

THE SYSTEMS APPROACH IN THE ANALYSIS OF THE OFFICIAL
TOWN PLAN, ZONING BY-LAW, AND SUBDIVISION REGULATIONS:
A CASE STUDY OF THE TOWN PLANNING ACT OF NOVA SCOTIA

by

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ABSTRACT

This thesis analyses the provisions of the Town Planning Act of Nova Scotia with respect to the procedures for the enactment, amendment, and repeal of the official town plan, the enactment, amendment, variation, and repeal of the zoning by-law, the enactment of subdivision regulations, and the approval of subdivision plans, through the following hypothesis:

The Town Planning Act of Nova Scotia does not require amendment if the statutory provisions for the enactment, amendment, and repeal of the official town plan, the enactment, amendment, variation, and repeal of the zoning by-law, the enactment of subdivision regulations, and the approval of subdivision plans pursuant to the subdivision regulations are to be satisfactory in terms of:

1. Systems Maintenance;
2. Community Planning;
3. Openness;
4. Efficiency;
5. Effectiveness;
6. Justice.

The hypothesis is tested and proven invalid. However the test itself and the methodology for the development of the conceptual framework and the consequent hypothesis are found to be sufficiently defective to necessitate an alternative conclusion about the validity of the hypothesis, namely, "not proven".

Notwithstanding the problem in establishing and testing the hypothesis, it is felt that the thesis is worthwhile inasmuch it has established a valid theoretical framework for the treatment of land use planning related issues and points to further areas of research.

The conceptual framework is based upon systems theory. A conceptual framework is a means of organizing concepts and facts

about a given class of phenomena in a consistent and logically satisfying manner while lacking the precision of a theory.

The main sources of supporting data for the conceptual framework and the test of the hypothesis are the Town Planning Act, population and economic data about the Province of Nova Scotia, and responses to a questionnaire which was mailed to planning authorities in the Province.

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CHAPTER I

INTRODUCTION

This thesis originated from some very practical concerns expressed by Mr. R.S. Lang, Director of the Community Planning Division of the Department of Municipal Affairs in Nova Scotia about the lack of adequate provisions for appeal and review under the Town Planning Act.¹ He made the following remarks at a recent planning conference:²

1. THERE IS NO SYSTEM OF PLANNING APPEAL. Nova Scotia is the only Province in Canada lacking such a system. One effect has been to limit municipalities' discretionary power. But it has also meant the Minister's office often becomes the scene of private appeals.³ And, as we have no precedents by the Courts to guide us in making planning decisions; a planning appeal system would solve these problems and serve the democratic process more satisfactorily.
2. THE SEPARATION BETWEEN PROVINCIAL AND LOCAL PLANNING POWERS IS CONFUSED. There is no reason why the Minister should have to approve every tiny change of land use. These such purely local matters could be delegated to councils if we had an appeal system.⁴

¹Province of Nova Scotia, Town Planning Act, R.S.N.S. 1954, Chapter 292 as amended by 1956 c.43, 1964 c.45, 1965 c.51, 1966 c.55, 1967 c.73 (Halifax: Queen's Printer). See Appendix A for summary of Act.

²"Community Planning in Nova Scotia 1967" - Address to the Nova Scotia Community Planning Conference, Amherst, N.S., November 9-10, 1967, R.S. Lang, Director of Community Planning.

³See Appendix D for explanation.

⁴Ibid, P. 8.

The thesis' original goal had been to recommend amendments to the Town Planning Act to incorporate the necessary provisions for appeal and review. However the goals of the thesis rapidly became more comprehensive.

1. It was realized that any suggestions for amendments to the Act had to be based upon some method of evaluating the validity and implications of Mr. Lang's remarks since the problem could not be assumed to exist on a priori grounds.

2. The topics which Mr. Lang mentioned involved the three planning instruments known as the official town plan, the zoning by-law, and subdivision regulations, not to mention the Town Planning Act.

3. If the three planning instruments and the Act were going to be examined then the matter of the roles of the various planning authorities would have to likewise be examined.

