



First Session — Thirty-Third Legislature
of the
Legislative Assembly of Manitoba

STANDING COMMITTEE
on
STATUTORY REGULATIONS
and
ORDERS

35 Elizabeth II

Chairman
Mr. D. Scott
Constituency of Inkster



MG-8048

VOL. XXXIV No. 1 - 8:00 p.m., TUESDAY, 24 JUNE, 1986.

MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Third Legislature

Members, Constituencies and Political Affiliation

NAME	CONSTITUENCY	PARTY
ASHTON, Steve	Thompson	NDP
BAKER, Clarence	Lac du Bonnet	NDP
BIRT, Charles T.	Fort Garry	PC
BLAKE, David R. (Dave)	Minnedosa	PC
BROWN, Arnold	Rhineland	PC
BUCKLASCHUK, Hon. John M.	Gimli	NDP
CARSTAIRS, Sharon	River Heights	LIBERAL
CONNERY, Edward J.	Portage la Prairie	PC
COWAN, Hon. Jay	Churchill	NDP
CUMMINGS, J. Glen	Ste. Rose	PC
DERKACH, Len	Roblin-Russell	PC
DESJARDINS, Hon. Laurent L.	St. Boniface	NDP
DOER, Hon. Gary	Concordia	NDP
DOLIN, Marty	Kildonan	NDP
DOWNEY, James E.	Arthur	PC
DRIEDGER, Albert	Emerson	PC
DUCHARME, Gerry	Riel	PC
ENNS, Harry J.	Lakeside	PC
ERNST, Jim	Charleswood	PC
EVANS, Hon. Leonard S.	Brandon East	NDP
FILMON, Gary	Tuxedo	PC
FINDLAY, Glen M.	Virden	PC
HAMMOND, Gerry	Kirkfield Park	PC
HARAPIAK, Hon. Harry M.	The Pas	NDP
HARAPIAK, Hon. Leonard E.	Swan River	NDP
HARPER, Hon. Elijah	Rupertsland	NDP
HEMPHILL, Hon. Maureen	Logan	NDP
JOHNSTON, J. Frank	Sturgeon Creek	PC
KOSTYRA, Hon. Eugene	Seven Oaks	NDP
KOVNATS, Abe	Niakwa	PC
LECUYER, Hon. Gérard	Radisson	NDP
MACKLING, Q.C., Hon. Al	St. James	NDP
MALLOWAY, Jim	Elmwood	NDP
MANNES, Clayton	Morris	PC
McCRAE, James C.	Brandon West	PC
MERCIER, Q.C., G.M.J. (Gerry)	St. Norbert	PC
MITCHELSON, Bonnie	River East	PC
NORDMAN, Rurik (Ric)	Assiniboia	PC
OLESON, Charlotte L.	Gladstone	PC
ORCHARD, Donald W.	Pembina	PC
PANKRATZ, Helmut	La Verendrye	PC
PARASIUK, Wilson	Transcona	NDP
PAWLEY, Q.C., Hon. Howard R.	Selkirk	NDP
PENNER, Q.C., Hon. Roland	Fort Rouge	NDP
PHILLIPS, Hon. Myrna A.	Wolseley	NDP
PLOHMAN, Hon. John	Dauphin	NDP
ROCAN, C. Denis	Turtle Mountain	PC
ROCH, Gilles (Gil)	Springfield	PC
SANTOS, Conrad	Burrows	NDP
SCHROEDER, Q.C., Hon. Victor	Rossmere	NDP
SCOTT, Don	Inkster	NDP
SMITH, Harvey	Ellice	NDP
SMITH, Hon. Muriel	Osborne	NDP
STORIE, Hon. Jerry T.	Flin Flon	NDP
URUSKI, Hon. Bill	Interlake	NDP
WALDING, D. James	St. Vital	NDP
WASYLYCIA-LEIS, Hon. Judy	St. Johns	NDP

**LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON
STATUTORY REGULATIONS AND ORDERS**

Tuesday, 24 June, 1986

TIME — 8:00 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. D. Scott (Inkster)

ATTENDANCE — QUORUM - 6

Members of the Committee present:

Hon. Ms. Hemphill, Hon. Messrs. Penner and Harapiak

Messrs. Birt, Maloway, Orchard and Scott

MATTERS UNDER DISCUSSION:

Bill No. 2 - An Act to amend The Real Property Act (Air Rights)

* * * *

CLERK OF COMMITTEES, Ms. T. Manikel: Before we begin this meeting we have to elect a chairman.

Mr. Maloway.

MR. J. MALOWAY: I nominate Don Scott.

MADAM CLERK: Don Scott has been nominated. Are there any further nominations?

MR. G. MERCIER: I nominate Jim Maloway.

MADAM CLERK: We have two nominees. Shall we vote on the first nominee?

The procedure calls, where we have more than one person nominated, that we hold a vote for the first person nominated.

All those in favour of Don Scott as Chairman? We have four people for and three against. Actually we have a majority here, so I think that settles it.

MR. CHAIRMAN: I call the committee to order. We first have to set a quorum. There are 11 members, I believe, on the committee, in total. At least there's supposed to be 11 members on the committee. Shall we accept a quorum of six? Is this traditional? We have our quorum, accept our quorum at six.

The first and only item of business before the committee is Bill No. 2, An Act to amend The Real Property Act, with regard to Air Rights. Is there any commentary from members, questions, following second reading on this bill.

The Honourable Attorney-General.

HON. R. PENNER: I believe there may have to be some amendment to the French version and staff are working on that now. I believe they're intimating — yes, they're

intimating — that they should have that amendment momentarily.

In the meantime, if you'd like to ask any questions

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: I wonder if the Attorney-General could indicate in what other provinces similar legislation exists.

HON. R. PENNER: British Columbia.

MR. G. MERCIER: Is this legislation substantially being asked for by the North Portage Development Corporation?

HON. R. PENNER: Yes, by the North of Portage Development Corporation and CMHC. CMHC raised the issue that in terms of its financing of the project, because some of the units that are contemplated are units for ownership above the landowner and building, that our real property law would have to make allowance for a plan of survey and the registration in the Land Titles Office of the plan of survey of the air rights that are to be used as part of the development so that mortgage financing could thereto adhere.

MR. G. MERCIER: Mr. Chairman, I take it we can just discuss the bill generally. It's a unique concept, and that doesn't mean I'm against it.

Section 124.33 would require — let me ask the question. Someone would be allowed to own the land, and a separate owner would be allowed to own an air parcel above the land? Is that correct.

HON. R. PENNER: Yes. I too have had some difficulty conceptualizing this. Then I realized that when you buy land without a building on it, all you have registered is the land and yet, no one would deny that you have the right to build a building. Then by development of our Real Property law, you own that which is affixed to the land. But we've never really thought in terms of the ownership of the air space. We've just taken that for granted, recognizing that there may be some limits set by zoning or by the Department of Transport regulations in terms of air flight and so on.

But this notion I think in terms of modern urban development is a realistic one of allowing development by other developers over someone else's building, which might be either by an extension of the building or by a cantilevered structure over the existing structure, is an interesting one and one which, given the value of the land, ought to be encouraged.

MR. G. MERCIER: I ask you what may appear to be a silly question. How high up would you be allowed to

register ownership to such a parcel? Something springs to my mind. For example, I recall concerns expressed by someone over an apartment filled encroaching into the flight patterns of airplanes landing at the airport, whether or not there should be a restriction on the height of an apartment building, I think, along the Assiniboine River because of the flight plans into the airport. This is such a unique thing, but I wonder how much thought has gone into a ceiling or limiting it?

