

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

580C0454

HOUSE BILL NO. 1126

Introduced by: Representatives Crisp, Chicoine, Duniphan, Fryslie, Hennies, Munson (Donald),
Nachtigal, Peterson, Solum, and Weber and Senators Vitter, Flowers, Ham, and
Reedy

1 FOR AN ACT ENTITLED, An Act to standardize publication and hearing requirements for
2 municipal and county planning and zoning procedures.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 11-2-10 be amended to read as follows:

5 11-2-10. If a county is conducting or in good faith intends to conduct studies within a
6 reasonable time, or has held or is holding a hearing for the purpose of considering a
7 comprehensive plan or official controls, the board in order to protect the public health, safety,
8 and general welfare may adopt as an emergency measure a temporary zoning map and temporary
9 zoning ordinance and other temporary official controls, the purpose of which shall be to classify
10 and regulate uses and related matters as constitutes the emergency. Before adoption or renewal
11 of such emergency measure or measures, the board shall hold at least one public hearing, ~~notice,~~
12 Notice of the time and place of ~~which the hearing~~ shall be given once at least ten days in advance
13 by publication in a ~~newspaper having general circulation in~~ legal newspaper of the county. ~~Such~~
14 ~~measures shall be~~ Any emergency measure is limited to one year from the date ~~they become it~~
15 becomes effective and may be renewed for one year. In no case ~~shall~~ may such ~~measures a~~
16 measure be in effect for more than two years.

Section 2. That § 11-2-11 be amended to read as follows:

11-2-11. The county planning commission may prepare, or cause to be prepared, a comprehensive plan for the county including those municipalities within the county which are either unincorporated or which have requested by resolution of the governing board of such municipality to be included. Zoning ordinances, subdivision ordinances, the official zoning map, and other official controls as deemed necessary, shall be included as adjuncts to and in accordance with the comprehensive plan. The county planning commission shall hold a public hearing subject to the same notice requirements as provided in § 11-2-19.

Section 3. That § 11-2-17.1 be amended to read as follows:

11-2-17.1. The board of county commissioners may enact permanent subdivision ordinances as defined in subdivision 11-2-1(7). The board need not follow the procedures provided in this chapter for establishing zoning districts or official controls pursuant to the comprehensive plan in implementing this section. This section ~~shall~~ does not apply to any county that has adopted a comprehensive plan. Before adoption of its subdivision ordinance or any amendment thereto, the commission shall hold at least one public hearing. Notice of the time and place of the hearing shall be given once at least ten days in advance by publication in a legal newspaper of the county. Any interested person shall be given a full, fair, and complete opportunity to be heard at the hearing, and the governing body may refuse or adopt the ordinance, with or without amendment.

Section 4. That § 11-2-19 be amended to read as follows:

11-2-19. After receiving the proposed comprehensive plan drafted by the planning commission, which includes proposed official controls, the board of county commissioners ~~shall direct the county auditor to publish once a week for at least two successive weeks in a newspaper of general circulation in the area affected, a notice of hearing, the time and place when the hearing will be held, and a notice that all interested persons may appear and be heard~~ shall hold at least one public hearing. Notice of the time and place of the hearing shall be given

1 once at least ten days in advance by publication in a legal newspaper of the county.

2 Section 5. That § 11-2-21 be amended to read as follows:

3 11-2-21. The action of the board of county commissioners shall be filed with the county
4 auditor. A summary ~~of the same~~ shall be prepared by the county planning commission, reviewed
5 by the state's attorney, and published once in ~~the official newspaper or newspapers in a legal~~
6 newspaper of the county and take effect on the twentieth day after its publication. Any summary
7 published under the provisions of this chapter shall contain a notification that the public may
8 inspect the entire comprehensive plan or any part, adjunct, amendment, or additions at the office
9 of the county auditor during regular business hours.