4. The thesis, by nature of the appeal and review function as defined later in this chapter, would have to analyze the statutory provisions for the enactment, amendment, and repeal of the official town plan, the enactment, amendment, variation and repeal of the zoning by-law, the enactment of subdivision regulations, and the approval of subdivision plans.

The question raised by Mr. Lang began to have very extensive ramifications and somehow all of the relevant ramifications had to be handled in a meaningful and economical fashion. A framework was required which was capable of ordering the relevant facts and issues.

This framework was called the "conceptual framework".

The development of both a conceptual framework and the formulation of specific amendments to the Town Planning Act was found to be an excessively difficult task especially since the draughtsmanship of statutes is a highly technical field. Therefore, this thesis focussed upon the development of an appropriate conceptual framework and the preliminary analysis of the three planning instruments.

The conceptual framework as it is set out in Chapter II is based upon systems theory.

The hypothesis is derived from the conceptual framework and the general areas of political science and public administration. This hypothesis is designed not only to test the suitability of statutory provisions regarding the planning instruments but also to indicate the strengths and weaknesses of the methodology developed in this thesis.

The hypothesis is:

The Town Planning Act of Nova Scotia does not require amendment if the statutory provisions for the enactment, amendment, and repeal of the official town plan, the enactment, amendment, variation, and repeal of the zoning by-law, the enactment of subdivision regulations, and the approval of subdivision plans pursuant to the subdivision regulations are to be satisfactory in terms of:

1. Systems maintenance;
2. Community planning;
3. Openness;
4. Efficiency;
5. Effectiveness;
6. Justice.

It was found that while provisions satisfy the requirements of systems maintenance, openness, and efficiency, they fail to satisfy the requirements of community planning and justice. The tests yielded

inconclusive results for effectiveness. As a consequence, the hypothesis was invalid.

However, certain weaknesses in methodology suggested that a more valid conclusion about the hypothesis was that it was "not proven".

The main test for the hypothesis was eight responses to a questionnaire mailed to planning authorities and municipalities in the Province. The questionnaire and individual replies are set out in Appendix C. Certain characteristics of the questionnaire and the treatment of it cast the results of the test of the hypothesis in doubt.

1. The questionnaire was not designed with the conceptual framework or the hypothesis in mind. It was designed to gather information mainly about planning appeal and review in the Province and to provide a basis for suggestions for the amendment of the Town Planning Act. The questionnaire was prepared and sent out before the final versions of the framework and the hypothesis had been drafted.

2. The questionnaire was mailed to the Director of the Community Planning Division who then had it typed up and mailed out as a questionnaire of the Community Planning Division. This led to two problems resulting in a lack of control over the results: a) some minor changes were made in the wording and form of the original questionnaire and since the author failed to keep an original copy of the questionnaire he cannot ascertain where the changes were made; b) the author does not know how many questionnaires were sent out, but the author did instruct the Division to mail a questionnaire to every planning authority and/or municipality in the Province, which

would have involved mailing out somewhere in the area of 60 to 70 questionnaires.

3. The questionnaire was not subjected to a pretest or check through personal interviews with any of the respondents which probably meant that a certain amount of ambiguity and overlap occurred in the questions.

4. The questionnaire was apparently mailed to planning officials judging by the offices of the respondents. Planning officials probably tend to have a professional bias when questioned about provisions for appeal and objections in the same manner that lawyers would tend to have opposite biases. In either case it would have been very difficult to obtain an objective assessment of the use and need of provisions for appeal and objections.

The responding municipalities represented approximately one half of the Province's population so that at least a certain quality of representativeness was achieved in the replies. One of the respondents, Halifax Regional Planning Commission, is not a municipality. The respondents and their populations are set out in Table 1.

TABLE 1

RESPONDING PLANNING AUTHORITIES

Authority	Population (1966)
Town of Stellerton	5,191
City of Dartmouth	61,000
Municipality of the County of Halifax	90,000
Halifax Regional Planning Commission	244,948
Town of New Glasgow	10,489
Municipality of the County of Cape Breton	40,325
City of Halifax	86,792
City of Sydney	32,767
Total Population of Municipal Units	326,564

Appeal and Reviews

Appeal and review are important concepts in the analysis of provisions regarding planning instruments. Therefore, an extensive definition of these concepts is useful at this point in the thesis.

