

DEVELOPMENT PLANNING ORDINANCE St. MAARTEN

AB1993, No. 13

THE ISLAND COUNCIL OF THE ISLAND TERRITORY OF ST. MAARTEN:

Considering:

That it is necessary in the interest of good development planning for the Island Territory to provide for regulations regarding the enforcement of Chapter III of the National Ordinance Fundamentals Development Planning;

Has decided:

To decree the following Island Ordinance:

SECTION I: DEFINITIONS

ARTICLE 1

1. This Island Ordinance understands the terms below to mean:

National Ordinance:	National Ordinance Development Planning Framework (P.B. 1976 no. 195)
Development Plan:	a plan that indicates the aimed for long-term development of an area
Zoning:	regulations that with an eye on good development planning further address the objectives for which the land included in the development may be used
Structure:	every construction of wood, stone, metal or other material that is either directly or indirectly connected to the ground or directly or indirectly supported in or on the ground
Building (noun):	every structure that forms a covered space, which people can access, that is enclosed - in part or in its entirety - by walls
Building (verb):	the building or renovating of buildings or other structures
Demolishing:	the removal of a structure or a part thereof
Government Administration Office:	the offices of the Island Administration in Philipsburg
Subdividing:	the dividing of a single plot of land into two or more lots for the purpose of development

2. In this Island Ordinance, "land" is also taken to mean inlets, waterways and bays within the coastal line.

SECTION II: DEVELOPMENT PLANS

ARTICLE 2

For the purpose of good development planning of the Island Territory and with an eye on the establishment of development plans, the Executive Committee examines the existing situation and the possible and desirable development of the Island Territory.

ARTICLE 3

A development plan is established by means of an Island Ordinance and consists of:

- (a) an outline with the main features, in which the basic principles of the plan are set forth,
- (b) one or more maps (drawings), in which the basic principles of the plan are worked out by means of indicating designated uses (zones),
- (c) zoning regulations as meant in Section III,
- (d) a commentary, which also reports on the examination that the plan is based on.

ARTICLE 4

1. Before a draft development plan is placed for inspection, the Executive Committee holds a public hearing at the place of its choosing at which hearing the preliminary draft is presented and those present are given the opportunity to express their opinions regarding the preliminary draft. The Executive Committee can be assisted by specialists.
2. The time and place of the hearing are made known ahead of time by announcement in Dutch and in English in one or more local newspapers and furthermore in the usual way official announcements are published.

ARTICLE 5

1. A draft development plan is placed for 30 days for everybody to inspect at the Government Administration Office.
2. The placement for inspection is made known in the manner described in Article 4, paragraph two. Furthermore, interested parties are informed in person of the announcement and the placement for inspection of the draft development plan.
3. Regarding interested parties who do not have a known place of residence or address in St. Maarten and whose address outside of St. Maarten is also unknown, as well as regarding possibly unknown interested parties, notice of the announcement and the placement for inspection of the draft plan is posted by the main entrance of the Court House in Philipsburg. A copy thereof is given to the Public Prosecutor of St. Maarten, who signs the original.
4. The announcement includes notice of the authority to submit objections.
5. Within the period of time mentioned in paragraph one, everybody can submit written objections to the Island Council, with a copy to the Executive Committee.
6. The Executive Committee requests recommendations regarding objections as meant in the previous paragraph from a committee of experts to be established for that purpose. The task and composition of such a committee are further provided for by a General Island Resolution.
7. Immediately upon receiving objections, the Executive Committee sends them through to the committee as meant in the previous paragraph.
8. The committee gives its recommendation within sixty days after the completion of the term mentioned in paragraph 1.

ARTICLE 6

1. If no objections are submitted, the Island Council decides within sixty days after completion of the term mentioned in Article 5, paragraph one on the establishment of the

draft development plan. If an objection is submitted conforming to Article 5, paragraph four, this period of time is extended by sixty days.

2. If in establishing the development plan it comes to differ from the draft plan or from the recommendations as meant in Article 5, paragraph **eight (amendment-alteration AB2000, No. 03, article 1-A)**, the reason(s) for the Island Council's decision are given.

ARTICLE 7

1. After its establishment, the development plan is placed at the Government Administration Office for thirty days for everybody to inspect.
2. The placement for inspection is announced in the manner as described in Article 4, paragraph two.
3. Those who submitted objections to the Island Council in a timely manner as well as those who have objections to the changes the Island Council has made in the development plan in its establishment, can appeal in writing to the Governor during the period of time of the placement for inspection as meant in paragraph one.

