

**Mr. McWilliam:** It is not something that I have devoted a great amount of thought to, so my comments would be subject to getting legal advice on it. However, I would suggest that, if you check the intent of this section, it is to apply to any building. The question of how that building has been registered in the Land Titles Office, I think, would not be a particular problem.

**Mr. Penikett:** I just want to make sure I understand Mr. McWilliam correctly. If there were such a building that may have been erected on a mining claim as part of the working of that claim, even though it might not be registered in the Territorial Land Titles Office, there may never have been any application for title of the land or for agreement for sale or anything; then you would still have sufficient access to be able to, or the municipality would be able to, under this section of the ordinance, sue, based on the evidence available.

**Mr. McWilliam:** Yes, that would be my understanding.

*Clause 306(11) agreed to*

*On Clause 306(12)*

*Clause 306(12) agreed to*

**Mr. Penikett:** Mr. Chairman, I do not want to sound picky about this thing but I am thinking of a number of cases in the Territory where there are old buildings and what some people might call "junked vehicles", but what other people might call things of historical or museum interest.

Now I am sure that could leave us to consider a number of comic possibilities. I know of several cases myself here there are old buildings that certainly would not meet anybody's building standards nowadays, where here are vehicles which have been machinery used in connection with the mining industry in some previous time, which, because we have no ordinance yet, as I understand it, to properly protect some things like that, they might fall into the hands of the municipalities because they were trying to clean up, which is a perfectly proper object for them. They may fall afoul with somebody like the Museum Society in the Territory who wants to protect them for an equally good reason.

I see here some potential for a conflict between two good and legitimate purposes, but which may conflict in the case of buildings and vehicles such as being described here. I admit the cases are unusual, but it seems to me that possibility exists here and I would like to have the Minister comment on it.

**Hon. Mr. Lattin:** Mr. Chairman, my interpretation of Section 307: to me, says that the notice shall be given to a particular person in whose ownership this particular piece of machinery is in. If we are talking of junked vehicles; we will bring it to his attention and he will have an opportunity to appear and justify the existence of that particular vehicle.

I do not think we are taking away from him in this particular section; we are laying out the procedures of how he can come up and justify his ownership of it.

**Mr. Chairman:** Order, please. The Chair has not yet passed subsection (12) of clause 306.

*Clause 306(12) agreed to*

*Clause 306 agreed to*

*On Clause 307(1)*

**Mr. Penikett:** Just in general discussion on the same subject, let me deal for a moment, with the particular possibility of the boundaries at Dawson City being expanded to include some of the old gold fields. There may be some, what might be called "junked vehicles", under this ordinance that are old dredges, for example. I doubt very much if Mr. Guggenheim or any of his heirs are going to be jumping on airplanes from New York, tearing themselves away from their art galleries to rush up here to reclaim any of these things, but, presumably, under other ordinances — such as the one we were dealing with the other day regarding owners of property, the Territory might have an historical interest in some of the things like this.

I guess my concern is to make sure that we do not have municipalities disposing of things which have archival interest, without the Territory properly protecting, or at least investigating, their historical value.

**Hon. Mr. Lang:** Mr. Chairman, if the Member reads on, he will see what the definition of a junked vehicle is in subsection (6). We are talking of vehicles, specifically vehicles. We are not talking about artefacts, or buildings that the Member alluded to earlier in his question on this particular matter.

It obvious to me that (a) we are talking about a junked vehicle as defined in the ordinance, and (b) the individual has the ability to appeal to council prior to anything coming forward. So the procedures, as my colleague has pointed out, are very well defined and if there is anything of an historic nature that he has in mind, I am sure that definitely that would be taken into consideration by a municipality in making its decision.

**Mr. Penikett:** I am pleased to have the Minister's assurance on the last point, as I am sure he knows. The problem is that there are some historic vehicles which I know would fall under this definition — I am not suggesting it be changed because there is no purpose served in that — but I can think of several cases where instruments and vehicles of historical interest certainly fall under these definitions. What I am concerned about in such cases is not that the individual be protected — the former owner who has long since left the Territory, with his money — I am more concerned about the

interests of the public of the Yukon being protected, where it comes in conflict with the interests of a particular community, that is all.

**Hon. Mr. Lang:** The only point I would make is that that would be different legislation, and the member will get a chance to debate it at that time.

*Clause 307(1) agreed to*

*On Clause 307(2)*

*Clause 307(2) agreed to*

*On Clause 307(3)*

*Clause 307(3) agreed to*

*On Clause 307(4)*

*Clause 307(4) agreed to*

*On Clause 307(5)*

*Clause 307(5) agreed to*

*On Clause 307(6)*

*Clause 307(6) agreed to*

*On Clause 307(7)*

*Clause 307(7) agreed to*

*On Clause 307(8)*

**Mr. Penikett:** Earlier on we had a section in this bill which Mr. MacKay complimented, because it permitted lawsuits against officers. We have a clause here, which of course I guess, is one that we see in other ordinances, which protects municipalities or their agents or employees; could I ask if there are any legal conventions in this jurisdiction, surrounding things which in this bill are described as any reasonable or necessary acts committed in connection with removal?

**Mr. McWilliam:** Yes, Mr. Chairman, it is my understanding that both those terms are considered by the courts and they have working definitions for them.

**Mr. Byblow:** Just before we clear this section I have a question of a general nature. In all the references to the junked vehicle, it appears that the municipality is being given the permission in every case to pick it up and destroy it; the reference to "destroy" is repeated in several of the clauses.

I am wondering if any intent is envisioned, by this entire Clause 307, to salvage any of this equipment? I am not thinking of that in economic terms; I am thinking in terms of salvage for historical purposes. We have a vehicle that is been left abandoned; it has some historic value; it would like to be placed into a museum; can the municipality, under this clause, take possession of that vehicle and restore it, to be placed into that kind of situation?

I only raise that because the reference is, in every case, for destruction of that unit.

**Mr. McWilliam:** This section is intended to deal primarily with those cars which have rusted out, and have been abandoned, et cetera. I would suggest that the consideration of whether or not that vehicle was to be used for historic purposes or put on display somewhere, would be dealt with, in considering the fate of that vehicle, before you actually include it on the list of vehicles to be destroyed. If you do intend to retain it and fix it up, you would not apply these provisions.

**Mr. Tracey:** Mr. Chairman, would section (5) not also give the municipality the option of whether they are going to destroy it or not?

**Hon. Mr. Lattin:** Yes, it would indicate so, Mr. Chairman.

**Mr. Byblow:** It boils down to a matter of interpretation: Section (5), again, refers to the destruction. I pose this very seriously: if you are giving the municipalities only the permission to destroy it, and not to retain it or restore it, maybe we should consider another term to be extended in there.

**Mr. Lang:** Mr. Chairman, if he reads subsection (5) fully, it says, in "...conditions which it considers necessary", that they may "postpone the removal and the destruction" thereof. I would suggest from any layman's point of view, and for that matter I would contend, any lawyer's point of view, that gives you the authority to decide whether or not it is an historic vehicle, and if it is, then certain steps that are perceived could be undertaken.

I do not think it is a question of bringing this in in every case or incident; this is just strictly a question of procedure.

**Mr. Byblow:** I guess if the intention is made clear, as it has been, that you can take a particular unit and restore it, then that is fine with me.

**Hon. Mr. Lang:** It certainly does not say that it has to be des-

troyed. If you read it, the intent is obviously there. It gives a very wide latitude to any municipality if they are dealing with a question of this nature.

*Clause 307(8) agreed to*

*On Clause 308*

*Clause 308 agreed to*

*On Clause 309*

**Hon. Mr. Lattin:** Mr. Chairman, I have prepared notes on this particular one. I think I should probably outline them. The overall philosophy of this part is to enable municipalities to plan for future growth and development of the community, and to progressively acquire the powers and control to implement and manage the development, to this end. A municipality should have a clear idea of its future growth, and this should be set out by statements of policy and maps of the official community plan.

A zoning by-law, which is a tool which manages development and is one of the important instrument tools of a community plan, may only be prepared after the community plan has been prepared. The other major tool, financial provisions of the community plan, is the means by which a municipality may take a positive step to implement this plan. Interim development control is a transitory power which a council may acquire, to cover the period between deciding to prepare a community plan or the by-law, and actually bringing it into effect.

The object is to forestall development that may not be compatible with the new plan or by-law, until the direction of the plan or by-law is firm, and positive decisions have been made. Having adopted a community plan, the council may pass a subdivision control by-law which will, with the Commissioner's approval, allow it to acquire the power now held by the Commissioner, to control the design and new development of the land subdivisions.

The provisions regarding the development cost charges enable a council to anticipate the eventual needs for various community facilities, and require a financial contribution toward their eventual provision.

The non-conforming use provisions set out the code that applies to land use and buildings not conforming to the provision of a zoning by-law. These provisions are similar to legislation enforced elsewhere in Canada.

The business improvement area division enables a council to create an area subject to the management of the Commissioner, which would seek to enhance the viability and effectiveness of the area.

The appeal provisions of the ordinance are intended to create uniform Territory-wide processes for dealing with variances and the further appeal, or, in some cases, alternate appeal to the Yukon Municipal Board. This is intended to avoid having to go to court on a matter of a technical or administrative nature.

The miscellaneous provisions division incorporates penalties for the violating of this part of the ordinance, and provisions for entering into a development agreement not in conformity to the zoning and other by-laws. The latter provision is similar to present Yukon legislation.

**Mr. Penikett:** Mr. Chairman, I thank the Minister for his statement at the beginning of this section because I think it is useful. It would be probably very difficult for us to discuss an innovation like this without having had that kind of general statement by the Minister at the beginning of debate.

Perhaps it would be easiest for us, for the moment or two we are going to spend in general discussion, to talk about a specific case or two.

Now, as I understand it, the concept of zoning itself is fairly new in some communities, and there has not yet been what you would call wide-spread public acceptance of it. The former Minister of Municipal Affairs shakes his head; well, let me challenge him because I think he is wrong about this as he is about a great many things.

I was in Mayo recently and talked to people there about zoning and there seemed to be some feeling in that community that the zoning that they had acquired came as a result of two options that they were given. Option one was to adopt a zoning plan themselves; option two was to have one imposed on them by the YTG. Now, if I am wrong about that, I would like to hear from the Minister.

Now, I want to ask the Minister, in practical terms: since we are going to get into this business of official community plans and we have the fairly long phasing in period which is allowed under this

bill, exactly what steps would he, as the Minister, and the board, be taking, in sequence, to go towards the point where Mayo would end up adopting an official community plan?

If the Ministers opposite will forgive me for this, I think it would be helpful for us to have these steps outlined for us, because I think that in order for all of us to understand how these things are going to work and what the implications of these things are going to be, we should understand how they are going to be imposed and how the plans will come into place.

**Hon. Mr. Lattin:** Mr. Chairman, since the Member is requesting the steps for implementing this plan, I will direct that question to my witness.

**Mr. McWilliam:** As the legislation outlines in this section, there is an intention to have all municipalities adopt an official community plan within two years of this legislation coming into force. I would point out that at the present time all municipalities do have an official community plan, although, in a number of cases, they are quite out of date.

There is also provision in here, that if there is a necessity for an extension of that two-year time period, it can be granted. Once the official community plan is in place, the municipality then has one additional year, in which time it must implement the zoning by-law which is the mechanism for bringing the recommendations of the official community plan into force.

**Hon. Mr. Lang:** Mr. Chairman, I would just add to that: it should be pointed out, as the witness has done, that all communities have the basis for an official community plan. A lot of money has been spent by the governments over the last ten years to try to get an official community plan, as the Minister has said, to assure some stability in the community and to act as an assurance to those people who have invested, and future investors as time goes on.

I should point out, with respect to the question that the Member has raised about Mayo, that there has been zoning in there for a number of years, within the L.I.D., but there have also been area development regulations passed, outside the perimeter of what is now the L.I.D.

I would suggest, Mr. Chairman, that perhaps he is maybe talking to the wrong people, or not really getting the right information. Most of these communities are already relatively familiar with zoning.