10 Section 6. That § 11-2-28.1 be amended to read as follows:

11 11-2-28.1. An individual landowner may also petition the board to change the zoning of all
12 or any part of ~~his~~ the landowner's property. Such petitioning landowner shall also notify all other
13 abutting landowners by registered or certified mail of the petitioned zoning change at least ~~one~~
14 ~~week~~ seven days prior to any public hearing held thereon by the board of county commissioners.
15 Property shall be considered as abutting even though it may be separated from the property of
16 the petitioner by a public road or highway.

17 Section 7. That § 11-2-29 be amended to read as follows:

18 11-2-29. Upon such filing or upon separate request by the board, the planning commission
19 shall hold ~~a public hearing not less than fifteen days after notice published in a newspaper of~~
20 ~~general circulation in the area affected~~ at least one public hearing. Notice of the time and place
21 of the hearing shall be given once at least ten days in advance by publication in a legal newspaper
22 of the county. At such public hearing, any person may appear and request or protest the
23 requested change.

24 Section 8. That § 11-2-30 be amended to read as follows:

25 11-2-30. The board of county commissioners shall thereafter by resolution or ordinance, as

1 appropriate, either adopt or reject such amendment, supplement, change, modification, or repeal,
2 and if it is adopted by the board of county commissioners, a summary ~~of the same~~ shall be
3 prepared by the county planning commission, reviewed by the state's attorney, and published
4 once in ~~the official newspaper in~~ a legal newspaper of such county and take effect on the
5 twentieth day after its publication. The provisions of § 11-2-22 ~~shall be~~ are applicable ~~hereto to~~
6 this section.

7 Section 9. That § 11-3-22.1 be amended to read as follows:

8 11-3-22.1. The board of county commissioners shall set a time and place for a hearing on a
9 petition filed pursuant to § 11-3-21.1. The hearing shall be held within thirty days of when the
10 petition is filed. ~~A notice of the hearing shall be published once a week for two consecutive~~
11 ~~weeks in a legal newspaper in the county. The board shall hold at least one public hearing. Notice~~
12 of the time and place of the hearing shall be given once at least ten days in advance by
13 publication in a legal newspaper of the county.

14 Section 10. That § 11-4-3.1 be amended to read as follows:

15 11-4-3.1. If a municipality is conducting or in good faith intends to conduct studies within
16 a reasonable time or has held or is holding a hearing for the purpose of considering a
17 comprehensive plan or official controls, the city council in order to protect the public health,
18 safety, and general welfare may adopt as an emergency measure a temporary zoning map, a
19 temporary zoning ordinance, and other temporary official controls, the purpose of which shall
20 be to classify and regulate uses and related matters as constitutes the emergency. Before
21 adoption or renewal of such emergency measure, the council shall hold at least one public
22 hearing, ~~notice.~~ Notice of the time and place of ~~which the hearing~~ shall be given once at least ten
23 days in advance by publication in a legal newspaper ~~having general circulation in~~ of the
24 municipality. ~~Such ordinance shall be~~ Any emergency ordinance is limited to one year from the
25 date it becomes effective and may be renewed for one year. In no case ~~shall~~ may such ordinance

1 be in effect for more than two years.

2 Section 11. That § 11-4-4 be amended to read as follows:

3 11-4-4. The governing body may adopt the necessary regulations for preparing a preliminary
4 survey and plan designating the proposed restrictions and district boundaries. The proposed
5 district and restrictions shall be definitely set forth in a proposed ordinance. The ordinance shall
6 be adopted as other ordinances; ~~except that the auditor or clerk shall publish one week prior to~~
7 ~~the date of the adoption of the ordinance, a notice of the time and place when and where all~~
8 ~~persons. Before adoption or renewal of such ordinance, the council shall hold at least one public~~
9 ~~hearing. Notice of the time and place of the hearing shall be given once at least ten days in~~
10 ~~advance by publication in a legal newspaper of the municipality. Any interested person shall be~~
11 given a full, fair, and complete opportunity to be heard at the hearing, and the governing body
12 may refuse or adopt the ordinance, with or without amendment; ~~the ordinance.~~