ARTICLE 8

The development plan is revised if the circumstances demand such and at least once in five years. Articles 2 up to and including 7 apply to such a revision.

SECTION III: ZONING REGULATIONS

ARTICLE 9

1. In the interest of good development planning, a development plan contains zoning regulations.
2. The zoning regulations can entail restrictions regarding the building or the execution of other work or activities in, on or above the therein-included land as well as the use of this land and the constructions placed thereon.

AB2000-01 St. Maarten Monuments Ordinance – D10 (amendments – additional paras)

3. Without prejudice to the second paragraph, the zoning regulations regarding a protected cityscape or townscape can include restrictions concerning the building, demolishing and execution of other changes to the appearance of that cityscape or townscape as well as concerning the use of the respective structures.
4. Restrictions as meant in paragraph three regarding building can also include the use and constitution of the materials, the façade, the shape of the roof and the arrangement of the parcel.
5. Article 5 applies.

ARTICLE 10

1. Zoning regulations can entail both detailed as well as general instructions concerning the development of the area in the plan.
2. The zoning regulations can determine that, respecting the rules as set by the regulations,
 - (a) the Executive Committee can or has to work out the designated uses (general purpose),

- (b) the Executive Committee can - within certain limits - change the designated uses.

ARTICLE 11

In as far as the zoning regulations do not correspond with the provisions of the Building and Housing Ordinance 1935, these provisions are not applicable.

SECTION IV: PERMIT FOR EARTH DISPLACEMENT PERMIT

This section/article is dead because there is no zoning. This article is a basis to implement regulations for the zoning. Because since 1976 (see Landsverordening Grondslagen Ruimtelijke Ontwikkelingsplanning PB1990, 161) nothing substantial has been done about zoning (there were concepts and plans but nothing was implemented) there is an emergency article 28 that gives the same regulations when you want to do certain activities. This article is what should be used if a hotel like Dawn or Red Pond is requested. This article is extended til January the 8th of 2009 (for the second time) (see AB2004 nr 01). The problem here is that a violation of this article is merely governmentally punishable which means that only the government can deal with this violation. It is not a criminal violation which means that the prosecutor's office has no tools to act.

This is one of the core problems of the spatial development problems. The ultimate goal in 1976 of the Federal Government was a balanced growth for the islands with a proper appeal procedure. This was never fully executed so that basically means that the commissioners have obtained the authority (which was meant for the Island Council) to deal with the developers and interested parties are lacking the necessary appeal procedure. This is a flagrant violation of the Federal Ordinance I just mentioned.

Paul Mooij

ARTICLE 12

1. The zoning regulations may include provisions that it is forbidden within a certain area as designated by the plan to execute certain works, not being structures, or activities without or not complying with a written permit from the Executive Committee (permit for works). Conditions can be attached to such a permit.
2. The works and activities as meant in the first paragraph can include:
 - (a) digging, leveling, raising, or heightening of soil,
 - (b) construction of roads or other types of paving or hardening of the land,
 - (c) placing of constructions, installations or equipment above or below the ground,
 - (d) works and activities that could effect the water balance and the ground water level,
 - (e) placing of wharfs or jetties,
 - (f) uprooting of trees or other greenery,
 - (g) planting the ground,
 - (h) demolishing structures,
 - (i) filling in water.
3. The request for a permit for works is submitted in writing to the Executive Committee. The applicant must provide all the information and the documentation that is necessary in

- order to be able decide upon the request. The Executive Committee makes a decision within sixty days of a request. The decision is made known to the applicant in writing.
4. The permit for works may only and must be denied if the work or activities constitute a breach of the zoning regulations.
 5. The Executive Committee postpones making a decision if there are no grounds to deny the permit and, before the request was submitted, a preparatory decision as meant in Article 16 was made concerning the area in which the work or activities are to take place or a draft development plan or a draft revision of an established development plan has been placed for inspection.
 6. If there are no grounds to deny granting the permit and the work or activities are in accordance with the development plan being prepared or the revision thereof, the Executive Committee can, in divergence of paragraph five, decide to grant the permit.
 7. The postponement ends when the preparatory decision expires, the term mentioned in Article 6, paragraph one has lapsed, or the Island Council establishes the (revised) development plan.
 8. The applicant can lodge an appeal within thirty days after the day on which a copy of the decision is sent with the Island Council against the decision to grant a conditional permit, to deny the granting of the permit or to postpone making a decision regarding the request. The applicant can likewise lodge an appeal if the Executive Committee has not made a decision within the time frame mentioned in paragraph three or if the permit is revoked.
 9. The Island Council requests the recommendation of the committee as meant in Article 5, paragraph **six (amendment-alteration AB2000, No. 03 article 1-B)** with regards to appeals as meant in the previous paragraph. Article 5, paragraph **seven (amendment-alteration AB2000, No. 03 article 1-B)** is applicable. The committee gives its recommendation within sixty days after the day the time limit for appeal expires.
 10. The Island Council decides within ninety days after the day the time limit for appeal expires. If the Island Council's decision diverges from the recommendation as meant in the previous paragraph, the decision is motivated.
 11. The permit for works can be revoked:
 - (a) if the permit for works is granted on the basis of incorrect or incomplete information and documentation provided by the applicant,
 - (b) if the works or activities have not commenced within the period of time mentioned in the permit,
 - (c) if the conditions whereby the permit is granted are breached.