I am sure that I can find in my riding, just like he can find in his, people who will object to zoning. But I am sure that everybody, without fail, in the final analysis, will agree that it is important that you have a system of zoning to ensure that the rights of other people are not being infringed upon and also to ensure that the investment that one is making is going to at least have some stability and some security. This is what this particular section of the ordinance is doing, in philosophy, to ensure that investments are being protected, as well as advanced, and people will know where those investments can best be made.

**Mr. Penikett:** I thank the former Minister for his statement. If he is curious about whom I was talking to there, it was the L.I.D. board. I would say, though, that I am sure he would not want to leave this impression that the official community plans proposed here are of the same status, weight, and authority as those that were previously in place, because I do not think that is the case. These are a much more serious, permanent and tough provision than the former plans, some of which, let me say in all fairness — and to a certain extent this is true in Whitehorse — were not developed to a sufficient public input. In many cases, from what I saw of them, — there might be a big debate about this but it is not necessary — it looked to me like they took the existing land use situation, and straightened out some of the lines and the boundaries, and then just sort of generalized that into a zoning map. That, to me, is good mapping but it is not necessarily good planning.

Let me ask the Minister, because I want to zero in on this point. I do not want the impression to be left that these community plans are going to be like the old ones. The witness was good enough to suggest that there will be quite a bit of flexibility in terms of the time. We talked about having two years after the ordinance came into force; that is, one and a half years, possibly, after this, and then possibly a one year extension beyond that. So we are talking about quite a bit of flexibility and that is good. We may need it. Let me ask the Minister how he, as the person who is going to be hearing grievances and complaints on this score, expects the plan to work in the following kind of case. You have a new municipality created. Perhaps in some cases the first municipal council in that

new municipality will be adopting a community plan; they will have a lot to do with the adopting of a community plan.

The plan comes into place; as I heard them say, subsequent zoning decisions should then be logically consistent with that plan, or must be consistent with that plan, and that has not always been the case up until now.

That council, on the basis of what they do with that plan, and the public's knowledge — the public develops some awareness of it, some familiarity with it, and they decide they do not like it. They defeat the council that helped bring it in. Now, we have talked about a fairly long period to establish that plan, initially. I would be interested to hear from the Minister how difficult it would be for a newly-elected council to change the plan, and therefore change the zoning that comes under it.

It is not a frivolous question, because I ask the Minister: if we are going to be establishing the plans in the first place with a great deal of care and a great deal of caution, it seems to me that probably the same caution ought to be applied in changing them. At the same time, you may have, in local councils, strong shifts in opinion locally, about what is best for the community in terms of zoning and planning; you may have new developments which make the old plan redundant.

I want to ask the Minister how he sees those processes working themselves out, because they are new, and they are different, and they are much tougher than the way local government has gone up till now.

**Mr. McWilliam:** I think Mr. Penikett is very correct in indicating that once you have gone through a considerable amount of thought and public scrutiny about preparing an official community plan, you have also to ensure that the same careful consideration is given to any amendment of that official community plan.

This legislation provides that, where an amendment is necessary or desirable, it go through the same process of public scrutiny.

I would point out to Mr. Penikett that somewhat later in this division, in section 221, if he wants to refer to it, we provide that the council must review their official community plan on a regular basis.

We are providing here that at least every five years it must be considered. They can also be requested to do so by the municipal board or by the inspector, if there appears to be some problem, or they could initiate a review of their official community plan at any time. In that way a new municipal council who had some political difficulty would be able to exercise their option to have the plan reviewed.

**Mr. Byblow:** On this very principle, with a community plan becoming in a sense a rather enshrined document towards the development of the town. I raise the question of areas of high growth: where in very short order it may be necessary to do some revisions or to permit some non-conforming uses of a general area, which, in effect, cannot be done according to the restrictions of the plan itself.

Can the witness or the Minister respond, with respect to how municipalities will deal with the sort of individual cases where it is almost absolutely necessary to develop in a non-conforming pattern? We are talking about five year plans; we are talking about revising it from time to time; and we know that the period will take almost up to two years to change.

From personal experience I know that we instituted a community development plan in 1977. Within three years it was out of date, and another one had to be put into place and is being presently developed. On several occasions through those three years, we had to develop in contradiction to the community plan. How are we going to address the cases of immediate, fast-growth situations?

**Mr. McWilliam:** I should point out that if Mr. Byblow is under the impression it would take two years to do an amendment to the official community plan, that is not quite the case. What we are providing here is that where you do an amendment to the official community plan, you must go through the same process of having public scrutiny and full consideration. What we are attempting to avoid is having piecemeal amendments made to the official community plan, that may totally change the basic principle that that plan was developed on. So, in a case of a community like Faro, which is developing rapidly, and where that development was not foreseen, there is, I would suggest, adequate provision here to amend the community plan.

**Mr. Byblow:** Well perhaps we are getting into specifics, but

how long does the witness see the length of time being, to initiate a change to the plan?

**Mr. McWilliam:** I believe, Mr. Chairman, we are into specifics now. We provide certain protection in here against an adoption of a community plan or amendment without proper consideration. So there are some time requirements for appeals, et cetera. I would say that, in general, what you are talking about is a matter of months.

**Mr. Chairman:** I will ask the witness whether the line of questioning is going to be dealt with in further sections here?

**Mr. McWilliam:** I would believe that Mr. Byblow's concern would be addressed in the following sections.

*Clause 309 agreed to*

*On Clause 310*

**Mr. Penikett:** The matters to be included within the framework of these plans might lead one to wish that the Government of the Yukon Territory had one, if it were possible.

The purposes laid out in Clause 310 talk about a framework, a guide. Land development is a critical factor. Then subsection (c) is an interesting provision. It talks about identifying critical problems and opportunities concerning the development of land and "the social, environmental and economic effects thereof;". Now, I guess those are all planning considerations anyway. Normally, if you hired a planner who is of the holistic school of planning, rather than the engineering school, he will want to look at the engineering factors and the social factors and all that.

The trouble is, with the possible exception of a place like Faro, even a town as old and as sophisticated as Dawson City would have some trouble, I would guess, making accurate assessments of the social and economic forces at work in their community all the time.

I am therefore bound to ask, even though we may come to this later, what kind of assistance from this Government, beyond the Department of Municipal Affairs, is the Minister prepared to offer to these communities, in making these kinds of judgements? We have a department, ERPU, which may be able to give them some population statistics; for example, which may be able to give them some reasonable projections about the rate of growth in some communities, even if the Government Leader obviously inflated those figures when he was on the Jack Webster Show. Mr. Lang's department may be able to make some assessments about some probable economic developments in the region, but unless that material is available to the municipalities, they will not themselves be in the position to be able to make, I think, reasonable judgments about what will be going on, partly because we get to this whole problem of turn-over again. We might think that, in Whitehorse, because we went for a period of growth at the beginning of the pipeline period — if you had moved to Whitehorse at the beginning of that period and were here for the next six months or something, you might have thought that this was a real boom town. It was not until you got into one of the slow periods that you would realize that your projections or your plans would have to be based on a very long framework.

I just wonder if the Minister could tell us what kind of sources of information are going to be available to the communities from this Government?

**Mr. McWilliam:** Perhaps I should preface my remarks by saying that we are guilty of belonging to the holistic school of planning in the department. Previous plans that had been done have consisted mostly of engineering planning, which has proven to be somewhat less than adequate in a number of cases. What we are providing here is the purposes that we see behind the community plan: directing a municipality's attention towards them, asking them to consider all that wide range of matters.

In addition to the assistance through the Department of Municipal Affairs' personnel, which does include professional planning expertise, we also provide to the municipalities, through the *Community Assistance Ordinance*, funding for community plans.

There are also other departments in this Government who, at the present time, are doing things such as regional planning which would work very well, I would suggest, in conjunction with a municipality considering its official community plan.

**Mrs. McGuire:** I just want to point out a typo in (e).

**Mr. Chairman:** Line 2 in (e), typo, there is an "h" missing in the word "the".

**Mr. Penikett:** I am beginning to understand what the department is about a little better now. Let me ask the Minister a direct

question which he may refer to the witness.

Let me use the case of Mayo, since I have such fondness for the place. Who does the Minister expect to prepare the first draft of the new official community plan for Mayo, given that he has identified some resources in the department and given that he has also said there may be some funding available if the people of Mayo have some reason not to wish to employ Mr. McWilliam and his friends. Who would the Minister expect, given the statement about regional plans and so forth, to do the first round because I doubt that anybody in the L.I.D. would be able to do as comprehensible a document as this, I would guess.

**Hon. Mr. Lattin:** Mr. Chairman, I always had a great faith in the ability of people to work together. I think it will be a cooperative effort between the people in a particular community and the expertise in our department. I think, Mr. Chairman, that is the only way that I can foresee developing a plan with any type of expertise, which would still satisfy what I would consider to be the needs of the people who are affected, and that is the people in the particular community.

**Mr. Penikett:** I must compliment the Minister for learning his case almost as well as his colleague from Porter Creek East.

With respect, while I understood his answer and I appreciate it, and the sentiments expressed in it are delightful, would he expect, in the case of Mayo, for example, that officials in his department would be preparing the first draft of the community plan? I know this is going to be the product of discussion, I hope it is going to be the product of discussion with the people of Mayo, and I am pleased to have the Minister's assurance on that point.

Would the first draft probably come from the Department of Community and Municipal Affairs? Someone has got to start somewhere, I assume, and I just want to know what the baseline document is going to be.

**Mr. McWilliam:** To use the example that Mr. Penikett has, Mayo, I would suggest that in that case, similar to the exercise that we went through with the Mayo periphery area, the department would be preparing a working draft to solicit comments. It is quite difficult, as all Members probably realize, to sit down without something to comment on and somewhere to start from, so the department will certainly be available to provide that assistance.

**Mr. Byblow:** If I am interpreting the discussion correctly, the department is going to assume the major role in drafting up and presenting the community plans. My familiarization with community plans that have been done is that they have been solicited from consultants and have cost upwards of \$20,000 to \$30,000.

Now, we are talking about a high degree of expertise and a tremendous amount of work in assembling these things. If I am reading this correctly and clearly, is this now going to be done by the Department of Local Government, in all cases?

**Mr. McWilliam:** I hope that Mr. Byblow did not take my previous remarks to say that we are going to walk into the community and take over the planning exercise. What the department would be prepared to do is offer what expertise and resources we have available to assist a community. That certainly would not preclude the possibility of using consultants and I would suggest that in larger communities, because of the limited resources that the department has, you would undoubtedly find that the municipality will also be utilizing consultants.

**Mr. Penikett:** Small communities, wherever they are, whether they are Yukon or Mayo itself, always have a problem finding the expertise that they need within their ranks. I am glad to extract from Mr. McWilliam the view that there will be, if not a first draft, some paper at least which will provide the basis of discussion for the community. That is good. Perhaps in the case of Mayo it might be some kind of regional plan of the peripheral zoning that has been done.

Let me ask the Minister how he sees the process developing. Given that the local council has an obligation to develop the plan under this law, and the responsibility for it before the plan is in place; before you get to my favourite subject, the municipal board, how would he deal with the kind of conflict, for example, where Mr. McWilliam or Mr. Livingston go to Mayo and they have some really good ideas, and the elected body in Mayo, such as it is, says, "No, that is not the way we want to go. We do not like the way you divide up the town. We like it the way it is now."

I can just see this possibility. There is an irreconcilable conflict between the view of this Government, which is trying to introduce some planning concepts for the good of the whole Territory, and the

view of Mayo as seen by the people who live there. And that is quite possible; that could easily happen.

Now, as I understand what is proposed here, the board is not yet in a position to be brought into play: to have hearings or to do the appeal thing. From the Minister's point of view, what would happen then, if that happened?

**Mr. McWilliam:** I think the key point is that this is an official community plan for that municipality. If Mayo becomes a town constituted with a municipal council, they would be the ones who would be responsible for the preparation of that plan. We can provide recommendations and assistance to them but it is their plan.