Appeal and review serve two broadly defined purposes: one is to improve the substantive quality of regulations by providing a means whereby a regulation may be questioned and thence reviewed either by the authority that made the decision or some other authority such as the courts, administrative boards, another administrative officer, or the legislating body and thus create a situation in which there is greater likelihood that all the relevant considerations are taken into account in the enactment and exercise of a regulation. The other is essentially procedural, that is, to ensure that the regulations are enacted, varied, amended, exercised, and repealed in the proper, i.e. legal manner and where possible in a manner consonant with the rules of natural justice.

Appeal and review serve two other purposes, and these are bound up with the nature of democratic self-government. These purposes are: first to provide an opportunity for citizens to voice their concerns and to meaningfully participate in the process of self-government without derogating from the right and duty of the duly elected and appointed authorities to govern; and second to give the authorities an opportunity to explain their actions and the purposes of the regulations under discussion in an open forum. One group of procedures or a single form of organization cannot encompass all the functions of appeal and review.

These remarks are from Milner's comments on the role of procedure in zoning. Milner noted that zoning procedures must serve four purposes:⁵

Main Purposes

1. "...zoning procedure ought to be aimed at assuring that the by-law complies with the official town plan or that a suitable explanation is offered why it does not."
2. "...to ensure that reasonable steps have been taken to enable the council, in forming its policy and drafting its precise by-laws, to inform itself fully of the implications of its policy..."

Subsidiary Purposes

3. "...to enable ratepayers to let off steam..."
4. "...to provide a corresponding opportunity for the council and its staff to explain ... to the public ... what planning and zoning are all about."

Appeal and review serve as linkages (one of several types) between elements within the political system and between the political system and the environment.

Appeal and review are reiterative functions in the sense that the process of appeal and review can take place only after a decision has been or is likely to be made and only in reference to that decision or decisions. Another decision may be made by the reviewing authority which will reconfirm, modify, or replace the original decision. Review may take place separately of appeal in the administrative sense of a systematic review of decisions and actions to provide an internal check upon the outputs and inputs of any system. Appeal takes place

⁵J.B. Milner, "Legal Requirements in Zoning Procedure", Nova Scotia Community Planning Conference, October 20-21, 1966. (Institute of Public Affairs, Dalhousie University, Halifax, 1966)

when some person or group within or outside the system is dissatisfied with an output of one of the authorities and seeks to have this output altered so as to better conform to the needs of the person or group doing the appealing.

The activities of appeal and review imply that there is some authority to whom the appeal can be directed and who is competent to carry out the review. Within the political context of this thesis, the authority may be independent or structurally differentiated from the body making the original decision, or may be the same authority, but a higher status person within that authority. Thus, if an administrator makes an original decision this decision may be appealed to some authority such as the courts or the legislature, or it may be appealed to the administrator's supervisor. In either case the reviewing authority has the power to substitute its judgement or decision for that of the original authority. Depending upon the nature of the issue and the degree of complexity and differentiation within the political system, appeal and review may proceed through several different stages with the reviewing authority becoming an originating authority if the reviewing authority's decision is appealed from.

Appeal and review then has a function of providing an opportunity for the modification of system's outputs to better conform with the requirements of the appellant. However, appeal and review are also crucial in terms of the system's internal requirements, that is, if we think of appeal as a means of conveying information, as part of the feedback loop which enables the authorities within the system to adjust their outputs to better meet the requirements of the environment

and in this way avoid the creation of potentially stressful demands, and better still, to engender supports.

CHAPTER OUTLINES

Chapter II establishes the conceptual framework. The conceptual framework is provided by systems theory. Systems theory defines the political system, locates the subject-matter of the thesis, and provides the conceptual tools for the analysis of relationships between the planning system and its environment and between elements within the planning and political systems. The planning system is defined by the Town Planning Act and is a subsystem of the political system of the Province of Nova Scotia (provincial and local authorities).

The functioning of a system is viewed as a set of interactions between input, systems, and output variables. The criteria for the hypothesis are derived from the classification of output variables.

