

# New Building Act – Part 2

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The new Czech Building Act (Act No. 283/2021 Coll., the Building Act, as amended (NBA)) became effective on 1 January 2024. The NBA will gradually replace existing legal regulations, primarily set forth in Act No. 183/2006 Coll., on zoning and building regulations (Building Act), as amended (OBA).

In the second part of our overview of significant changes, we discuss new developments in how planning documentation is adopted, as well as changes affecting planning agreements, preliminary information and the newly introduced principle of full appeal.

In the following part, we will introduce you, for example, to the new regulation of the unified environmental statement, news concerning building closures, the new developments in the field of legalization of black buildings or the new implementing regulations.

## Planning documentation

### Existing planning documentation

Planning documentation, in particular zoning plans, regulatory plans, development principles, development plans (hereinafter collectively as “**planning documentation**”), issued under the OBA generally remain (with certain exceptions) valid and are considered planning documentation under the NBA.

Such exceptions include, for instance, the planning documentation of a settlement (in Czech: sídelní útvar) or a zone, municipal plans or regulatory plans approved prior to 1 January 2007 will expire due to adoption of new ones, however, no later than 31 December 2028, or regulatory plans adopted on request prior to 1 July 2024, which are considered regulatory plans under the NBA and remain in effect no later than 31 December 2025. The time limitation of validity also applies, for example, to the Zoning Plan of the Capital City Prague, which was adopted in 1999. Therefore, it is important to move forward with the process of adoption of the Metropolitan Plan in order to preserve the continuity of regulation as of 2029.

## Ongoing processes

In general, those parts of planning documentation that began the adoption process before 1 July 2024 (the end of the NBA's transitional period) must be completed in accordance with the previous legal regulations. Thus, if, for example, a public hearing on the draft zoning plan was initiated before that date, its adoption will be completed in accordance with the existing regulations. If, however, only the first phase of the land-use planning documentation process has been carried out, e.g. the discussion of the land-use plan assignment, only this first phase, which ends with the adoption of the land-use plan assignment, will be completed according to the existing regulations; the phase of preparation of the draft land-use plan, its joint and public discussion and adoption will in such a case already be subject to the new legislation.

## Means of defence

There is one quite significant change to the possibility to challenge adopted or amended planning documentation. The NBA completely abolishes the possibility to lodge objections (in Czech: *námítky*) and preserves only the possibility to submit remarks (in Czech: *připomínky*).

We understand that the purpose of this modification is primarily to speed up the whole process, on the other hand, it cannot be excluded that directly affected owners of buildings and land will see their positions adversely affected, as any remarks they submit will no longer have to be justified in as much detail as they were under the existing legislation.

Under the OBA, objections served as a stronger defense when challenging draft planning documentation or its amendments. They could only be submitted by the owners of buildings and land affected by the change, by an authorized investor or by a representative of the public. The procurer of the planning documentation was then obliged to address the objections in detail in its justification of the respective measure proposed in the planning documentation.

Under the NBA, remarks can be made by anyone and no longer need to be justified. The procurer is only obliged to evaluate them and take them into account in its decision, if necessary. Although the NBA does stipulate an obligation of the procurer to justify its remarks, it does not specify the scope of this justification, and it is currently unclear how procurer will specifically deal with the new remarks process so that the affected owners in particular are not deprived of their rights.

The benefits provided by this new regulation remains to be seen in practice.

## Planning agreements

It is already relatively standard under the OBA that a builder concludes a cooperation agreement, a land development agreement or other similar innominate agreement with a local government unit, i.e., a municipality or region, in connection with the realization of a development project. Such agreements typically oblige the developer to make certain improvements to the area affected by the development in the public interest, for example by building or reconstructing a road, a car park, a sewage treatment plant or a kindergarten. In return, the municipality concerned undertakes to make every effort and not to cause unnecessary obstruction to enable the developer to successfully carry out its project.

The NBA regulates the concept of such agreements in more detail and refers to them as "planning agreements". For example, the NBA envisages that planning agreements may include an obligation on the developer to participate in redeveloping the site or to assume the costs of constructing public infrastructure as well as an obligation on the municipality, region or infrastructure owner to cooperate or not to pursue remedies in administrative or judicial proceedings (e.g. appeals against decisions of the building authority). The NBA only provides examples of planning agreement content, thereby preserving contractual freedom in their negotiation, with regard to the mandatory public law regulation of the NBA.

The NBA now provides that areas and corridors may be defined in the zoning plan in which decision-making on the territory will even be conditional on the conclusion of a planning agreement. In such case, the zoning plan also sets out the basic content of the planning agreement, the conditions for its conclusion and the time limit for its conclusion.

## Preliminary information

Preliminary information allows builders to request the building authority to communicate relevant information for the developability of a certain area, for example, information on the conditions for issuing planning permission or on the range of authorities concerned. This is a concept that already exists in the legal system, but until now it has only been regulated in the Administrative Procedure Code, which the provisions of the OBA referred to, and is not very well known in practice.

The NBA regulates the concept of preliminary information in more detail, refining and expanding it. According to the NBA, both building authorities and the authorities concerned (e.g., environmental authorities) are now obliged to provide preliminary information. According to the NBA, these bodies should, upon request, inform the builder about (in particular) the conditions of land use and any changes thereof, whether certain projects need permits and how to obtain them, as well as the manner in which the application for a project permit will be assessed (and the conditions for granting it).

According to the NBA, obliged entities shall provide preliminary information within 30 days of the request.

## The appellate principle

Current setting of the procedure for deciding on appeals under the OBA leads to a game of administrative ping-pong between building authorities. In the case of a successful appeal against a planning permission or a building permit, the appealing building authorities "merely" annul the contested decision and returns the case to the first instance for reconsideration, according to the existing regulation. If the first instance building authority has a different perspective on the matter, does not respect the decision of the appealing authority and again issues an incorrect (illegal) decision, the builder is forced to go through the whole appeal procedure again. In practice, it has been shown that this procedure often significantly prolongs the entire planning or construction procedure and thus disproportionately delays the realization of the project.

In order to reduce unwanted delays in proceedings, NBA significantly changes this concept. If, when deciding on the merits, the building appellate authority concludes that the contested planning permission is incorrect or contrary to the law, the building appellate authority is obliged to directly amend the contested decision itself. This procedure will apply to all appeals filed after 1 July 2024.

***Should you have any questions in respect of the new Building Act, please do not hesitate to contact us.***

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