13 Section 12. That § 11-4-5 be amended to read as follows:

14 11-4-5. If such an ordinance is adopted, the ordinance ~~shall be published and take effect as~~
15 ~~other ordinances~~ is subject to the provisions of § 9-19-7 as a comprehensive regulation unless
16 the referendum is invoked, or unless a written protest is filed with the auditor or clerk, signed
17 by at least forty percent of the owners of equity in the lots included in any proposed district and
18 the lands within two hundred fifty feet from any part of such proposed district. A corporation
19 shall be construed to be a sole owner, and if parcels of land are in the name of more than one
20 person, ownership representation shall be in proportion to the number of signers who join in the
21 petition in relation to the number of owners. If a protest is filed, the ordinance does not become
22 effective unless the ordinance is approved by two-thirds of the governing body of the
23 municipality. The protest provisions of this section do not apply to any ordinance regulating or
24 establishing flood plain areas.

25 Section 13. That § 11-4-21 be amended to read as follows:

1 11-4-21. The board of adjustment shall ~~fix a reasonable time for the hearing~~ hold at least one
2 public hearing of the appeal; give public notice thereof, as well as due notice. Notice of the time
3 and place of the hearing shall be given once at least ten days in advance by publication in a legal
4 newspaper of the municipality, and due notice shall be given to the parties in interest ~~and.~~ The
5 board shall decide the ~~same~~ appeal within a reasonable time. ~~Upon the hearing any~~ Any party
6 may appear at the hearing in person or by agent or by attorney.

7 Section 14. That § 11-6-17 be amended to read as follows:

8 11-6-17. Before recommendation to the council of the comprehensive plan or part thereof,
9 the planning commission shall hold at least one public hearing, ~~notice.~~ Notice of the time and
10 place of ~~which the hearing~~ shall be given once at least ~~fifteen~~ ten days in advance by publication
11 in a legal newspaper ~~having general circulation in the community of the municipality.~~ The
12 planning commission shall submit the recommended comprehensive plan or part thereof to the
13 municipal council.

14 Section 15. That § 11-6-18.2 be amended to read as follows:

15 11-6-18.2. A summary of the action of the city council shall be prepared by the city planning
16 commission, reviewed by the city attorney, and published once in ~~the official newspaper of the~~
17 ~~first or second class~~ a legal newspaper of the municipality and take effect on the twentieth day
18 after its publication. Any summary published under the provisions of this chapter shall contain
19 a notification that the public may inspect the entire comprehensive plan or any part, adjunct,
20 amendment, or additions thereto at the office of the city auditor or clerk during regular business
21 hours.

22 Section 16. That § 11-6-27 be amended to read as follows:

23 11-6-27. In exercising the duties granted to it by this chapter, the planning commission shall
24 recommend and the council shall by ordinance adopt regulations governing the subdivision of
25 land within its jurisdiction as defined in § 11-6-26. Such regulations may provide for the

1 harmonious development of the municipality and its environs; for the coordination of streets
2 within subdivisions with other existing or planned streets or with other features of the
3 comprehensive plan of the municipality; for adequate open spaces for traffic, recreation, light,
4 and air; and for a distribution of population and traffic which will tend to create conditions
5 favorable to health, safety, convenience, or prosperity. Before an adoption of its subdivision
6 regulations or any amendment thereof, ~~a public hearing thereon shall be held by the council~~ shall
7 hold at least one public hearing. Notice of the time and place of the hearing shall be given once
8 at least ten days in advance by publication in a legal newspaper of the municipality. Any
9 interested person shall be given a full, fair, and complete opportunity to be heard at the hearing,
10 and the governing body may refuse or adopt the ordinance, with or without amendment.