The main source for the systems analysis is David Easton's The Systems Analysis of Political Life⁶ in which the concepts of systems, political system, subsystems, environment, authorities, gatekeepers, channels, receptors, effectors, stress, inputs, demands, supports, outputs, information, feedbacks, and feedback loops are introduced.

Chapter III describes the role of the courts in the administrative process. The courts are analysed as a review body. The judicial

⁶David Easton, A Systems Analysis of Political Life, (New York: John Wiley and Sons Ltd., 1965).

remedies of declaratory judgement, prohibition, injunction, certiorari, and mandamus and the conditions necessary to bringing them into effect are described, along with the general grounds for judicial review of administrative actions. It is shown that the courts can only intervene when a specific right of a person or group can be shown to have been injured or is about to be injured. This feature severely limits the breadth of judicial review of administrative behaviour, as partially evidenced by the relative paucity of cases relating to planning that have been heard by the Supreme Court of Nova Scotia over a twenty year period. Three actions brought before the Supreme Court of Nova Scotia are discussed.

This analysis of the role of the courts in planning is significant inasmuch:

1. The recommendations about planning procedures and structures have to account for the attitude of the courts toward legislation;
2. The courts are one means of carrying out the appeal requirements of the function; and,
3. The judiciary directly through actual review of administrative action, and indirectly as an example and through the implied threat of review, infuse certain norms such as openness, fairness, impartiality and justice into administrative behaviour. These norms form part of the context of the planning system as goals or objectives of the system.

Chapter IV provides the factual background for the thesis. The chapter begins with a description of the population and economic characteristics of Nova Scotia. It is shown that the Province is experiencing a very low rate of growth, and that this growth is

concentrated in a few urban centres. In planning terms this means that the problem is substantially one of bringing existing services up to acceptable standards rather than accommodating additional growth. There is relatively little stress on existing methods of handling planning problems.

The remainder of Chapter IV is devoted to a description of the government of Nova Scotia, provincial and local authorities. Subsumed under this section is an extensive discussion and analysis of the Town Planning Act. It defines a planning organization composed of the Minister of Municipal Affairs, the Community Planning Division of the Department of Municipal Affairs, council of a municipality, and the planning board. The procedures and content of the official town plan, zoning by-law, and subdivision regulations are described as set out in the Act.

Chapter V gives content to the input and output variables, derives the hypothesis, and tests the hypothesis. A copy of the questionnaire is included in Chapter V.

Chapter VI contains the conclusions.

CHAPTER II

CONCEPTUAL FRAMEWORK - SYSTEMS THEORY

A conceptual framework is a way of ordering thinking about any given class of phenomena. A conceptual framework is not defined with sufficient precision to be termed a theory while it has many of the same functions, that is, to define a subject area and to postulate relationships about the elements in a logically vigorous fashion.

The general subject area is the political system since community planning is a function of the political system, and this is a thesis about procedures in regard to the official town plan, zoning by-law, and subdivision regulations which are instruments for the realization of various community planning objectives.

The Town Planning Act¹ is deemed to define a planning system (subsystem of the political system of Nova Scotia) composed of the Minister of Municipal Affairs, council, the planning board, and in a very tenuous sense - the courts.

Systems theory is the conceptual framework. Later in this chapter the systems relevant variables are grouped under input variables, systems variables, and output variables. Output variables will provide the criteria for the hypothesis. Data for the hypothesis and its test are set out in Chapters III and IV. This chapter sets up the conceptual framework and briefly discusses the three classes of variables.

¹Province of Nova Scotia, The Town Planning Act, R.S.N.S. 1954 Chapter 292, as amended by 1956 c. 43, 1964, 1965, c. 51, 1966 c. 55, 1967 c. 73 (Halifax: Queen's Printer).

SYSTEMS THEORY

The systems approach is based upon general systems theory. General systems theory is an attempt to pull within a group of related theories, those about separate areas of concern, e.g. physics, biology, starting from the notion of a "system". In systems terms, a system is defined as "a set of objects together with relationships between the objects and between their attributes."²

Three central notions in the definition of the system are "objects", "attributes", and "relationships". Objects are defined as the parts or components of a system and are unlimited in variety. Attributes are the properties of objects, such as: number, weight, state, and velocity. Relationships defines those properties which hold the system together.³

In addition to the original definition of a system by Hall and Fagen, Anatol Rapoport introduces a dynamic-analytical dimension in the definition by adding: "...certain relationships imply others;" and, "...a given state of relationships at one time will imply a specifiable state of relationships at another time."⁴

Information embodied in messages is the crucial linkage variable, tying the components of the system together and relating the system to

²A.D. Hall and R.E. Fagen "Definition of a System", General Systems Vol. 1, 1956, p. 18.