HON. R. PENNER: Just as with the ownership of land, the fact that you own a piece of land doesn't give you an unencumbered right to build any kind of structure, in any kind of way, to any kind of height, that is determined by zoning, and in the instance used by the Member for St. Norbert, by the Department of Transport regulations. There's a limit beyond which you can't go, depending as I say on both of those. Presumably, the upper limit is set by zoning more than it is by Department of Transport regulations. No one can really build into an airspace, but zoning is usually lower than airspace in any event.

Theoretically, one owns the airspace above the land to the upper levels of density. When the air disappears, you've lost your air rights. Then you're into registering outer space rights.

MR. CHAIRMAN: Mr. Birt.

MR. C. BIRT: The concept of a condominium corporation or the condominium concept from what I gather, is sort of the essence here, in the condominium law or concept, there's the common elements. You know you have access to get from your cube in the air down to the ground; you have an access. You have part of a common space. What happens here, you are going to have someone owning the land and someone — or multiples of other people above that land situation. Is it going to be a criteria or a condition that there would be an access because there's a plan that is required to be filed, but it doesn't seem to be identified, that they would need access or right-of-way or the usual common things that sometimes occur with land.

HON. R. PENNER: In a way, the Member for Fort Garry answers in his own question by referring to right-of-way. In fact, by private agreement, there would have to be in fact. The access or right-of-way is granted and it can be registered, just in the same way as a party-wall agreement can be registered for somewhat the same purposes; or in Crescentwood, where I live, those joint carriage ways that exist between adjoining property to get back to your old carriage house.

MR. C. BIRT: The onus then is on the owner of the land and the potential buyer of negotiating, then if there is either a lease or a sale and a purchase of their rights or air space. Then it's between consenting parties then to work out some form of agreement that can be registered against — I guess the title — whether it be the land or the air rights?

HON. R. PENNER: Yes, against the prime title; in the same way that no one in their right mind would buy

a piece of river property from — (Interjection) — I know it's happened and I suppose it's happened to people who aren't in their right mind, by definition, but if you're buying the river frontage from the chap who owns all the way to Henderson Highway, you don't buy it without an agreement, an access agreement, and you don't rely on the private agreement. You immediately file in the Land Titles Office and register the appropriate caveat.

MR. CHAIRMAN: Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, the Attorney-General indicated two examples, and I just want to make sure that I understood him correctly. He mentioned the instance of a cantilevered building or a building over a building. Now can I put what I interpret from that on the record and see whether it's right or not?

Let's say you've got a one-storey building on a lot and the building next door is several stories high; are we saying that the building next door on the third storey can cantilever over top of the one-storey building on the adjacent lot and sell that air space above property "A's" one-storey building?

HON. R. PENNER: Subject of course to the engineering capability, zoning, and the agreement with the prime owner on the land . . .

MR. D. ORCHARD: At the first lot?

HON. R. PENNER: Yes, at the first lot, but it's the owner of the first lot in your sketch, as I see it, to the left who owns the air right — we need to go back to the question of how high but he owns the air rights — and if the chap to the right comes to him and says that he wants to build from his second storey over the first-storey structure, he can purchase the air rights, which begs a nice question then, who owns the air rights above the cantilevered structure? Who owns those air rights? You buy a volume actually, don't you?

A MEMBER: Yes.

HON. R. PENNER: Yes, yes, you buy a volume and say I'll have 10 cubic metres of air, please.

MR. D. ORCHARD: Of course, the agreement with the original landowner as in the example, and that, on the Hansard, will only mean something to you and I because we see the diagram . . .

HON. R. PENNER: File it as an exhibit.

MR. D. ORCHARD: No, I've got some confidential notes here.

The first property owner must give up his rights by agreement before the second property owner could proceed to build any structure that would impinge on those air rights. That's the first step?

HON. R. PENNER: Right.

MR. CHAIRMAN: Mr. Ernst.