11 Section 17. That § 11-6-31 be amended to read as follows:

12 11-6-31. Any subdivision of land containing two or more lots, no matter how described, shall
13 be platted or replatted, and must be submitted to the planning commission for their consideration
14 and recommendation to the council for approval or rejection or reviewed and approved in
15 accordance with § 11-3-6. ~~Any plat submitted shall contain the name and address of a person to~~
16 ~~whom notice of hearing may be sent; and no plat shall be acted upon by the council without~~
17 ~~affording a hearing thereon, notice of the time and place of which shall be sent by mail to said~~
18 ~~address not less than five days before the date fixed therefor.~~

19 Section 18. That § 11-6-34 be amended to read as follows:

20 11-6-34. When any map, plan, plat, or replat is tendered for filing in the office of the register
21 of deeds, ~~it shall be the duty of any such officer to~~ the register of deeds or deputy shall determine
22 whether such proposed map, plan, plat, or replat is or is not subject to the provisions of this
23 chapter and whether the endorsements required by this chapter appear thereon, ~~and no.~~ No
24 register of deeds or deputy ~~shall~~ may accept for record, or record, any such map, plan, plat, or
25 replat unless and until ~~the same shall have~~ it has been approved by the city council of such

1 municipality as required by § 11-6-26 or reviewed and approved in accordance with § 11-3-6.

2 Section 19. That § 11-6-36 be amended to read as follows:

3 11-6-36. From and after the time when the platting jurisdiction of any municipality ~~shall have~~
4 has attached by virtue of the adoption of a major street plan as provided in § 11-6-26, the
5 municipality or other public authority ~~shall may~~ not, except as provided by § 11-6-37, accept,
6 lay out, open, improve, grade, pave, or light any street or lay or authorize the laying of water
7 mains, sewers, connections, or other facilities or utilities in any street within the municipality
8 unless such street ~~shall have~~ has been accepted or opened as, or ~~shall have~~ has otherwise received
9 the legal status of, a public street prior to the adoption of a comprehensive plan, or unless such
10 street corresponds in its location and lines with a street shown on a subdivision plat approved
11 by ~~said~~ the council or on a street plat made by the planning commission and adopted by the
12 council or reviewed and approved in accordance with § 11-3-6.

13 Section 20. That § 11-6-37 be amended to read as follows:

14 11-6-37. The council, or, in the case of a street outside of the municipality, the governing
15 body of such outside territory, may locate and construct or may accept any other street if the
16 ordinance or other measure for such location and construction or for such acceptance be first
17 submitted to the planning commission for its consideration, and, if disapproved by the
18 commission, be passed by not less than two-thirds of the entire membership of the city council
19 or said governing body; ~~and a.~~ A street approval by the commission upon such submission, or
20 constructed or accepted by ~~said~~ a two-thirds vote after disapproval by the commission, ~~shall have~~
21 has the status of an approved street as fully as though it had been originally shown on a
22 subdivision plat approved by the council or on a plat made by the commission and adopted by
23 the council or reviewed and approved in accordance with § 11-3-6.

24 Section 21. That § 11-6-38 be amended to read as follows:

25 11-6-38. From and after the time when the platting jurisdiction of any municipality ~~shall have~~

1 has attached by reason of the adoption of a major street plan as provided in § 11-6-26, no
2 building permit ~~shall~~ may be issued for or no building ~~shall~~ may be erected on any lot within the
3 territorial jurisdiction of ~~said the~~ said the commission and council as provided in § 11-6-26, unless the
4 street giving access to the lot upon which ~~said the~~ said the building is proposed to be placed ~~shall be~~ is
5 accepted as opened as, or ~~shall have~~ has otherwise received the legal status of, a public street
6 prior to that time, or unless such street corresponds in its location and lines with a street shown
7 on a recorded subdivision plat approved by ~~said the~~ said the council or on a street plat made by ~~said the~~ said the
8 commission and adopted by the council or with a street located or accepted by the council, or,
9 in the case of territory outside of the municipal corporation, by the governing body thereof, after
10 submission to ~~said the~~ said the commission, and, in case of ~~said the~~ said the commission's disapproval, by the
11 favorable vote required in § 11-6-37. Any building erected in violation of this section ~~shall be~~
12 ~~deemed~~ is an unlawful structure, and the municipality or governing body may bring action to
13 enjoin such erection or cause it to be vacated or removed.