³Ibid.

⁴Anatol Rapoport, "Some Approaches to Political Theory", David Easton ed., Varieties of Political Theory (Englewood Cliffs, New Jersey: Prentice Hall Inc., 1966), p.p. 129-130.

the environment through the two classes of summary variables -- inputs (including feedback) and outputs. Information in this context is understood in the broadest sense to include transfers of energy, such as verbal messages, physical action-projects, protest marches or transfers of funds, which have the potential to act as cues for responses.

The thesis will not attempt to "solve" any problems through the use of systems theory, but it will use the theory as a means of identifying critical variables and establishing concepts and hypothesis.

There are various approaches, including general systems theory, which offer explanations analgous to and employ conceptual approaches which can subsumed under systems theory.

The system as defined is a dynamic ensemble of relations between various components. In a closed system, according to certain laws of thermodynamics there is a tendency toward entropy, defined as a state of maximum probability, in which the system becomes disorganized, that is homogeneous, whereas the alternative is an open system which imports information, or energy, negative entropy, in which case the system tends to increase in complexity and differentiation and grows in the organismic sense in which one of the possible outcomes or states is to homeostasis which has been defined as "...the ensemble of organic regulations which act to maintain the steady state of the organism..."⁵

⁵Ludwig von Bertalanffy, "General System Theory -- A Critical Review", General Systems, Vol. VII, 1962, p.6.

Homeostasis is analogous to the equilibrium model of a system. However, the concept of homeostasis or equilibrium merely refers to a state at a given time which the system is attempting to achieve, a change in a critical variable leading to a predisposition toward another state of equilibrium at a higher level of complexity if the system is "progressing", or a lower level of complexity if the system is degenerating". A political system is an open system.

The concepts of system, open system, and homeostasis as described imply:

1. An discrete entity known as a system which has boundaries;
2. Interactions between components of the system which enable the system to maintain various states; and
3. Transfers across systems boundaries of information which can be refined into outputs into the environment (that which surrounds the system) and inputs from the environment.

The Cybernetics model of the self-adjusting machines facilitates understanding of the main structural aspects of the systems processes. The Cybernetics model establishes three elements, four, if the feedback is structured as a loop or channel. These elements are: an effector which produces a response to the environment, this response triggers a sensing device, feedback which sends into a receptor a long with stimuli, and the receptor sends a message to a control appartus which in turn sends a message to effector.⁶ Essential to the model are goals which can be set out in qualitative or quantitative terms, e.g. 10,000 bolts an hour, or community planning. The response (output)

⁶Ibid, p.5

in terms of the production of bolts or planning is fed through a sensing device which informs the control apparatus of the actual performances. The control box "evaluates" performances, and if necessary adjusts same according to predetermined goals or standards. The Cybernetic unit of control apparatus, receptor, effector, sensor, and feedback loop can be linked to other units forming a very complex system. This simple model illustrates that a system must have goals which determine the sorts of responses that are required by the system. Homeostasis is likewise described by this model since the control apparatus enables the system to respond to feedback cum stimuli in a manner designed to maintain the system at a given or predetermined state.

A system may contain subsystems. Organizations, however defined, can be defined as subsystems of the political system, as are the local and provincial levels of government.

David Easton defines the political system "...as those interactions through which values are authoritatively allocated for a society..."⁷ comprising "...a complex set of processes through which certain kinds of inputs are converted into the types of outputs we may call authoritative policies, decisions, and implementing actions..."⁸.

An alternative definition of the political system was set out by Gabriel Almond in which he states "...the political system is that

⁷David Easton, A Systems Analysis of Political Life, (New York: John Wiley and Sons Inc., 1965) p. 21.