MR. J. ERNST: I presume, Mr. Chairman, by creating an asset, basically the air parcel title or whatever it is, does it become taxable? Can you put a real property tax against that as you would most, if not all, other title arrangements?

HON. R. PENNER: The answer, Mr. Ernst, is yes.

MR. J. ERNST: The other question is: presumably, one of the reasons for proposing this legislation is so that we can create a mortgage-ability of that asset?

HON. R. PENNER: That's the primary reason, yes.

MR. J. ERNST: Has this been run by the major lenders at all? What do they think of it?

HON. R. PENNER: Yes. In fact, this bill is required by CMHC for it to complete its financing of some aspects of the North of Portage development.

MR. J. ERNST: I see. So the bankers association or somebody looks at this?

HON. R. PENNER: Yes.

MR. J. ERNST: In the past — a couple of examples come to mind — Trizec, for one, being built over top of a City of Winnipeg parking garage, but I think that was done by agreement, if I'm not mistaken.

HON. R. PENNER: Traditionally, as I understand it, and I'll check with Mr. Evans, it's being done by leasing. That is, you could lease the air right in order to occupy

MR. J. ERNST: As opposed to owning the air right?

HON. R. PENNER: As opposed to owning it, but that, given the way in which we deal with leasehold interests as opposed to outright ownership, is not good enough for traditional type of financing, and CMHC prefers to have this kind of security.

MR. J. ERNST: I see, okay.
Thank you, Mr. Chairman.

MR. G. MERCIER: Does the province intend to use this legislation to sell air space parcels above the Legislative grounds or building or other public property to help pay off the deficit?

HON. R. PENNER: Just above the Tory caucus room once we get it located.

MR. C. BIRT: Through the Attorney-General, there is one question here that I had asked quietly before the committee had started. It's what the surveyor has to do to basically, I guess, approve that there is this plan. I'm curious to know what does it involve, and has it been approved by the land surveyors association or people? It reads rather awkwardly.

HON. R. PENNER: The land surveyors have been consulted. They say they can do it, and it's Mr. Evans' belief that they'll do it, as I would have expected, by reference to the number of feet above sea level, so that you define from 762 to — one hopes metres.

Okay, can we proceed?

MR. G. MERCIER: Page by page.

MR. CHAIRMAN: Any other questions?
Bill by bill?

HON. R. PENNER: I have an amendment and with the permission of the committee, I'll move it.

MR. CHAIRMAN: Yes. Mr. Penner.

HON. R. PENNER: It's just to improve the wording of the French version. Could you distribute the . . .

MR. CHAIRMAN: Yes, they're being distributed.

HON. R. PENNER: Thank you. — (Interjection) — I just want you to notice the beauty of the handwriting here. To whom are we indebted? Mr. Yost? I'd better read it into the record:

In committee, Proposed Amendment to Bill 2, An Act to amend The Real Property Act (Air Rights).

I move THAT Section 1 of the French version of Bill 2 be amended by striking out therefrom, in the 4th line thereof, the word "insertion" and substituting therefor the word "adjonction."

MR. CHAIRMAN: Agreed. (Agreed)

HON. R. PENNER: My second motion is:

THAT subsection 124.3(1) of The Real Property Act as proposed by Section 1 of Bill 2 be amended in the French version by striking out therefrom, in the 4th line thereof, the word "et" and substituting therefor the words "ou d'."

That's a good one.

MR. CHAIRMAN: Agreed. (agreed)

HON. R. PENNER: Bill as a whole.

MR. CHAIRMAN: Can I have that to initial, please?
Bill by bill, I presume.

HON. R. PENNER: Bill as a whole.

MR. CHAIRMAN: Bill, okay.

Bill as a whole—pass; Title—pass; Bill be reported—pass.

HON. R. PENNER: Committee rise.

MR. CHAIRMAN: Yes. That completes the affairs of the committee.

Committee rise.

COMMITTEE ROSE AT: 8:24 p.m.