If there were to be, as Mr. Penikett pointed out, irreconcilable differences between departmental officials and the community, over what the plan entailed, it would be the community, I would suggest, that would be the one to dictate how that plan was prepared, presented to the Yukon Municipal Board, and then to the Commissioner for approval. At the Commissioner's level, the political decision may be made that they wanted changes.

**Mr. Penikett:** That brings me to my next question, Mr. Chairman. The Catch 22 is surely that, having perhaps reached an impasse with the department, an agreement to disagree, they then proceed on their own. The department, through C.A.P. or some other means, provides for the community to hire a planner and they develop their own plan. The problem is that once it goes through, or does not go through, the Municipal Board, it is this Government who has the final say. Having done that, you then still have the problem that all subsequent zoning decisions have to fit in with that plan.

Let me ask the Minister: is the Minister satisfied that the communities which are going to be affected by this fully understand the implications of that?

**Hon. Mr. Lattin:** Yes, Mr. Chairman, I think I would be. I think one of the keys, Mr. Chairman, is the transitional period, the lead time, as it were. I think they will have time to understand it and I think they will get a lot of the interpretations and their questions answered during this particular period.

When we get into the plan, I foresee everybody having a fair idea how to proceed with it — what the restrictions are; what the method is; what their particular powers are. Again, I have a lot of faith, Mr. Chairman, in the ability of common sense. I am not saying that there will not be times when we may have a little bit of gnashing of teeth, but, in the over-all situation, I foresee that we will accomplish the goal we set out to accomplish.

**Mr. Hanson:** Mr. Chairman, after listening to Mr. Penikett talk so much about Mayo — he was only there for a quick stand overnight, and he seems to be an expert on the town; or two-night stand, one last spring. We have had problems between the L.I.D. and the municipal government, in the two years I have been in the House, on some three occasions. I have not even said a word to anybody. I have gone home, been congratulated on settling it, and I had had nothing to do with it. The department has shown a lot of common sense.

I would not, myself, living in a small community, really be concerned with it, because so far they always seem to have ended up with the right answer. It might take a little arguing but we always seem to get some kind of a fair judgment out of it. I see no objection to it.

**Mr. Penikett:** I just want to say to the Member for Mayo that a one-night stand in Mayo is worth a month of sleepless nights in Whitehorse. I am sure everything is working wonderfully between the L.I.D. and the Department of Local Government, and that is as it should be. I hope it continues to be that way.

I am not asking these questions to be frivolous. I am using Mayo as an example because it seems to me it is a community that may not yet have accepted all the professional wisdom about planning and engineering and so forth as it is in Whitehorse.

**Mr. Chairman,** there is one question I wanted to ask the Minister before we leave this matter, and it arises out of the question asked by Mr. Byblow. Mr. McWilliam had explained the kind of cautious, slow process that would be involved in changing official community plans. There will be times, no doubt, for example, when a new ore body is developed in a place like Faro, or when the company decides they want to build a smelter, where everybody will have to accelerate their decision-making process or the process of amending the plan, because the zoning changes required will not fit into it. Could the Minister just outline very briefly how he would approve,

or what kind of circumstances he would see, accelerating the amending process to the plan, where it was required?

**Hon. Mr. Lattin:** Mr. Chairman, I have not really contemplated that particular aspect in detail, but I would believe that the flexibility is in there for us to do that.

I think I should direct the question to the witness, who is far more capable than I to deal with the technical aspects of this procedure.

**Mr. McWilliam:** I would suggest that we are dealing here with two steps. The first is a consideration of those items which should be reviewed in preparing an official community plan or an amendment, consideration of the things that were laid out in Clause 310.

The second step is the provision for adequate public notice and the opportunity for anyone who feels that they have something to contribute to make their position known.

In the case that Mr. Penikett has raised, where there is a very obvious requirement to amend the community plan, I would suggest that it would not be difficult to curtail the amount of time that was necessary for the consideration of all those factors that go into a community plan. The reason for the amendment should be very clear at that point in time, and the consideration of the impact on the overall plan would not take that much time. I would, however, suggest that it would be far more difficult to try to curtail any of the public notice or inquiry process. That would still take some time and I would suggest that, for the safeguard of that community, you would want that.

**Mr. Byblow:** I do not know how many communities are involved presently in developing community plans, but as I understand this entire section: if a council simply has to endorse a community plan for purposes of its development; if you have a situation where a municipality has a plan just recently developed in approximately the same year as this ordinance comes into effect; if that community plan meets all the requirements, under this section; is it possible then to adopt that plan without doing another one, through all this sequence of steps?

**Mr. McWilliam:** I would suggest that if the community plan that Mr. Byblow refers to has considered all of the aspects necessary for an official community plan, and it is not just an engineering document, as has been the case in some community plans in the past, there should be no problem implementing that as the official community plan.

It comes down to what the council is satisfied with as an official community plan is they are going to operate under. It is their consideration.

Clause 310 agreed to

On Clause 311

Clause 311 agreed to

On Clause 312

**Mr. Penikett:** I guess there is nothing that can be said about this section, Mr. Chairman, other than that I am sure, at some point in the history of this ordinance, that you are going to have a community elect a council which runs against that community's official plan. Then we are going to have some problems because they may even decline to try to amend it. If they fail to do what they are required to do under this plan, they are going to have one imposed upon them. I do not know how that would work out. I think the most likely case, I guess, where this provision could be used, is where a community just does not have the resources or just cannot get it together to prepare a plan, and they more than likely have to call upon the department to do it for them as an interim measure.

Clause 312 agreed to

On Clause 313

Clause 313 agreed to

On Clause 314

Clause 314 agreed to

On Clause 315

**Mr. Byblow:** It seems to me this section has been identified for amendments.

**Hon. Mr. Lattin:** Sorry, Mr. Chairman, I am remiss. I was trying to find my place. Yes, Mr. Chairman, we do have an amendment to this particular clause. I move that Bill Number 57, *Municipal Ordinance*, be amended as follows:

in Clause 315(2) on page 166, by substituting the following: "315(2) The Yukon Municipal Board, in reviewing an official community plan, shall consider only

(a) whether the official community plan confirms to the require-

ments of this ordinance

(b) whether the council has, in preparing and adopting the official community plan, complied with the requirements of this ordinance.

in Clause 315(3) on page 166, by deleting paragraph (b) and (c) and substituting new paragraph b to read: "The Yukon Municipal Board, after considering the proposed plan, may hold a public hearing, and in such case the provisions of Section 313 shall apply *mutatis mutandis* and shall

(a) approve the plan or

(b) refer the plan back to the council with recommendations for modification".

**Mrs. McGuire:** I just have a question, Mr. Chairman, on 315(3) where it says, "The Yukon Municipal Board after considering a plan, may hold a public hearing..."

I think "may" is a very weak word. I think that they should have to hold public meetings where the plan would be scrutinized by everybody concerned, even though there are provisions on the top of the page that say that the plan is open to interested persons for inspection. That does not always cover everybody. That mileage is not always available to people in communities.

When we are down to "may hold a public hearing", you are at the end of the line as far as the plan is concerned; you went through the council, through the individuals, and on to the planning board. So I think it is of the utmost importance that they do have to hold a public meeting, or otherwise you will probably be coming up with a lot of problems from this ordinance itself.

**Mr. Chairman:** I must inform the Honourable Member that it is normal procedure, when a Member has concerns, and is not satisfied with the amendment proposed, you can, under Standing Orders, produce a sub-amendment to the amendment.

**Mrs. McGuire:** I do not believe that portion was amended; (b) and (c).

**Mr. Chairman:** "In clause 315(3), on page 166, by deleting paragraphs (b) and (c) and substituting new paragraph (b) to read ...

**Hon. Mr. Lang:** Well, Mr. Chairman, I recognize what the Member is saying, but I think that there are enough safeguards put into the legislation here. In 313(1), while in the preparation of the plan itself, they must give public notice to people that they are putting a community plan together. It gives the council the capability, if they feel that the public should have more input into the plan, and are interested, to make a hearing available to the public so that they may view it. Then you have the third step — checks and balances in the system with the municipal board — which allows for that as well. If you put a "shall" in, and there is a common consensus in a community, and the Department of Municipal Affairs as well as the council have had hearings and everything, you may well be going through a very fruitless effort on that last step, if there have been no changes made and there has been a hearing held during the final preparation of the official community plan.

I think it is a question of trust; some discretion must be left to the municipal board. Nine times out of ten, they will decide to have a hearing. But if circumstances dictate that such is not necessary, why force the municipal board to hold a hearing? There will be enough cooperation and, I am sure, enough publicity, with respect to an official plan for a community, that if it is necessary there will be a hearing. Changes and amendments can then be made as necessary. But, I think, to make it a "shall", you could well bring about a situation of the whole board going to a community and nobody showing up, and that does not make any sense either. So I think you have to allow for that discretion.

**Mr. Penikett:** These amendments appear to somewhat clarify the role of the board and do seem to be an improvement in the drafting, as I read it. They do, in part, meet the concerns that I had about it. I have no remaining hope that I should be sufficiently eloquent and persuasive as to persuade the Members opposite that it may be a flawed concept.

I must say that I still find it a bit of a peculiar beast combining, as it were, nominees from both the Territorial Government and the Association of Yukon Municipalities, especially since that method of appointment neither guarantees that the Board will have expertise nor that its members necessarily represent all the interests concerned. However, the Government seems to be bound on this course.

So I would like to make a couple of suggestions, not by way of



amendment, but by way of discussion on this bill. I still think that, even though specific reference has been removed to Clause 311 from 315 — and I think that is a good idea — given that some members of the board, or servants of that board, may feel compelled to want to advise councils that have not sufficiently developed their plans in the areas enumerated: the environment, the economy, and social questions; none of which areas, I say with the greatest respect, most municipal councils in the Territory are competent to deal with. I use the word “competent” in the strict legislative meaning of “competent”.

Let me fantasize for a moment: if I were to form a government tomorrow, and be stuck with the kind of boards that we have, and this is a view that I have expressed to the Government Leader privately, but let me say it to him for the record, my inclination would be to take certain of these boards which seem to me to have enormous power, the Public Utilities Board and the Transport Board, these boards because they are acting in areas of significant policy importance for the Territorial Government, I would be inclined, even if it required changes to other legislation — in fact I do not think it would, if we could pass the *Council Ordinances* now proposed — to appoint government back benchers to chair such boards.

I will explain why briefly. It seems to me in boards like perhaps even the Workers' Compensation Board, and certainly this municipal board, they are going to be making decisions from time to time for which someone of the public is going to want someone to be politically accountable.

There is probably going to be no one on that board who holds public office or who was elected to public office. There may be some former politicians, but there are probably not going to be any currently elected politicians. The boards such as we have in the territory were created so that commissioners could have an arms-length relationship with some of these tough decisions, and not have to pull political heat for them. The Minister may not always know the reasons for a board having made its decision; nor, at times, may he always want to feel 100 per cent accountable for what that board has done.

I say with respect, to the Government Leader and the Ministers opposite, that it may not be a bad idea, for two reasons, to do what has been done in Ontario and Alberta; both, I would point out in passing, are Conservative provinces; to appoint government back-benchers to the chairmanship of some of these boards, so that, during Question Period or in-Committee, members may ask questions directly to the chairman of those boards about decisions of those boards, or rulings of those boards.

Now, that would provide an opportunity, it seems to me, for all members of the Legislature to find out what is going on, and to hear the reasons for which decisions are made, but it would have one additional added advantage, and I hope I can say this without suggesting any discourtesy to anyone opposite. The added advantage it would have, it seems to me, whether you are talking about the Public Utilities Board or the Transport Board, the Workers' Compensation Board, or any of these other major boards, and particularly the municipal board, is that of having a backbencher begin to acquire an intimate knowledge or expertise in some field of important territorial policy. It would allow that member to pinch-hit, where necessary, and provide a very useful back-up for the current minister who is responsible for that portfolio, and it would provide, I think, a useful training ground for all government backbenchers, since I am optimistic enough to hope that in the life of this territory there will be changes of government from time to time.