⁸David Easton, "Categories For the Systems Analysis of Politics", p. 144.

system of interactions to be found in all independent societies which performs the functions of integration and adaptatoon (both internally and vis a vis other societies) by means of the employment, or threat of employment, of more or less legitimate physical compulsion. The political system is the legitimate, order-maintaining or transforming system in the society."⁹ Almond's definition is less useful for our purposes since it was essentially designed to explain differences between political systems, nevertheless, some of his definitions and concepts will prove to be usable in this thesis.

David Easton's systems approach will provide the framework for conceptual thinking about appeal, review, planning, the official town plan, zoning by-laws, and subdivision regulations.

In A Systems Analysis of Political Life which provides a framework for the analysis of appeal, review, and planning, David Easton notes three methodological objectives:

1. "...to establish criteria for identifying the important variables requiring investigation in all political systems:"
2. "...to specify the relationships among these variables:" and
3. "...to achieve these goals through a set of generalizations that hang together with greater than lesser coherence and interdependence."¹⁰

In his analysis Easton is concerned with those elements pertinent to the survival of the political system.¹¹

⁹Gabriel A. Almond and James S. Coleman, editors, The Politics of Developing Areas, (Princeton, N.J.: Princeton University Press, 1960) p. 7.

¹⁰David Easton, A Systems Analysis of Political Life, p.8

¹¹Ibid, p. 13.

As a consequence of the systems characteristics of political life, a political system comprises a system of behaviour, is surrounded by environments, is open, that is subject to influences from these environments, and possesses the capacity to more or less effectively respond to the demands of the environment in a variety of ways.¹² The inability to respond to certain types of demands leads to the partial or complete breakdown of the political system. "Disturbances" are simply the influences from the other environments, and from within (subsystems of the political system) which compel the political system to respond by changing its product to the environment and/or by making structural modifications.

In very simple terms the systems approach to political life can be envisaged as model comprising the political system, outputs to the environment, and inputs from the environment which are linked together in a systematic fashion.

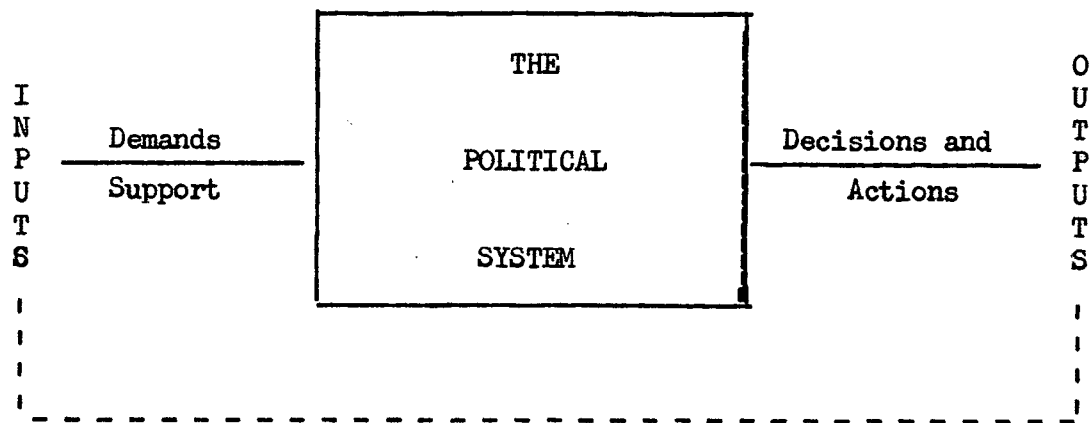
Figure 1 diagrammatically sets out components and their relationships.

The concepts composing the systems analysis of political life fit into two broad classes -- those treating the structures and those treating the processes of political life.

¹²Ibid, P.18

ENVIRONMENT

ENVIRONMENT



ENVIRONMENT

ENVIRONMENT

FIGURE I ¹³

MODEL OF THE POLITICAL SYSTEM

¹³David Easton, A Framework For Political Analysis (Englewood Cliffs, New Jersey: Prentice Hall, Inc., 1965) Diagram 3, "A Simplified Model of a Political System".