SECTION V: USE

ARTICLE 13

The zoning regulations can determine that it is forbidden to use, make use of, or allow the use of structures and vacant land in a manner or for a purpose that conflicts with the land's designated use.

SECTION VI: EXEMPTIONS AND OTHER REQUIREMENTS

ARTICLE 14

1. If the zoning regulations include the prohibition meant in Article 13, the Executive Committee must - when there is no urgent reason to limit the most functional use - grant an exemption from this prohibition if requested to do so.
2. The zoning regulations can provide that the Executive Committee has the authority if so requested to grant an exemption from its provisions so indicated, respecting the rules as determined by the those regulations.
3. Article 12, paragraphs three, eight, nine and ten apply.

ARTICLE 15

1. The zoning regulations can provide that the Executive Committee lays down further requirements regarding the topics the regulations concern.
2. The decision to lay down further requirements is made in writing and is motivated.
3. Interested parties can lodge an appeal against the decision within thirty days after the day that the decision is sent by the Island Council. Article 12, paragraphs nine and ten apply.

SECTION VII: PREPARATORY DECISION

ARTICLE 16

1. The Executive Committee can declare that a development plan is in the making (preparatory decision).
2. Within two weeks of the preparatory decision being made, it is announced to the Island Council.
3. The preparatory decision includes the determination for which area it applies and as per which date it goes into effect.
4. The preparatory decision may include regulations regarding building or the execution of other works and activities on or above the land it concerns as well as the use of that land and constructions on that land. These regulations are only set in as far as is necessary to prevent that grounds become less feasible for the realization of the purpose as to be designated by the plan.
5. The preparatory decision is made known in the same way as the way described in Article 4, paragraph two and is placed for thirty days at the Government Administration Office for everybody to inspect.
6. The preparatory decision expires if, within a year of the date that it goes into effect, the draft development plan is not placed for inspection. The Executive Committee can extend the preparatory decision for a half-year at most. The second and fifth paragraphs apply to such an extension.

SECTION VIII: TRANSITIONAL PROVISIONS IN ZONING REGULATIONS

ARTICLE 17

1. The zoning regulations include provisions concerning the preservation of existing structures and the continuation of the existing use of the land and the structures as per the condition such are in at the time of the placement for inspection of the preparatory decision or the draft development plan.
2. The zoning regulations provide for safeguards regarding the partial renovation or changing of existing structures or, if they are destroyed by a calamity, the entire restoration of such structures, providing that the digression from the zoning regulations is not made greater and the restoration for the rebuilding of the structure destroyed by a calamity is requested within a period of three years.
3. For the purpose of this Article, existing structures also includes structures that at the time mentioned in the first paragraph were in the process of being built on the basis of a valid building permit.

SECTION IX: DAMAGES

ARTICLE 18

1. If an interested party has or shall have damages as a result of the zoning regulations which in all reasonableness should not be borne by such a party or not borne by that party in full, this party at its request will be awarded a just amount in damages by a Court of Law at the expense of the Island Territory. For the purpose of this paragraph of this Article, zoning regulations does not include:
 - (a) the sequence in which the development plan is realized,
 - (b) the lay-out of the road system or lot divisions,
 - (c) the amount of, location, measurements or appearance of the buildings to be erected.
2. Such a request must be submitted in writing to the Island Council with a copy to the Executive Committee. It should mention in as far as possible the nature and the scope of the damages.
3. Directly after receiving it, the Executive Committee sends such a request to the committee meant in Article 5, paragraph **six (amendment-alteration AB2000, No. 03 article 1-C)** for a recommendation. The committee gives a recommendation within sixty days of receiving a request.
4. The Island Council decides within thirty days after receiving the committee's recommendation. If the Island Council diverges from the recommendation, the decision is motivated.