I believe enough in the system, such as we have it, in the usefulness of people who come to office and who come to Cabinet office, particularly, having had some background and some experience

I think the chairmanship of government boards, as I am sure the Government Leader will agree, is a useful arena in which to gain some experience about government policies and government practices. If back benchers, whatever the party, can from time to time gain that experience, I think that better policies would result; better decisions, and more politically sensitive decisions, would result; but we would also have the added advantage of accountability to the legislature, which does not exist now.

Having said that, I guess I must concede that the amendment proposed by the Minister in Clause 315 is something of an improvement. I must say before I sit down, though, that I continue to have some reservations about the board concept: this board particularly; and the Minister will forgive me if, from time to time, in the next couple of years, I ask him critical questions about its development.

**Mr. Fleming:** I rose on this once before, but I thought it was just (b) and (c) being removed. I agree with the amendment very much, actually, and I am wondering if I am right when I see that (c) is also completely removed, and I presume that is because it could possibly go farther on, and then the disapproval will be made at the Commissioner's level. Is that true?

**Mr. Chairman:** Shall the amendment carry?

**Mr. Byblow:** Just one question on the amendment. In 315(3)(b), where the board may refer the plan back to council with recommendations for modifications; from the earlier line of questioning, I guess at that point I would ask whether that requires the municipal council then to hold further public hearings, or is that now at their discretion?

**Mr. McWilliam:** I believe, perhaps, to answer both Mr. Fleming's and Mr. Byblow's concerns, the best analogy that can be made for the Yukon Municipal Board functioning in this role, is that of a technical watch dog. It is going to ensure that the council has complied fully with the requirements of this ordinance. If it has not, it will refer the plan back to them for consideration of those points. If the council then turns around and says, well, we feel we have complied, it goes on to the political level for consideration.

**Mr. Fleming:** That is right, Mr. Chairman, and my concern was the possibility, in this case, of having consultants do this, and now it is costing a few thousand dollars, and all of a sudden a board would just reject it, and that is the end of the whole issue. So that is why I am prepared to go along with the amendment, as it is.

**Mr. Byblow:** I take it from what the witness said, Mr. Chairman, that council does not have to comply with the recommendation of the municipal board; that in terms of the steps, it can say “No, we disagree with the municipal board”, and then it goes on to the Commissioner for approval.

**Mr. McWilliam:** The municipal board is only checking the official community plan to make sure that the council has done its homework. If they feel there is an area where it is deficient, this is where the reference is to refer the plan back with recommendations. If the council then feel that they have considered that matter in sufficient detail, the plan then goes forward to the Commissioner.

**Mr. Penikett:** I just wanted to say that I think Mr. Fleming did ask an important question here: this is unlike the previous proposal where the board can say, “Zap, the plan is no good.” The ball has always been put back, under this proposal, to the municipality, and that is the way it should be.

*Amendment agreed to*

*Clause 315 agreed to*

*On Clause 316*

**Mr. Fleming:** I am presuming, in that (3)(b), then, “disapproves” means that that would be the protection of the plan? Yes.

**Mr. Penikett:** I just want to ask the Minister one question. I could have asked it in the last one, but I might as well ask it now.

Throughout this bill there are references to the Municipal Board. There are also references to the Inspector of Municipalities, as there were in the old one. Could the Minister explain to me why, in this section, the Inspector could not have carried out the functions that are given to the board?

**Mr. McWilliam:** As I believe the Minister has previously indicated, the department is frequently a party to any consideration of an official community plan. They have helped to prepare it. Because of our role in land development, the effect of an official community plan reflects back directly on the Government. I would suggest that, if this role was exercised by the Inspector, there would be some concern as to how unbiased he might be.

**Mr. Penikett:** Mr. Chairman, I am not going to dwell on it now, but believe me, there is going to be some question about that, whoever you appoint to the board; if he is close to the Minister, you are not going to solve that problem. If I may, I would just quote a lawyer I was talking to recently: conflict of interest is when someone complains.

*Clause 316 agreed to*

*On Clause 317*

**Mr. Penikett:** We are talking about Clause 317 and I would love to know how we can get away with 317(3).

**Mr. McWilliam:** Mr. Chairman, my immediate reaction to that is to say: we can try.

Perhaps the Government Leader has something to say.

**Hon. Mr. Pearson:** Mr. Chairman, I do not think it really is fair that we put the witness on the spot on this.

**Mr. Chairman:** Political question, sir?

**Hon. Mr. Pearson:** Mr. Chairman, I think it is good for us to have a clause like this in our legislation. It is clear in jurisprudence as well as in legislation, that the senior government can virtually do anything it wants. They are not subject to our legislation unless they deem themselves to be subject to that legislation. This is just a statement of our hope, I guess, is the best way that we can put it.

**Mr. Penikett:** I love the Government Leader's answer. Legislation contains clauses which are statements of hope; believe me, I could suggest lots of amendments for lots of bills that were statements of hope. The Government Leader will concede that there is a great deal of legislation we deal with that is so submissive, when it comes to the questions of federal powers and federal authority here, almost to make us to seem like a supine legislature, which is not, I am sure, the way we would like to have ourselves portrayed.

Let me just ask, as a purely practical matter though: there is nothing in this legislation that would really allow us to tell the federal government that they could not expand the Whitehorse airport or do something on it. The Government Leader has indicated that the Federal Government might deem or consent to be governed by it inside municipalities; I think they certainly have never shown particular reverence for the zoning laws in Whitehorse. I do not know why they would anywhere else. Does the Government Leader have any indication that the federal government is prepared to submit to this ordinance in this respect?

**Hon. Mr. Pearson:** No, Mr. Chairman.

**Mr. Penikett:** So it is just an uppity hopeful little clause and we are just trying to slip it in there. I just hope, Mr. Chairman, that we do not have the whole bill disallowed because of the one clause in here, that is all.

**Hon. Mr. Pearson:** No, Mr. Chairman, it is not uppity at all. The bill, I am quite confident, Mr. Chairman, will not be disallowed as a result of this. I think that it is a fair statement of intent on behalf of both the Government of Canada and Government of Yukon that when there are these official community plans in place, all governments should be cognizant of them and should live within them.

**Mr. Byblow:** I am not sure I completely understand subsection (2) in conjunction with (4). Perhaps we could have an example.

**Mr. McWilliam:** I do not believe that (2) and (4) should be considered as being completely married and inseparable. In subsection (2), what you are indicating there is that the official community plan restricts development. You are bound by it. However, in subsection (4) you are indicating that the council cannot, through their official community plan, injure an individual property owner. For example, they could not zone an individual property "open space" which would mean it would be totally useless.

**Mr. Penikett:** Mr. McWilliams' answer raises another problem. We passed a lot of legislation, good puritans that we are, to provide penalties for all sorts of things. We do not provide rewards for very much.

The case that Mr. McWilliam gave of non-impairing property owner's rights to the land is a difficult one because I can think of a case where a property owner had land which he was not prepared to develop and had a fairly high grade zoning. He came to a council in this Territory and asked for the zoning to be reduced radically. He did that as a personal petition, because of the tax benefits for him in having the land re-zoned to more accurately reflect its present use.

It seems to me that that kind of petition was in order, however, the contrary case, if he applied to have it upgraded, the council might decide to keep it where it is, which really would affect his rights in the land considerably. Private land which is zoned "open space" would be, I think probably, for investment purposes, practically useless.

I guess I am not as worried about the clauses as I am about Mr. McWilliam's answer, I guess, Mr. Chairman.

**Mr. Fleming:** Mr. Chairman, might I ask the Minister and the witness, because of subsection (4); is there not a section in this ordinance somewhere that empowers the government, or even the council or the Commissioner, to really acquire any land necessary for certain things?

**Hon. Mr. Lattin:** That would be by expropriation.

**Mr. Byblow:** That very term the Minister just brought up is

what I was really inquiring about, with respect to subsection (4).

If a community development plan was deemed necessary to cause expropriation, would that take place following the plan, or during the plan? I am just a bit unclear.

**Hon. Mr. Pearson:** Mr. Chairman, expropriation is designed so that an owner's rights are not taken away from them. They are paid money instead of, type of thing.

This does not apply to expropriation at all. The municipality has the right to expropriate, but they are not impairing the rights of a property owner. They are paying for the rights of that property owner on expropriation.

*Clause 317 agreed to*

**Mr. Chairman:** The Chair will call a recess at 3 o'clock and another at 4:30. We will have a short recess now.

*Recess*

**Mr. Chairman:** I call Committee to order and refer Committee to page 168, clause 318.

*On Clause 318*

*Clause 318 agreed to*

*On Clause 319*

*Clause 319 agreed to*

*On Clause 320*

*Clause 320 agreed to*

*On Clause 321*

**Mr. Penikett:** Under what circumstances would the Municipal Board request a council to review their plan?

**Mr. McWilliam:** It, again, relates back to some of the other functions which the Municipal Board conducts: for example, where they act as an appeal agency under the zoning by-law. In the process of considering an appeal, they may recognize a deficiency in the community plan and recommend that the council take a look at it.

**Mr. Penikett:** Surely that would be an exceptional case. Surely the problem is to adjust zones to the plan, rather than plans to zoning?

**Mr. McWilliam:** That is correct, Mr. Chairman. It is for an exceptional case.

*Clause 321 agreed to*

**Mr. Penikett:** From this and other provisions in the bill, I am a little confused about who initiates these boundary changes.

If I could just give you the kind of problem: it seems to me it is one thing for Whitehorse to decide that it wants to expand its boundaries to take in the Carcross Road or the Mayo Road area. It might however be another thing for the Territory to decide that it would be a good thing for Whitehorse to take those in, for planning purposes.

However, the people in those areas might not want to become a municipality, which is a possibility. They might also want to have a separate municipality. Now, somebody has to initiate this process and it seems to me it is not inconceivable that you could have two competing applications, and the applications might not just be to have to competing municipalities, but you might have, conceivably, two different groups of people wanting the boundaries in different places.

How do you get started when there are two of them? Do they both just go to the board, and the board sorts that out? How does the Minister see that happening?

**Mr. McWilliam:** The provisions that would deal with that are under the sections that cover boundary expansion in the first part of the ordinance. All that Clause 322 deals with is the situation where the decision has been made to alter the boundaries, to ensure that the community plan is expanded to include that area.

Under the earlier sections, for which I believe there is an amendment proposed, there are two ways that boundary expansion could be considered: either at local initiative or as a request of the Commissioner.

*Clause 321 agreed to*

*On Clause 322*

**Mr. Chairman:** The Chair assumes Mr. Penikett was on Clause 321, is that correct?

**Mr. Penikett:** No, I was on 322, Mr. Chairman, but that is alright.

*On Clause 323*

*Clause 323 agreed to*

*On Clause 324*

**Mr. Byblow:** I am not sure I completely understand 324 in its relation to 323, because the one clause says that everything, as per existing zoning, stays in place, and then Clause 324 adopts a new zoning by-law. Perhaps what it means is that you just enshrine that by by-law.

**Hon. Mr. Lang:** Mr. Chairman, it is strictly a grandfather clause until you get a community official plan into place.

*Clause 324 agreed to**On Clause 325**Clause 325 agreed to*

**Mr. Fleming:** I think maybe the Minister may have explained it, I am not sure. However, just so that I am clear; when it comes into force, an L.I.D. is then a municipality. What happens to the existing zoning laws in that community? Do they take effect at that time, or are they completely washed out, and you start over, making by-laws and re-zoning that area?

**Mr. McWilliam:** No, Mr. Chairman, the existing development regulations could be adopted by the new municipality as their interim zoning by-law.

*Clause 326 agreed to**On Clause 327*

**Mr. Byblow:** Could I have an explanation of the meaning for 1(b)?

**Mr. McWilliam:** Yes, Mr. Chairman, I presume that Mr. Byblow is referring to the word "amenity"; without reference to Mr. Penikett's dictionary for non-lawyers, I have been informed that it is to ensure that the municipality takes into consideration those things that are beneficial for the area.