STRUCTURES OF POLITICAL LIFE

Political structures are designed to facilitate ends of the political systems, the central end being persistence, the retention of the ability to cope with demands of a stressful and non-stressful sort through suitable responses in the form of outputs.

The structural components of the political system are: the authorities, receptors, responding agents, gatekeepers, and channels. These components are essentially defined by their function (including powers) and location in the political system.

1. Authorities

The authorities lie within the political system. Their task is to produce authoritative and associated outputs which are more or less capable of producing the desired effects within the system and its environment. Typical authorities are the legislature, the courts, and the executive.

2. Receptors

Receptors are authorities to whom feedback is directed.¹⁴

3. Responding Agents

Responding agents may be authorities or members of the political system or both. Where the responding agents are authorities the responses are quite specific comprising deliberate and calculated action. "But a response may also be more diffuse and diversified; it may appear as individual and isolated reactions on the part of the members severally considered.

¹⁴A Systems Analysis of Political Life, p. 420.

In the aggregate, their actions may lead to a new set of circumstances that can be designated as a generalized response in the system."¹⁵

4. Gatekeepers

Gatekeepers are those specialized elements of the political system, located at either the boundaries or well within the political system whose function is the conversion of diffuse wants and expectations into specific demands that can be considered and perhaps managed by the authorities. The gate-keeping function (an analogous term is "conversion") may be performed by the authorities, political parties, opinion leaders, interest groups, and opinion leaders. The gate-keeping or conversion process is similar to Gabriel Almond's interest articulation and aggregation functions.¹⁶

The role of the authorities in want-conversion (gate-keeping) should be further elucidated since this treats a matter close to the thesis. Authorities may act as demand generators and want-convertors in their own right, in a relatively autonomous fashion, "...in response to internal moral norms that inspire them to live up to the ideal expectation of the culture with regard to what is expected of the authorities in the system."¹⁷ Finally, one of the crucial variables in the activation of the gatekeeping function is the timing of the flow of demands.

¹⁵Ibid, p. 247

¹⁶The Politics of Developing Areas, p. 17.

¹⁷A Systems Analysis of Political Life, p. 97.

5. Channels

Channels are paths of flow for input and output elements comprising "...the interrelationships among such familiar secondary political structures as interest groups, parties, opinion leaders, mass media, political leaders, legislatures, and relevant unorganized publics. What makes it possible to describe connections among these structures in a political system as channels is that regardless of where a demand is initiated, it becomes a message that may move from and through any of these subsystems to another, depending on the demands particular career."¹⁸ Channel capacity determines the number and types of demands that may be handled. Responses to an excessive demand situation may be an increase in the number of channels or increase in specialization of channels, or both.

Channels may be of two types, direct or mediated.¹⁹ In the former case, information (or demands) is transmitted directly to the authorities. In the latter case, information (or demands) is relayed to the authorities by gatekeepers.

PROCESSES OF POLITICAL LIFE

1. Outputs

Outputs are products of the authorities such as decisions, actions, policies, programmes, and press releases which in the context of the

¹⁸Ibid, p. 119.

¹⁹Ibid, p. 418.

systems analysis approach are designed to engender support for the regions, system, or authority, by meeting existing demands, forestalling future demands by anticipatory action, or engendering a generally favourable climate for the system in a diffuse manner.

Outputs, like inputs, may cross the boundaries of the system or may move from one element of the political system to another. Movement within the system is exemplified by the forwarding of a decision of the executive to an operating department which then proceeds to put the decision into effect, say, the construction of a highway or the issuance of a regulation. The output of the executive member becomes an input for the operating department resulting in an output which crosses the system's boundary.

Outputs and inputs can be viewed as exchange and transactions — two subsidiary notions which will be important in the thesis.

"Echanges can be used to refer to the actuality of the relationships, to the fact that the political system and those systems in the environment have reciprocal effects on each other. Transactions may be employed when we wish to emphasize the movement of an effect in one direction from an environmental system to the political system, or the reverse, without being concerned at the time about the reactive behaviour of the other system."²⁰

2. Inputs

Inputs are "...summary variables that concentrate and mirror everything in the environment that is relevant to political stress."²¹

²⁰A Systems Analysis of Political Life, p. 26.

