



# Bill 206: Real Property Rights

## *BILD Alberta Submission*

### General Comments

The Building Industry Land Development Association Alberta (BILD Alberta) is the unified voice of the residential construction industry representing 1,600 home builders, land developers, professional renovators, suppliers, skilled trades and consultant members. BILD Alberta members are part of an industry that represents \$8 billion in economic activity and 118,000 jobs. On the behalf of our membership, we welcome the opportunity to provide input to the Select Special Committee on Real Property Rights. BILD Alberta requests the feedback provided below is given the same consideration as invited stakeholder submissions.

### **Question 1: Do you think the legal remedies available to a real property owner who is deprived of the use of their real property are adequate?**

Legislation currently lacks standards to assure a property owner's right to fully develop surface resources, such as sand and gravel. As a result, much of the resource base has been sterilized by municipal policy including mandatory setbacks, implementation of mandatory rezoning processes which cannot be appealed, and land use planning which clearly details the inability to extract resources.

Section 58 of the *Law and Property Act* states:

58(1) The owner of the surface land is and is to be deemed at all times to have been the owner of and entitled to sand and gravel on the surface of that land, and all sand and gravel obtained by stripping off the overburden or excavating from the surface, or otherwise recovered by surface operations.

However, sand and gravel property owners do not have any flexibility in how their land is used, enjoyed, or developed due to prescriptive municipal policies. In addition, sand and gravel property owners do not have legal remedies apart from lawsuits which are often lengthy processes to navigate. Remedies, including compensation, should be available to sand and gravel property owners if municipality policy restricts the use and development of their land.

### **Question 2: Do you think the real property rights should be expanded, or in the case of an individual, constitutionally protected?**

Legislation should enable private landowners to develop their land if it is in the best interest of Albertans and not tied to municipal policy. Municipal policy does not always consider and provide weight to the broad interests of all Albertans. Provincial policy does not provide protection for a property owner's right to fully develop the resource, instead much of the resource base is now sterilized by municipal policy.

Municipalities have knowing or unknowingly effectively enacted ban on resources including sand and gravel. As a result, property owner's development rights are effectively subordinated to those of their neighbors or community, instead of being mitigated as they would be for other forms of development in the very same location or proximity to the adjacent resident or community.

### **Question 3: Do you think the law of adverse possession should be abolished?**

BILD Alberta supports the importance of recognizing private property rights but does not hold a specific position on adverse possession in Alberta.

### **Question 4: Do you think the expropriation processes provided under the *Expropriation Act* are adequate?**

BILD Alberta encourages a review of the *Expropriation Act* in order to reduce red tape and allow development to proceed once the expropriation process moves to the step of valuation and compensation.

When developing large communities, expropriation of lands is often required to facilitate new roads and other infrastructure. As expropriations move through the legislated process, they often get delayed when determining land valuation and compensation. This is an extra step of red tape that delays projects from moving forward when the matter in question simply relates to compensation to the landowner.

Delays over the compensation aspect of expropriations can lead to multiple months of delays which results in considerable interest charges for industry when the matters going through the process simply relate to compensation, not the design of the project.

Development proceeding as this process plays out still provides the affected landowners with fair compensation and maintains the ability to challenge the expropriation at previous stages. Once the process moves to the compensation stage, money will still be paid, debate and process is simply focused on the amount of compensation.

In addition, municipalities should collaboratively work with developers in building stronger communities through the expropriation process. Developers often require assistance from municipalities in acquiring adjacent land for road widening and access to services. Municipalities can be reluctant to expropriate land on the behalf of developers if the project is not deemed to be in public interest. A lack of collaboration between municipalities and developers can impact growth in new communities and ultimately affordable housing, which should always be considered in the public interest. Municipalities need to work with developers in identifying cost-effective solutions in community development goals within an area structure plan and expropriate land when possible.

BILD Alberta recommends a review of the *Expropriation Act* to reduce red tape, streamline inefficient processes, add clear authority to dismiss unnecessary or responsive claims, allow landowners to receive compensation faster, allow public projects with municipalities to proceed more expeditiously, reduce the amount of infrastructure funds paid by an expropriating authority to landowners' lawyers for substantial legal costs, and consider including processes that are found in other Canadian jurisdictions.

### **Question 5: Do you have any comments on Bill 206, Property Rights Statutes Amendment Act, 2020?**

BILD Alberta welcomes additional opportunities to provide input on the behalf of our members prior to the committee submitting recommendations to the legislative assembly. BILD Alberta strongly advocates for policies that reduce red tape and encourage private sector investment in growing communities. BILD Alberta members mostly expressed concerns on the expropriation process and *Expropriation Act* and would like to work with government in reviewing this legislation to identify inefficiencies, streamline processes and promote further economic growth.

**Question 6: Do you have any other comments on real property rights as they relate to any of the following statutes: *Alberta Bill of Rights, Alberta Land Stewardship Act, Expropriation Act, Land Titles Act, Law of Property Act, Limitations Act, or Responsible Energy Development Act?***

The current statutes under review are adequate for the mandate of the Select Special Committee on Real Property Rights.

**Question 7: Do you have any other comments on real property rights in Alberta?**

BILD Alberta members also expressed concerns over municipalities using legislative authority to impose tree preservation policies which prohibits private property owners from removing trees on their land. These municipal policies add additional red tape to builders looking to proceed with projects and reduces the amount of land developers can utilize for community growth. BILD Alberta would like to participate in further engagements to raise this issue to relevant ministries.