**Mr. Tracey:** Am I correct in assuming that we have passed 325 and 326?

**Mr. Chairman:** Yes, Clauses 325 and 326 are cleared. We are now dealing with 327. The direction I gave was that it was partly on page 171.

*Clause 327 agreed to**On Clause 328*

**Mr. Byblow:** The reference to "board of variance"; is that within the municipal structure or within the municipal board structure?

**Mr. McWilliam:** The board of variance is a board which is set up by each individual municipality.

**Mr. Penikett:** Mr. Chairman, in the case of the City of Whitehorse, it is the planning board who can hear applications for variance, and they do not need to go to council.

*Clause 328 agreed to**On Clause 329*

**Mr. Chairman:** We will deal with clause 329 section by section.

*On Clause 329(1)*

**Mr. Penikett:** Mr. Chairman, I want to hear from the Minister about development and use permits. Development agreements, as I have seen them operate in the Territory, have not been very successful. I am thinking of two particular development agreements: one with the Cassiar Asbestos Corporation and the other with Cyprus Anvil Mining Corporation, most particularly the one with Cassiar Asbestos Corporation, which governed the years in which the mine was going to operate and the terms and conditions of local employment and so forth, all of which were immediately ignored, and no one was around to enforce it.

It is very easy for a council to impose a modest contingency or restriction, it seems to me, on a small operation. It is a very much more difficult proposition for them to impose something on a big outfit. I have not seen much evidence that they have been successful; such negotiated agreements never seem to have the force of universal law.

**Hon. Mr. Pearson:** Mr. Chairman, the development agreement with Cassiar Asbestos in respect to Clinton Creek was with the Government of Canada, not the Territorial Government. It is regrettable that it was not enforced to the benefit of all of Yukon.

**Mr. Chairman:** I do believe that the development agreement with respect to Cyprus Anvil has been adhered to quite closely, and I know it is referred to often. The company has indicated its willingness to live up to that agreement.

With respect to smaller outfits, I think I would agree with the Honourable Member; it will be easier to deal with them.

**Mr. Penikett:** Mr. Chairman, I do not disagree with the Government Leader at all; in fact I do not know the one with Cyprus Anvil particularly well at all. I am quite willing to concede that the company, because of its nature, has been willing to go along with it. Were there a different group of individuals running that company, or had it new owners, they might be less willing, and there is nothing, as I understand it, that we could do to prevent their breaking it. It is, in fact, good faith.

That is the problem I have with them as a rule, because if you are dealing with a bad corporate citizen, they may be just bits of paper.

**Hon. Mr. Pearson:** Yes, Mr. Chairman, I agree 100 per cent with the Honourable Member on that point.

*Clause 329(1) agreed to**On Clause 329(2)**Clause 329(2) agreed to**On Clause 329(3)*

**Mr. Byblow:** I guess this is the section which, in effect, is the catch-all for everything relating to land use and development.

I am wondering if it is not possible, through section (3), when the community plan is being developed, to qualify an area with enough latitude for the type of activities that can go on within that area. That may eliminate the need for changes to the community development plan. If you give a zone several different types of development that can go on within it, you can then control more specifically, by by-law, what you can do within it. Can either the witness or the Minister comment, as to whether this is perhaps the avenue to go if you want to assure yourself that you will not have to change the plan as often as high growth or rapid development may dictate?

**Mr. McWilliam:** The provisions in subsection (3), here, just identify those things that council may consider when doing a zoning by-law. There are certainly all sorts of flexibilities provided here, for them, when they are preparing the various zones or districts. One example would be in Teslin: at the request of the people there, when the area development regulations were prepared, there was one type of residential zone. It was not differentiated into multi-residential, single, et cetera.

**Mr. Fleming:** Are we discussing (3) in its entirety?

**Mr. Chairman:** Yes, we are treating the clause section by section.

**Mr. Fleming:** I am just wondering if I could get a little explanation on (d): "prescribe the class of use of land or buildings", or land and buildings shall be excluded from these types of things. I wonder if we could get a little explanation on that?

**Mr. McWilliam:** Yes, Mr. Chairman, this is a fairly standard provision in legislation, providing for a zoning by-law. The municipality may want to exempt certain types of buildings from a given zone. This just gives them the opportunity to carry out their wishes.

**Mrs. McGuire:** I would just like to know the reasoning behind a paragraph here, on 329(3)(o), page 174, where it says:

"regulate the location of buildings or structures to ensure the optimum exposure of buildings to the sun, and to ensure that no building inhibits the exposure of another building, whether on the same lot or adjacent land ...". Is that a new "right to light" thing?

**Mr. McWilliam:** Mr. Chairman, that is essentially what could be done here. Perhaps Mr. Byblow could provide more information on it, since this is something that Cyprus Anvil are currently experimenting with in their new development at Faro.

**Mr. Byblow:** Excuse me, Mr. Chairman, but the witness has challenged me. I do not know whether you have to spell it out in here, but this seems to be a section with a fairly comprehensive set of areas in it which council may wish to regulate by by-law. The witness is quite correct. A considerable amount of attention was taken to ensure a maximum amount of exposure to the sun in residential buildings in the particular development which is going on in Faro now. But whether you want to regulate that to be happening all the time is at the discretion of the council, if I understand this correctly.

**Hon. Mr. Lattin:** Yes, Mr. Chairman, that is correct.

**Mr. Fleming:** Under (k) where it reads:

"regulate or prohibit the public display of signs and advertisements and regulate the nature, kind, size, location, colour, illumination ..." and so forth and so on.

I assume that, under some of the legislation that we have now, there may have to be some changes made to allow for this; or will

this section simply supersede that?

**Mr. McWilliam:** This is similar to an existing provision in the *Municipal Ordinance*. Also there is reference to it in most regulations that are set up under the *Area Development Ordinance*, so there will not be any problem with a transitional period.

*Clause 329(3) agreed to*

*On Clause 329(4)*

**Mr. Byblow:** I have a general question, and it relates to a specific instance. I suppose this has posed a number of problems for a number of municipalities and communities. Where you have a special situation of a non-conforming use, such as a cottage industry in a residential area — let us assume that that situation exists presently in a municipality or in a community, and it is going to be written into the new community development plan for as long as that particular facility stays in place.

The question would be: when the plan is developed, is there a time at which this particular facility, under a non-conforming use, has to be eliminated from that zone, or could the plan take into account this particular non-conforming use, and apply it to more of the same in that particular zone?

**Mr. McWilliam:** The provisions dealing with non-conforming use are dealt with in a separate division in here. As Mr. Byblow will note when we get to those, it is fairly clear as to how non-conforming use should be handled. Subsection 4 here is dealing with a different matter. This is permitting temporary use of a zone. An example, again, would be in the case of Faro, where a construction camp was located within the community.

**Mr. Byblow:** I recognize that (4) deals with special circumstances and temporary situations but my general question is a little broader. Can a community development plan make a multiple use situation out of a zone, and then the by-law regulate each individual case?

**Mr. McWilliam:** Yes, Mr. Chairman.

*Clause 329(4) agreed to*

*Clause 329 agreed to*

*On Clause 330*

*Clause 330 agreed to*

*On Clause 331*

**Mrs. McGuire:** I just wanted to point out a typo, 12 lines down in (1): "required".

**Mr. Chairman:** Unanimous consent?

**Some Members:** Agreed.

*Clause 331 agreed to*

*On Clause 332*

*Clause 332 agreed to*

*On Clause 333*

**Mr. Byblow:** Could I inquire of the witness to what extent this procedure varies from the present *Municipal Ordinance*?

**Mr. McWilliam:** This sets out, in considerably more detail, the process which must be gone through in attempting to pass a zoning by-law or an amendment thereto.

*Clause 333 agreed to*

*On Clause 334*

*Clause 334 agreed to*

*On Clause 335*

*On Clause 335*

*Clause 335 agreed to*

*On Clause 336*

**Mr. Penikett:** I have a small procedural question. The other day the Government Leader explained that we have passed out of the stage in our legislation where we describe the limits of the Commissioner's power, the restraints of the Commissioner's power. Now because the Commissioner has no power, we are, in this case, drafting legislation which allows flexibility for both those people who are governing and the Minister. We have a bit of an anomaly, it seems to me, in the sense that we keep referring to the Cabinet in this bill as the Commissioner; yet there are other people like the board and the Inspector who are quite clearly identified. The Inspector is an officer of the Minister of Municipal Affairs.

I wonder if it might not make sense — and I suggest this not as an amendment now, but something for the Minister to think about, since he has an officer of high rank in his department called the Inspector who reports to him — to make it quite clear, the next time

he gets around to looking at this, that when you are talking about approvals for a third reading of zoning by-laws, you simply say "the Inspector", since the inspector is going to do what the Minister tells him anyway. You could then do away with this fiction that the Commissioner really has anything to say about it.

**Hon. Mr. Pearson:** Mr. Chairman, I acknowledge that we on this side accept in good faith what the Honourable Member has just said.

*Clause 336 agreed to*

*On Clause 337*

*Clause 337 agreed to*

*On Clause 338*

*Clause 338 agreed to*

*On Clause 339*

**Mr. Fleming:** Mr. Chairman, I would just like to have a little explanation of 339(1).

**Hon. Mr. Lattin:** In 339, in order to provide some compensation for processing a requested by-law amendment, a fee may be required.

*Clause 339 agreed to*

*On Clause 340*

**Mr. Penikett:** I am one of those people who thinks he understands this section, but it is sufficiently complicated and important that I think it merits some explanation by the Minister, Mr. Chairman.

**Hon. Mr. Lattin:** On Clause 340, this section provides that, in an area subject to the preparation of a community plan or zoning by-law, the council may take an additional power: to suspend approval of a development proposal until such time as the provisions of the new official community plan or zoning by-law are known. The new power will have the effect of allowing a council to prevent new development from taking place even if it complies with the existing plan or by-law. Therefore, before taking this power, council is required to advertise its intentions; after taking the power, a person who considers himself aggrieved by a decision of a council can appeal to the Yukon Municipal Board.

*Clause 340 agreed to*

*On Clause 341*

*Clause 341 agreed to*

*On Clause 342*

**Mr. Byblow:** I notice that there is no timing referred to, with respect to the failure to adopt either a by-law or a plan in relation to the development of a certain area. Would that not be necessary?

**Mr. McWilliam:** No, I do not believe it would be advisable to put any time qualifications in here, because the consideration of an amendment to the community plan or the zoning by-law may vary in detail, and the time could vary substantially.

**Mr. Byblow:** What I am getting at is, if a particular amendment to a zoning by-law is being held up indefinitely, then any activity that is being requested to be done on that is also being held up. Is that the situation?

**Mr. McWilliam:** No, that is not the situation, Mr. Chairman. What this deals with is the situation where council has put these interim controls on, so that they can re-evaluate a portion of their community plan or their zoning by-law. The procedure is there for public notice and for appeal, by anyone who wishes to carry out a development. However, what this Clause 342 deals with is that, if the council fails to make an amendment to either the official community plan or the zoning by-law, then they revert back to the existing official community plan and by-law.

**Mr. Byblow:** I can only conclude by saying that I assume the witness is quite confident that there is not an indefinite period of time before something is agreed to be amended or not amended; that it could not be just sitting on the shelf.

**Mr. Lang:** Mr. Chairman, that is exactly what 342(1) does.

*Clause 342 agreed to*

*On Clause 343*

**Hon. Mr. Lattin:** On this particular section, Mr. Chairman, Divisions and Subdivisions, this division introduces a number of new powers regulating the subdivisions of land within a municipality. The powers initially will be exercised by the Commissioner, and where the community has adopted a community plan, it may also pass a subdivision by-law.

The object is to set certain Territorial-wide standards regarding

the subdivision of land, so that in all cases certain basic requirements are met. Provision for local by-laws and Commissioner's regulations would allow for variation to suit local circumstances, and the circumstances of particular subdivisions.