SECTION X: DURESS AND CRIMINAL PROVISIONS

ARTICLE 19

1. The Executive Committee has the authority to - at the offender's expense - have removed, prevented, done or restored in its previous condition that which is or is preserved, made, erected, undertaken, left out, damaged or removed in conflict with this Island Ordinance.

2. Except for in urgent cases, the Executive Committee does not use this authority without the interested party first being warned in writing and being given the opportunity within a period of no more than sixty days to make the circumstances such that these are in compliance with this Island Ordinance.

ARTICLE 20

1. Violation of the zoning regulations, the regulations of a preparatory decision as well as violation of Article 22, paragraph one will be punished with imprisonment for a maximum of two months or with a monetary fine for a maximum of ANG five thousand.
2. If at the time of the violation not a year has passed since an earlier conviction of the guilty party for a similar violation became irrevocable, the maximum term of imprisonment or monetary fine for sentencing is double the amount in the first paragraph.
3. The criminal acts as meant in this Article are considered to be felonies.
4. The Executive Committee nominates the civil servants of the Island Territory of St. Maarten who are in charge of monitoring compliance with this Island Ordinance to the Governor so that they can be appointed and sworn-in as detectives as per Article 185 (amendment-alteration AB2000, No. 03 article 1-D) of the Code of Criminal Procedure of the Netherlands Antilles.

SECTION XI: SUBDIVISION PLANS

ARTICLE 21

Regarding areas for which no preparatory decision as meant in Article 16 has been made or for which a draft development plan has not been placed for inspection nor a development plan established, a set of transitory rules for the subdivision of land in accordance with the provisions of Article 22 up to and including Article 28 is applicable for a maximum period of fifteen (amendment-alteration AB2004, No. 01 article 1-A of amendment-alteration AB2000, No. 03 article 1-E) years after the coming into force of the Island Ordinance Environmental Development Planning St. Maarten.

ARTICLE 22

1. The subdividing of land may only take place in accordance with a subdivision plan that has been approved by the Executive Committee.
2. Subdivision is mandatory before land can be developed by means of building two or more buildings.
3. The Executive Committee has the authority in special cases to grant an exemption from paragraph two. In the interests of good development planning, conditions can apply to such an exemption.

ARTICLE 23

1. By means of one or more maps which use the most suitable scale and a descriptive commentary, the subdivision plan must give a detailed impression of:
 - (a) the boundaries,
 - (b) the geographical situation,
 - (c) the division of lots,
 - (d) the buildings,

- (e) the building setback line,
 - (f) the roads,
 - (g) the wiring/cables and/or strokes of land for wiring/cables,
 - (h) the facilities for water management,
 - (i) the utilities.
2. The Executive Committee takes the expected development of the surrounding lands into consideration in deciding about the draft subdivision plan.
 3. The owner or the owner's representative must submit the draft subdivision plan in writing to the Executive Committee.
 4. The draft subdivision plan is placed at the Government Administration Office for thirty days for everybody to inspect.
 5. The placement for inspection is made known in the manner prescribed in Article 4, paragraph two.
 6. Interested parties can submit a written objection to the Executive Committee against the draft subdivision plan within the term of thirty days mentioned in paragraph four.

ARTICLE 24

1. The Executive Committee decides within sixty days of the draft subdivision plan being submitted. It can postpone the decision once for a maximum of thirty days.
2. If the Executive Committee does not make a decision regarding the approval of the draft subdivision plan within the period of time mentioned in the previous paragraph, the approval is to be deemed to be withheld.

ARTICLE 25

The Executive Committee in any case refrains from approving a draft subdivision plan if:

- (a) the land to be subdivided, due to its natural condition or its shape or dimensions, is not suited to the intended development, also taking into account the interests of a good development planning of that particular area and the surrounding area;
- (b) from the public interest's point-of-view, the intended development would amount to a serious grievance due to insufficient compatibility with existing development or a lack of essential public facilities which can not reasonably be provided in the short term or only at a disproportionately high expense.

ARTICLE 26

1. The Executive Committee has the authority to require necessary additions to and amendments of the draft subdivision plan and to place conditions on the approval in the interests of good development planning. The Executive Committee can refrain from approving the draft subdivision plan if these additions and amendments are not adopted.
2. If the subdivision plan provides for the building of one or more new roads or the widening of one or more existing roads, approval is only granted if it is assured that the land intended for these roads will not be transferred in ownership to the Island Territory. The subdivision plan can determine that the transfer takes place after the roads are built in accordance with the requirements the Island Territory sets in place.
3. In special instances, the Executive Committee can grant an exemption from the provision in the second paragraph.
4. In as far as an approved subdivision plan contains provisions regarding the building setback line that do not comply with the provisions regarding the building setback line in the Building Ordinance 1935, the provisions of the Building Ordinance 1935 do not apply.