Section 343 also defines two terms used throughout this particular section.

**Mr. Fleming:** I just wonder if the Minister might explain something for me. I know in many areas before, that we had to give back to the Queen, of course, 30 per cent, on any certain subdivisions that were made. I wonder if the Minister could clarify whether there is anything that may cause a problem in this area anywhere?

**Hon. Mr. Lattin:** I do not think so, Mr. Chairman. I think we deal with that further on, but I will ask the witness.

**Mr. McWilliam:** We do deal with the concern that Mr. Fleming has, in Clause 347, Dedication for Public Land. When we get there, I am sure he will notice where there is land which is already subject to the reversionary rights of 33.3 per cent: under this new legislation, if we take the 10 per cent dedication which is proposed, those additional reversionary rights would be waived.

*Clause 343 agreed to*

*On Clause 344*

*Clause 344 agreed to*

*On Clause 345*

**Mr. Penikett:** In Clause 345(1)(a) there is an interesting spelling of the word "authority" there, Mr. Chairman.

**Mr. Chairman:** Unanimous consent.

*Clause 345 agreed to*

**Mr. Penikett:** Mr. Chairman, I believe there is another typo in 345 that we probably should draw attention to, and that is that at the end of 345 there should be a period, not a semi-colon.

*On Clause 346*

**Mr. Chairman:** Unanimous consent.

**Mr. Byblow:** If I am reading 346(1) correctly, it says that access to a subdivision has to be provided by the prime developer. Is that what it means?

**Mr. McWilliam:** Yes, Mr. Chairman.

**Mr. Byblow:** It would appear to me that that is a new innovation. Perhaps only in a sense. I am perhaps confusing the cost of something as opposed to the development of something. Is there any relationship to cost here?

**Mr. McWilliam:** Mr. Chairman, there is certainly always a cost in providing road access. This is not a new provision, under the existing subdivision provisions in the *Municipal Ordinance*. There is a similar requirement.

*Clause 346 agreed to*

**Mr. Chairman:** Is the Minister prepared to deal with his amendment in the next clause, 347?

*On Clause 347(1)*

**Hon. Mr. Lattin:** Yes, Mr. Chairman. I move that Bill Number 57, entitled *Municipal Ordinance*, be amended as follows: in Clause 347, on page 182, delete subsection (1) and substitute the following:

(1) Every plan of a proposed subdivision shall make provision for the dedication to the public use, in addition of streets and mains to a maximum of 10 per cent of the land to be subdivided, except that the requirement of this section shall not apply to:

(a) land to be subdivided into units four hectares or over in an area;

(b) land intended for a railway station ground or right-of-way, or a right-of-way for a ditch, irrigation canal, pipeline, telephone line or power transmission line, or a reservoir or a sewage lagoon; or

(c) land to be subdivided for the purpose of correcting or rearranging boundaries of land previously included in an area, subject to the requirements of this section; and

where reversionary rights have been exercised on any subdivision, no further dedication for public use shall be required.

**Mr. Penikett:** Just a small textual question following the reading of the amendment: I notice that there is no change in the wording of what was formerly (d). Is it the Minister's intention that that is a separate section (d) — the last two lines of his proposed amendment — or is it simply part of the body of the main clause?

**Hon. Mr. Pearson:** No, Mr. Chairman, when we were looking at this, we recognized that there was a problem and it was in the drafting. It is intended that there not be a (d); it does not read right

with the way it was originally. So there is no change in the wording really, it is just in the drafting style.

**Mr. Fleming:** Pardon the ignorance, but I have forgotten just what a hectare was. How many acres is a hectare?

**Hon. Mr. Lattin:** Two and a half acres, I believe, Mr. Chairman.

**Mr. Byblow:** What is the present provision in subdivision development for the amount of public use land?

**Mr. McWilliam:** As Mr. Fleming was pointing out before, where it is private land, the Crown has its right, under reversionary rights, to 33.3 per cent. That is over and above streets and roads.

*Amendment agreed to*

*Clause 347(1) agreed to*

*On Clause 347(2)*

**Mr. Penikett:** There is a lot of loose talk in this bill. Section 347(2)(a) refers to a parcel of land "of such width as may be determined by the approving authority lying between the bank of the land containing the water and the land to be retained by the owner,..." Is there a convention in this regard? I seem to remember there was 100 feet, or something. Is that the kind of amount we are talking about here, or are we dealing with different environmental situations in Yukon which may require more? Or, in some cases, are we considering even less than that?

**Mr. McWilliam:** As Mr. Penikett will note, this section provides a maximum in here. He is correct in recognizing that there is a standard for public reserve on waterfront now, but, since most of that land falls under the federal authority, it is not something that we have been all that directly involved with.

**Mr. Fleming:** I think that possibly this is the same question, but I did not quite hear all of the answer. I was wondering: in the case where the Crown gets 33.3 per cent back, I am just wondering what happens then? Say it is the Territorial Government administering this situation and a municipality such as Whitehorse subdivides a large area and it goes back to the Crown; just what happens to it in this case?

**Mr. McWilliam:** Yes, Mr. Chairman, under section (1), as amended, it is very clear that where the provisions for dedication of land of 10 per cent are exercised, then there is no further reversionary right.

*Clause 347(2) agreed to*

*On Clause 347(3)*

*Clause 347(3) agreed to*

*On Clause 347(4)*

**Mr. Penikett:** Well, I may as well ask it here since I did not ask it in the previous one. The approving authority here has some power to do things which, because of the availability of land here, we certainly would not be dictating to them in many other parts of the country. I am sure if we had much good agricultural land here we would not be taking all the flat land and putting houses on it.

I guess in other parts of the world there are some places where they have to build houses in swamps or ravines, because there is nothing else available. Is there any reason, other than convenience, that this legislation would specify that, except where permitted, — I know parks and all that kind of stuff, but that we want to avoid these things. It seems obvious that a developer is not going to pick a swamp if he can get some other place to put houses.

**Hon. Mr. Pearson:** Mr. Chairman, what this section is saying is that, in the area that the developer is developing, he is required to dedicate 10 per cent to the authority. He cannot choose that swamp and dedicate that; use that as his dedication; on the basis that the authority may well want to use the dedicated area for a public park, and it simply would not be suitable.

**Mr. Fleming:** I take it that it is in the next section who is the approving authority; then this could be the case.

**Hon. Mr. Pearson:** Mr. Chairman, little doubt about it. If the approving authority wanted the swamp in order to create a public park or for some other reason, then, by all means, there is nothing stopping that. There is no reason to stop at all in that case.

**Mrs. McGuire:** We have gone past (2), have we?

**Mr. Chairman:** We are on subsection (4) now, page 184.

**Mrs. McGuire:** I would just like to point something out here on 2(a), where it says that the authority is approving a parcel of land on width while lying on the bank. It needs a comma.

**Mr. Penikett:** I think Mrs. McGuire is concerned about the

health of the approving authority if they are found lying between the bank of land containing the water and the land. It seems a peculiar position for the approving authority, that is all.

**Mr. Chairman:** Unanimous consent?

**Some Members:** Agreed.

*Clause 347(4) agreed to*

*On Clause 347(5)*

*Clause 347(5) agreed to*

*On Clause 347(6)*

**Hon. Mr. Pearson:** There is a typo, Mr. Chairman, in the word "dedicated", in the top line.

**Mr. Chairman:** Unanimous consent?

**Some Members:** Agreed.

**Mr. Byblow:** In subsection (6), when it says vested in the Crown within a municipality, what is the full meaning of that, in relation to what the municipality can do with it?

**Mr. McWilliam:** There is a section a little further on in this Clause which provides that the Crown can transfer management of that land to a municipality. Basically all that subsection (6) deals with here is clarifying the ownership of the land: that it rests with the Crown, and, on a technical matter, that we ensure that there is, on a plan of survey, proper designation.

*Clause 347(6) agreed to*

*On Clause 347(7)*

*Clause 347(7) agreed to*

*On Clause 347(8)*

**Mr. Fleming:** He is merely "dedicating the land" to it. Nothing has really happened yet. "...thereof the applicant be required to pay to the municipality a sum of money..." Has anything really happened that he yet has to pay a sum of money for?

Is this before the fact or after the fact?

**Mr. McWilliam:** This provides that, if there is no requirement for public land in that area — for example if it is an industrial subdivision and the community would be better served by parkland in a residential area — they can obtain a sum of money in lieu. It also gives the authority the capability to direct the time and method of payment. They could, for example, indicate that the developer would have to make payment as he sold those lots.

*Clause 347(8) agreed to*

**Hon. Mr. Pearson:** Mr. Chairman, I am sorry I missed it. There is an error in subsection (7)(b). The term in the bottom line, "the fair market value of the required land," the word "market" is redundant and should not be used. I would request the Committee's concurrence that we take that word out.

**Mr. Chairman:** Do I hear unanimous consent?

**Some Members:** Agreed.

*On Clause 347(9)*

**Mr. Byblow:** I believe that what is referred to in subsection (9) is when, according to subsection (8), there is no public use land designated or identified or set aside; what you are doing is paying in lieu of that absence of land. Because you are dealing with what amounts to 10 per cent of that particular development; you are probably talking about 10 per cent of the cost of development of that land.

**Hon. Mr. Pearson:** No, Mr. Chairman, not at all. Possibly, Mr. Chairman, Mr. McWilliam could explain this best.

**Mr. McWilliam:** Mr. Chairman, what you are dealing with here is setting a value on the land which should be dedicated to the public. This establishes the method whereby the developer and the municipality shall agree on what amount he is required to pay in lieu of providing land.

**Mr. Byblow:** I guess I am just not sure what criteria you are using to determine the value of that land.

**Mr. McWilliam:** That is what this section is intended to do: describe how that land value is arrived at. The *Assessment and Taxation Ordinance* deals with what things must be considered in determining fair value. That is why the reference to the *Assessment and Taxation Ordinance*.

**Hon. Mr. Pearson:** Mr. Chairman, I might help the Honourable Member a little bit. It has no relation whatever to the cost of development. It is the value of that land; that is what we are dealing with.

**Mr. Byblow:** My problem is that you are talking about a no-

nentity, because there is no land that was set aside. You are paying in lieu of and I was just having some difficulty here as to how you establish a value on something that does not exist.

**Hon. Mr. Pearson:** Well, Mr. Chairman, 10 per cent of that parcel of land does exist. The assessment taxation legislation in place has a procedure for determining the value of land, and that is what is used. That is the criterion that is used.

*Clause 347(9) agreed*

*On Clause 347(10)*

*Clause 347(10) agreed to*

*Clause 347 agreed to*

*On Clause 348*

*Clause 348 agreed to*

*On Clause 349*

**Mr. Penikett:** Yes, I have been noticing these designations: "Buffer Strip B1, Buffer Strip B2, Utility Lot U2" and so forth. Apart from causing me to reminisce about spy planes and so forth, are these designations standard now, or are they new innovations by the department? I assume that they would, in any case, have to be something that would fit fairly readily into existing zoning maps.

**Mr. McWilliam:** At the present time in land development, it is not really clear as to whether a parcel is being dedicated for public use, green belt, or whether it is really utility easement. There has been some confusion, and in some cases, where an individual felt that he had a green belt behind his house, he was somewhat perturbed when they came along and cut down the trees to put a utility line in. This, I would suggest, provides some clarification of that.

**Mr. Penikett:** Well, probably not, Mr. Chairman, because I notice that there are a lot of fire-breaks in this town, and when it suits real estate agents, they are suddenly described as green belts.

*Clause 349 agreed to*

*On Clause 350*

*Clause 350 agreed to*

*On Clause 351*

*Clause 351 agreed to*

*On Clause 352*

**Mr. Chairman:** Is the Minister prepared to make an amendment?

**Hon. Mr. Lattin:** Yes, I am, Mr. Chairman. I move that Bill Number 57, entitled *Municipal Ordinance*, be amended as follows:

in Clause 352(2), on page 188, by deleting subsection (a) and substituting the following:

"(a) prescribe reasonable conditions respecting the submission of plans to the council, governmental agencies and public utility organizations, the information to be shown on plans or otherwise supplied, and proof of the suitability of the land and its proposed subdivision.

**Mr. Penikett:** Could I have just an explanation as to why the Minister prefers the amendment to the original drafting?

**Hon. Mr. Lattin:** Suitability.

**Hon. Mr. Pearson:** There did not seem to be any need to prove the need for the land, but there had to be need to prove the suitability of the land.

*Amendment agreed to*

*Clause 352 agreed to*

*On Clause 353*

*Clause 353 agreed to*

*On Clause 354*

**Mr. Penikett:** Mr. Chairman, I have one brief question. In the past, certain people have obtained land from the Crown in the Yukon, on certain conditions, one of these conditions being that they not subdivide the land. Now, some time ago, there was one court case that I know of where someone who had obtained land in this Territory did subdivide it, was challenged by the Territory, went to court, and had their right to subdivide the land upheld.

Could I ask the Minister if he is quite sure that the authority of the Territory to decide how and when land should be subdivided, or where it should be subdivided, is not changed by this ordinance; particularly in respect to those people who obtain land for one purpose and now, with a change of ownership, may want to subdivide it, even though they originally obtained it through a farming

or something — well, I cannot think of an example, but I am sure the Minister knows of some.

**Mr. McWilliam:** I believe that the case to which Mr. Penikett refers was not overturned on the basis that there was no right to subdivide. It was a question of whether there was requirement for reversionary rights, and the decision was based on the fact that it was not being subdivided into town-site lots. So there was a subtle distinction there.

Basically, this will not change the process for subdivision, except that it now permits municipalities to become the approving authority, within their own municipality.

**Mr. Penikett:** Perhaps what I am slightly more concerned about, Mr. Chairman, than even the municipalities having some authority, which is obviously desirable, is the rights of people immediately beyond the boundaries of municipalities to subdivide in a way that may negatively affect the plans of those municipalities.

**Mr. McWilliam:** Mr. Chairman, I would suggest that the Minister has already answered that concern, when he pointed out that the intention of the subdivision policy, here, is to ensure that there is some consistency across the Territory. Outside of municipalities, the Commissioner would still be acting as the approving authority. In the case of a concern about how that subdivision is going to affect the municipality, I would suggest that that is where the concept of regional planning becomes very important.

**Mr. Penikett:** Does the Minister mean consistency as in the case of the Mayo Road and the Carcross Road?

**Hon. Mr. Lattin:** Mr. Chairman, I think we have two different plans, in those two particular areas.

*Clause 354 agreed to*

*On Clause 355*

*Clause 355 agreed to*

*On Clause 356*

**Mr. Byblow:** Under 356, where you require the plan of a whole subdivision to be registered in the proper Land Titles Office. The registry with the Land Titles Office requires, in most cases, a long period of time. If you are not permitting approval to a development, you would therefore be holding back that development; is this the situation that could be created here?

**Hon. Mr. Lattin:** Mr. Chairman, the way I interpret this particular section is that approval may be revoked, by the approving authority, up to the time of issuing of a certificate of title. A revocation is subject to appeal to the Yukon Municipal Board.

*Clause 356 agreed to*

**Mr. Penikett:** Mr. Chairman, you did announce an order of the day earlier today, and I just wanted to call your attention to the time.

**Mr. Chairman:** I still have 30 seconds.

I declare a short break at this time.

*Recess*

**Mr. Chairman:** I call Committee of the Whole to order.

*On Clause 357*

*Clause 357 agreed to*

*On Clause 358*

*Clause 358 agreed to*

*On Clause 359*

**Mr. Penikett:** I just want to make absolutely certain that the planned development of subdivisions inside a municipality like this one will, of course, continue to be a cooperative venture between the two levels of government. There is nothing here that would enable the municipality to dictate development, to any great extent, in the case of the Territory.

**Mr. McWilliam:** Yes, that is the case. It would continue to be a cooperative effort.

*Clause 359 agreed to*

*On Clause 360*

**Mr. Fleming:** I just ask the question concerning, "Notwithstanding subsection (1) the time allowed for consideration of an application may be extended with the approval of the Commissioner." I take it that is before that 90 days has elapsed, not afterwards.

**Hon. Mr. Lattin:** Yes, Mr. Chairman, that would be before the 90-day period had expired. It is anticipated that this would seldom occur.

*Clause 360 agreed to*

*On Clause 361*

*Clause 361 agreed to*

*On Clause 362*

**Mr. Penikett:** I wonder if the Minister could just give a brief explanation of this clause. I think I know what he is talking about here, but it may have something to do with the kind of situation I was referring to earlier.

**Hon. Mr. Lattin:** This particular section, 362(1), requires that leases be subject to subdivision approval. Also documents such as agreements for sale and mortgages which, upon foreclosure, could result in a non-acceptable subdivision.

Also, Mr. Chairman, since I am on my feet: subsection (2) prevents raising separate titles to two parcels separated by a row, or similar surveyed right-of-way, without the approval of the approving authority.

*Clause 362 agreed to*

*On Clause 363*

**Mr. Byblow:** Perhaps we could have an explanation of the full import of this section. As I see it, there is some delineation of who pays for what costs of a development, given that there is private developer. My past experience has been that this has been a contentious area. Perhaps I could just have from the Minister or the witness an explanation as to what this section is intended to do, with respect to that delineation.

**Hon. Mr. Lattin:** Clause 363(1) allows a municipality to levy development cost charges, in order that a municipality obtain funds to provide municipal services to new developments created by subdivision, where there is an intensification of development of an existing lot. Changes are to be established by by-law.

In subsection (2), they may not be levied unfairly, and, in (3) they may be established geared flexibly to the nature and the scale of the development involved.

In subsection (4), provision is made in (5) and (6) to ensure that the money is used for the intended purpose and that the by-law is subject to the Inspector's approval.

Subsection (7) is to ensure that it is not unreasonable or discriminatory.

**Mr. Byblow:** I guess that subsection (7) has a lot of implications. I have a specific question: if I am reading subsection (5) correctly, it says that any development charges imposed on the development are retained within the municipality. Is that correct?

**Mr. McWilliam:** This is one of those examples where reserve funds do become quite important. These costs that are levied by the municipality upon the developer have to be deposited in a special reserve fund of the municipality. Then it goes on in subsection (6) to describe how those funds may be used.

**Mr. Byblow:** Referring to subsections (2) and (3), it is my understanding there that, prior to the approval of the development plan, in creating a subdivision, it is going to be clear what costs shall be borne by the developer, and what costs shall be borne by the municipality at large. And, further, it is going to be determined what costs will be assessed against the development, for future expansions to the various systems which may be created as the result of this stage of development. Is that generally what is happening?

**Mr. McWilliam:** Yes, Mr. Chairman, that is the case. In subsection (2) you are saying that you cannot change the rules of the game after it has started. The developer has already initiated action; if there is going to be any development costs charge levied, they must be known to him in advance, and agreed upon.

*Clause 363 agreed to*

*On Clause 364*

*Clause 364 agreed to*

*On Clause 365*

*Clause 365 agreed to*

*On Clause 366*

**Mr. Penikett:** I know everybody wants to get out of here and get done with this, but I do not want to skip through this section too quickly. I think I know what it means, but I want to ask the Minister's interpretation of one section, since it has implications for a part of town which he represents.

I remember, during my time at Whitehorse City Council, that we had a real problem with homes in the downtown area; older homes

particularly, which were bona fide residences, they were not rental housing units, and they had not been converted into businesses, which were technically non-conforming, in some cases, on some small ground. They did not fit in with the present building code; they were on the wrong-sized lots, or they were in the wrong position on the lot.

People who lived in those houses wanted to maintain their homes and, in some cases, wanted to do a major repair such as putting a new roof on, which seems to be a perfectly acceptable, desirable improvement. They were running into problems because they were told by municipal inspectors that, if they did this, their house would become more non-conforming, or that they could not do these kinds of improvements to their home, even adding a porch or a garage, or something modest like that, because it would make the house more non-conforming. When in actual fact common sense would say that all they were doing was making the dwelling more habitable, and maintaining it in the existing housing stock, as a useful, comfortable dwelling.

I think that many of the people who found themselves in such circumstances were not financially secure enough to buy a new home in Riverdale, or whatever, and simply wanted to renovate their existing accommodation, but fell afoul of the law, which in my opinion was created for an entirely different purpose. I just wondered if the Minister had considered such circumstances; and whether or not this provision will make things better or worse in cases such as those.

**Hon. Mr. Lattin:** I pray it will not make it any worse. I realize that these things have arisen from time to time, but I think it is quite clear in this particular section that the nonconforming use of a building may be extended throughout the life of the building, but that no major alterations contrary to the zoning by-law are permitted. Distinction is made between permissible repairs and maintenance, on the one hand, and acceptability of no major structure operations on the other.

Mr. Chairman, I would suggest — the Honourable Member was talking about a new roof on a building, on this particular example he quoted — I will submit that repairing a roof or putting on a new roof would not change the structural design of the building. It is my interpretation that that would be permissible.

**Mr. Penikett:** I hope that interpretation is perfectly correct, and is conveyed to all concerned. I want to assure the Minister that if he does not know of cases in his constituency, I do. There are cases where people were stopped from doing exactly that, under the present law.

**Hon. Mr. Pearson:** There was one thing the Honourable Member did mention and it should be made clear: a roof can be rebuilt or reconstructed, but a porch cannot be built on, because that is adding to the size.

**Mr. Penikett:** Mr. Chairman, I was using sloppy language when I said that. I said that in order to make the distinction between the two kinds of things, but I accept the Minister's commitment.

*Clause 366 agreed to*

*On Clause 367*

**Hon. Mr. Pearson:** Mr. Chairman, in line 3, in order for the section to read properly, the word "or" has to be inserted between "plan" and "zoning".

**Mr. Chairman:** I understand that the section has to be amended; am I correct in saying that?

**Hon. Mr. Lattin:** Yes, Mr. Chairman, I am sorry I was a little bit slow on rising to my feet.

Mr. Chairman, I move that Bill Number 57, *Municipal Ordinance*, be amended as follows:

In clause 367(1) on page 195, by deleting the words "official community plan zoning by-law", and substituting the words "official community plan or zoning by-law".

*Amendment agreed to*

*Clause 367 agreed to*

*On Clause 368*

*Clause 368 agreed to*

*On Clause 369*

**Mr. Penikett:** Mr. Chairman, I hope this clause will not prevent a municipality from putting a restriction on a zone, as occasionally happens where there is one non-conforming use. That operation may have a little bit of spot re-zoning done, but there is a restriction on it, that the moment that present business retires or comes to an

end, that zoning expires, and that special use goes out of existence.

**Hon. Mr. Lattin:** No, Mr. Chairman, on this particular clause, a change of ownership or tenancy is not in itself a reason to require a change in use. This protects an individual who acquires a non-conforming use lot: for example, a house that is sold as a home in an area now zoned commercial. So this is a protection.

**Mr. Penikett:** Mr. Chairman, just let me make a small point with regard to this section, just before we finally clear it. A number of times in this bill, the Minister has given commitments about the meaning and the intent which frankly were not always clear to me from the wording of the ordinance. They may be clear to a lawyer or to an expert. That is fine.

I understand that, when there is some indecision as to the interpretation of some legislation, it goes to the courts; the courts cannot consider the *Hansard* of the day as evidence at all, but only the legislation as it is. I can understand the reasons for that.

When officials, Mr. McWilliam's successors some years hence, are interpreting an ordinance, is it permissible for them, or is it ever the practice for them, to go back to the Debates and to try to ascertain the legislators at the time?

I am not talking about legal interpretation; I am talking about administrative practice.

**Mr. McWilliam:** Yes, Mr. Chairman, all I can comment on that subject is that myself or my successors are directed in our duties by the Minister and the Cabinet of the day. They are certainly the ones who would direct our actions, not previous *Hansard*.