ARTICLE 27

1. A subdivision plan is approved by means of a General Island Resolution. If an objection has been lodged against the plan in accordance with Article 23, paragraph six, the reason(s) for the approval are given.
2. The Island Territory secretary sends an authenticated version of an approved subdivision plan to the applicant.
3. The approved subdivision plan is placed at the Government Administration Office for thirty days for everybody to inspect.
4. The placement for inspection is made known in the manner prescribed by Article 4, paragraph two.
5. The applicant as well as interested parties who submitted objections conforming to Article 23, paragraph six can lodge an appeal against the Island Council's decision within the term of thirty days mentioned in paragraph three. Article 12, paragraphs nine and ten are applicable.

ARTICLE 28

The provisions in this chapter are also applicable with regards to the revision of a subdivision plan.

SECTION XI A: TEMPORARY PROCEDURE DRASTIC WORK

ARTICLE 28A

1. Until January 8, 2009 (amendment-alteration AB2004, No. 01 article 1-B), for areas for which no preparatory decision as meant in Article 16 has been made, no draft development plan has been made available for public review or no development plan has been determined, prior written permission from the Executive Committee's is required for the following works:
 - (a) digging, raising or levelling the ground;
 - (b) placing roads and other hardening of terrain;
 - (c) works that can influence the water management and ground water level;
 - (d) uprooting trees or pruning that leads to uprooting of other shrubbery;
 - (e) demolishing of structures;
 - (f) filling-in of water.
2. The request for permission as meant in the first paragraph is submitted in writing to the Executive Committee. Articles 23, second to sixth paragraphs and 24 apply, in the understanding that instead of draft subdivision plan is read: the request. The person making the request is obliged to provide all information and submit all documents that are necessary in order to be able to decide on the request.
3. The Executive Committee can withhold its decision regarding the request if the proposed works would create a serious objection from the perspective of the general interest:
 - (a) due to non repairable damage to nature, the environment or the current use of the ground and surrounding grounds, or
 - (b) due to non repairable infringement of the expected development of the ground and the surrounding grounds.
4. The Executive Committee can base its permission on conditions, with the purpose of preventing the consequences as meant in paragraph three.
5. The permission can be retracted on the grounds mentioned in Article 12, paragraph eleven.

(amendment-addition AB2000, No. 03 article 1-F)

SECTION XII: TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 29

1. This Ordinance will be referred to as: St Maarten Development Planning Ordinance.
(amendment-alteration from AB2004, No. 01 article 1-C)

ARTICLE 30

1. As per the date that this Island Ordinance comes into effect, the Building Ordinance 1935 (P.B. 1935 nr. 64, as amended) is amended as follows:

(a) at the end of Article 22, a seventh circumstance is added, reading:

“7. that the building plan conflicts with the zoning regulations of a development plan or with the regulations belonging to an approved subdivision plan that concerns the land in the request.”

(b) After Article 22, a new Article 22(a) is added that reads:

“Article 22(a)

1. *Diverging from that which is provided by Articles 21 and 22, the Executive Committee places the decision on hold if there is no basis to reject the permit and – before the request is submitted - a preparatory decision as meant in Article 16 of the Island Ordinance Development Planning St. Maarten has been made concerning the area where the structure shall be built or a draft development plan or a draft revision of a development plan is placed for inspection.*
2. *If there are no grounds to deny the granting of the permit and the structure is in accordance with the development plan being prepared or the revision thereof, the Executive Committee can – in divergence from paragraph one – decide to grant the building permit.*
3. *The decision is placed on hold until the preparatory decision has expired or an irrevocable decision is made regarding the draft development plan or the period of time meant in Article 6, paragraph 1 of the Island Ordinance Development Planning St. Maarten has been exceeded.*

(c) In Article 33, the first paragraph reads:

“In as far as this does not follow from the zoning regulations of a development plan or an approved subdivision plan, the building setback line is established by the Executive Committee at the time the building permit is granted. “

ARTICLE 31

All measures taken on the basis of the Building Ordinance 1935 remain valid, with the exception of those withdrawn or amended by the authority that is entitled to do so according to this Ordinance. Such measures are also understood to include the subdivision plans realized on the basis of Section 10 of the Building Ordinance 1935.

As determined in the meeting of October 13, 1993.