With reference to your concern in Clause 369, you are dealing with a temporary use situation there, and that was previously dealt with in Clause 329(4).

*Clause 369 agreed to*

*On Clause 370*

**Mr. Byblow:** I wonder if I could have a clarification of "municipally owned property". Does that necessarily mean the requirement of property in the nature of a land bank, or are we talking about streets, roads? What is the reference to "municipally owned property"?

**Hon. Mr. Lattin:** Mr. Chairman, I think before I answer that particular question that I should make some general comments on this particular clause. The business improvement area concept, in which a management commission may be established to clear for municipally owned property and promote the area, is a new concept in Yukon. In principle, council has the power to create a commission, turn over certain civic powers to the commission, and devise a suitable means of funding the commission.

The business improvement area may only be created where there is suitable provision in a community plan.

**f2Mr. Byblow:** If I am reading Clause 371(b) correctly, this commission is then entitled to impose special levy, or just by recommendation to set those mechanics into motion.

**Mr. McWilliams:** No, the commission cannot levy or raise that money. It is the council that would be doing that. What the management commission may be empowered to do is to direct the spending of those monies, as instructed by council.

*Clause 370 agreed to*

*On Clause 371*

*Clause 371 agreed to*

*On Clause 372*

**Mr. Penikett:** I have tried to understand the purpose of this section. The board of variance referred to in subsection (1) shall consist of not less than three or more than nine members, and shall hear and determine appeals made to it, pursuant to this part. That is fine. But subsection (2):

"Where the population of a municipality is more than five thousand the board shall be composed of persons other than aldermen of the municipality."

Now, the 5,000: what they are talking about there in the second clause is the City of Whitehorse, basically. The board of variance, as it now exists — I think we talked about this previously — is the planning board, which contains two aldermen. Is it proposed here that the planning board of the City of Whitehorse shall no longer include aldermen?

**Mr. McWilliam:** Perhaps I should point out that, while the planning board provides the function of the board of variance, they are, nevertheless, established as a board of variance; one body doing two separate jobs. What this legislation provides for — and it



was dealt with earlier in this part — was that a board of variance must be established. It is now a requirement. It is intended to ensure, again: where possible, to remove any concern about the objectivity of the board.

**Mr. Penikett:** So, all of a sudden, the board of variance in Whitehorse is going to be the planning board minus the aldermen. Is that the circumstance? They are going to have to separate their agenda accordingly, so that when they are sitting on planning decisions generally, they will include the aldermen; when they are sitting on variance applications, the aldermen will have to leave the room? Is that what is being proposed?

**Mr. McWilliam:** It could work in that way, Mr. Chairman.

**Mr. Penikett:** Well, I must express some concern about this, Mr. Chairman, because it may be a good idea, but I really do not think we are the people who should be deciding that. Of all the boards with which I have had the pleasure and displeasure of being associated, I would say that the planning board in this City, which includes a majority of non-elected people, has been one of the best I have had anything to do with. In fact, the fact that it has two aldermen on it, who participate in the discussions and then bring forward the decisions of that board to the council, is a very good idea, and is consistent with what I was proposing to the Government Leader earlier about boards of this Government. It works so well that we should only tamper with it very cautiously. I seriously ask the Minister if the Council of Whitehorse really knows the implications of this? If they do not, I am not sure that we should pass it so quickly.

**Mr. McWilliam:** This specific provision was put in at the request of AYC, which also represents the City of Whitehorse.

**Mr. Penikett:** Well it may be; having been involved with AYC when I was on city council, I am not sure that every member of council knows what AYC is doing, or vice versa.

If it is not going to delay passage of the bill too long, I would appreciate it if the Minister would set aside this clause until he has satisfied himself that the Whitehorse City Council knows. If this goes through, you are going to have a radical change in the planning board procedure, such as they are going to have to separate the agendas — the variance applications as opposed to the other business of the planning board. They are going to have to have two separate agendas, and they are going to have to sit as two bodies.

It is quite conceivable now that an alderman, for example, can sit as chairman of the planning board. There is nothing wrong with that. The planning board elects their own chairman; they govern their own procedures that way.

What they will now be required to do is to have a chairman of the board of variance who will be a citizen, especially if they had an alderman chairman; he would have to sit as two separate bodies. To make their procedures very clear, they would have to reconstitute themselves to have separate meetings and they would have to keep separate sets of minutes to make them legal. I am not sure they have thought out all those things. I am not sure that there is a good reason for doing it, even if they have thought it out.

**Mr. McWilliam:** While I cannot comment on whether or not the House would want to stand this section over, I would point out that the difficulties which Mr. Penikett is suggesting may occur have been considered; however, it was thought that where you have a board of variance which is, in effect, an appeal board, there is considerable merit to recognizing it as precisely that: an appeal board, which should be, at least for the consideration of appeals, separate from the planning board, who, after all, have helped to prepare the community plan and zoning by-law that is being appealed against.

**Mr. Penikett:** Well, Mr. Chairman, I fear that this notion of specialization is really a bureaucratic convention. I am afraid human beings do not function that way. I think that one of the things that makes the planning board work so well in this city is that they are making planning decisions, or trying to make planning recommendations, based on their practical experience gained from having heard variances, appeals of variance. In fact, it is that practical experience, after they have spent some time on the board, which ultimately gives them the kind of expertise and the knowledge and the wisdom to be able to make sensible recommendations on planning. In other words, they are not dealing only with problems that come from past decisions, but they are making recommendations to solve them for the future.

It seems to me that if we go ahead with this, the city is going to end up having two separate boards, a planning board and a board of variance. They are going to have to function separately whereas

they function very well as one entity. It seems a little contradictory for this Government to be arguing that this board cannot carry out two functions, whereas the Municipal Board, which we are proposing, is going to carry out several. I have some problem with the logic there.

*Clause 372 agreed to*

*On Clause 373*

*Clause 373 agreed to*

*On Clause 374(1)*

*Clause 374(1) agreed to*

*On Clause 374(2)*

*Clause 374(2) agreed to*

*On Clause 374(3)*

*Clause 374(3) agreed to*

*On Clause 374(4)*

*Clause 374(4) agreed to*

*On Clause 374(5)*

*Clause 374(5) agreed to*

*On Clause 374(6)*

*Clause 374(6) agreed to*

*On Clause 373(7)*

*Clause 373(7) agreed to*

*On Clause 374*

*Clause 374(8) agreed to*

*On Clause 374(9)*

**Mr. Penikett:** Mr. Chairman, I think I know why this section is here, and I may even be partially to blame. I am not sure I like it any better for that. One of the things that human beings who are not experts or specialists do, is they make judgments about people or about things, without always knowing fully their reasons for doing so.

Sometimes, in hearing an application, a citizen board, it seems to me — since we have now knocked off anybody who is politically accountable — is going to make judgments on whether they like the sound of it or whether they think it fits in: such general attitudes like that. The people at the municipal level who are equipped to be able to write reasons are the people in the bureaucracies, the professionals, because they are the people who are intimately aware of ordinances like this, and can say that such and such is not acceptable, because it falls afoul of Clause 43 of the by-law, et cetera. It is my experience that even elected people do not do that very well. In fact they do not do it very often, and when they do it they do not do it very well. To expect part-time citizen boards to be able to write those kind of decisions is even more unreasonable.

I know that the courts have said that tribunals like this cannot make decisions without stating their reasons clearly, and I understand that a court will do that, because they want to be able to write their judgments in such a way that they can become a precedent.

It seems to me that, having removed the political people from this thing, we have now created a circumstance whereby the boards in this case are going to be totally dependent upon the officials who serve them.

The officials who serve it are, in every case, going to be officials accountable, responsible to the elected politician. You are going to have a very peculiar situation, where the officials are going to have to try and anticipate decisions of boards or going to be writing optional decisions for boards. Before they have made the decision, they will be drafting the reasons, because it is very hard to adjourn the board; that does not usually happen. They usually make a decision, and then have to write the minutes of it. You are going to have the officials who are not accountable to the board, but are responsible to the elected people, writing decisions, or drafting decisions for a board. You are going to have political people having no input, and you are going to have the board — instead of simply saying yes or no, which the board is very well equipped to do — justify itself in language which satisfies lawyers and judges. It is something which, I think, most of these boards are not well equipped to do.

I do not know what the answer is. I just want to tell the Minister I think this is going to be a real problem for him, because it is one thing for a board to say yes or no, the application is approved or denied, but it is another thing for them to have to cite chapter and verse of the laws in the sections of why it is approved or disapproved. I think that is something which, without very good advice and a lot of official talent, they are not going to be able to do.

**Hon. Mr. Pearson:** Well, Mr. Chairman, I must take issue with a couple of comments that the Honourable Member has made. The board makes its decision based on facts and merit: that is all, nothing else, no politics, nothing else. Mr. Chairman, the board makes its decision and puts its decision in writing. It gives its reasons for doing that. Now, I just do not accept the fact that this has to be an iron-clad legal document, that is going to fly to a court of law at that point in time.

**Mr. Penikett:** Well, as is often the case, the Government Leader is speaking common sense and I am inclined to agree with him. Unfortunately I am not sure the courts do. In one decision I know of, if I remember correctly, the courts required the decision be written in the language which he said was not possible; that is my problem with the clause.

I do not think you can do anything about the clause. I just want to go on record as expressing a concern about it, because it is something that some judges are requiring us to do, and I think it is going to be very difficult. In practical purposes, for boards in small communities, it will be almost impossible.

*Clause 374(9) agreed to*

*On Clause 374(10)*

*Clause 374(10) agreed to*

*On Clause 374(11)*

*Clause 374(11) agreed to*

*On Clause 374(12)*

**Mr. Penikett:** Mr. Chairman, I cannot let this section go by without expressing my concern that we have got a whole system of appeals here — notwithstanding the Government Leader's objection — on matters that have a strong political content, but without political people having much of a voice. In fact, you are going to have one group of appointed people making a decision and then another group of people over-ruling them. There is no accountability to the elected people or the public, anywhere along in the process.

*Clause 374(12) agreed to*

*On Clause 374(13)*

*Clause 374(13) agreed to*

*Clause 374 agreed to*

**Hon. Mr. Lattin:** Mr. Chairman, I move that you do now report progress on Bill Number 57, and beg leave to sit again.

**Mr. Chairman:** It has been moved by the Honourable Member for Whitehorse North Centre that the Chairman do now report progress on Bill Number 57 and beg leave to sit again.

*Motion agreed to*

**Hon. Mr. Lattin:** I move, Mr. Chairman, that Mr. Speaker do now resume the Chair.

**Mr. Chairman:** It has been moved by the Honourable Member for Whitehorse North Centre that Mr. Speaker do now resume the Chair.

*Motion agreed to*

**Mr. Chairman:** The witness may now be excused.

*Mr. Speaker resumes the Chair*

**Mr. Speaker:** I will now call the House to order. May we have a report from the Chairman of Committees?

**Mr. Njootli:** Yes, Mr. Speaker, the Committee of the Whole have considered Bill Number 57, *Municipal Ordinance*, and directed me to report progress on same and ask leave to sit again.

**Mr. Speaker:** You have heard the report of the Chairman of Committees. Are you agreed?

**Some Members:** Agreed.

**Mr. Speaker:** Leave is so granted.

May I have your further pleasure?

**Hon. Mr. Graham:** Mr. Speaker, I move, seconded by the Honourable Member for Mayo, that we do now adjourn.

**Mr. Speaker:** It has been moved by the Honourable Minister of Justice, seconded by the Honourable Member for Mayo, that we do now adjourn.

*Motion agreed to*

*The House adjourned at 5:26 o'clock p.m.*

**The following Legislative Returns were tabled Friday, November 7, 1980:**

80-3-22

Realignment of Alaska Highway in the Morley River area (Oral Question - October 30, 1980 - Page 525)

80-3-23

T.V. maintenance contract

(Oral Question - November 4, 1980 - Page 586)