²¹Ibid, p. 26

Inputs are the raw materials of the political process in the forms of demands and supports.

This thesis is mainly concerned with demands in the form of appeals and demands to the authorities to modify or repeal a given enactment.

A demand is defined "...as an expression of opinion that an authoritative allocation with regard to a particular subject-matter should or should not be made by those responsible for doing so."²² Demands may be broad or narrow in scope. Demands are directed toward the authorities. Demands, and supports originating within the political system are termed "withinputs".

Demands, while essential for the rationale of the political system, are its greatest source of danger since demands are potentially stress-inducing both in terms of volume and in terms of content. Stress in either case "...will tend to undermine the capacity of a system to produce its characteristic outputs, authoritative decisions."²³

The crucial systems variable under the both types of stress just mentioned is time. Due to excessive volume or content characteristics (complexity, dissension creating, difficulty in treatment) the system's channels are unable to cope with the flow of demands within a suitable period of time and backlog of demands is created. Demands are not processed and hence not converted into requisite outputs, resulting in among other things, more untreatable demands and

²²Ibid, p.38

²³Ibid, p.57

dissatisfaction in the environment which eventually leads to a loss of support for the system. A certain level of support is crucial if the system is to survive at all

The excessive volume situation leads to what David Easton calls "demand input overload".²⁴ This demand input overload is essentially the same phenomenon that occurs under the situation of content stress, since under both types of stress the time variable determines the ability of the system to adapt to the demands. It is implicit in Easton's remarks, that demands ordinarily of a non-stressful type will produce stress if there are too many for the system to effectively handle. A sudden peaking of demands will not allow the system to develop the appropriate adaptive measures that a more evenly paced flow of demands would permit. Thus, a content stress need not necessarily arise if the system has enough time to cope with an unusual or complex problem. Of course, this last statement does not eliminate the possibility that a demand may be so "outrageous" in content terms that the system simply cannot cope with it and still maintain its general terms of reference. For example, a democratic system of government may not be able to adapt to the requirements of waging a war without completely changing its character to say, a totalitarian system.

Notwithstanding the conceptual unity of volume stress and content stress, the systems approach does not give us reason to assume that structural adaptations of the political system will be the same for both types of stress. At this stage Easton merely states that the

²⁴Ibid, p. 58

problem of demand input overload may be handled by an increase in number of channels -- which is about as close to being specific about structural adaptations that Easton gets.

Finally, the notion of feedback and information are discussed. "Feedback", "Feedback loop", and "Feedback processes" are information concepts embodying the notion that the authorities must obtain information if they are to maintain the desired levels of support.

Feedback is the return of systems relevant information to the authorities. The Feedback loop describes the channels this information follows to reach the authorities. And feedback processes are "...the actual flow patterns and related effects..."²⁵

The meaningfulness of the feedback concept is predicated upon four assumptions about states of the system.

1. There exist interrelationships of outputs, demands, and supports.
2. The authorities are responsive to information inputs from the environment.
3. The authorities are competent in terms of skills, imagination, and organizational ability to achieve their goals.
4. The authorities possess sufficient resources to respond affectively to demands.²⁶

The above are assumed to be valid for the state of affairs of Nova Scotia. The assumptions are slightly unrealistic inasmuch there are always constraints upon the authorities' willingness and ability (resources and competence) to respond to feedback from the environment and from subsystems. These constraints are very important with respect to the system's ability to maintain the

²⁵A Systems Analysis of Political Life, p. 366.

²⁶Ibid, p.p. 363-364

requisite level of supports. However, it is beyond the scope of this thesis to analyze the constraints arising from motivational considerations.

Information has two functions: one is to describe the state of the system and the environment, and the other is to describe the effects of outputs.²⁷ Information enables the authorities to adapt before the event and to know what sorts of adaptations are likely to be most successful.

Information and demands often may be incorporated in the same message and handled by the same structures or channels. Thus, a public hearing while being a forum for the presentation of information in the form of opinions and arguments, may also provide an opportunity for the expression of demands.

The notion of feedback can include demands as well as information, since the essential characteristic of feedback is that it is initiated by a reaction to a system's outputs.

Information feedback can be assessed in terms of its volume, accuracy, delays in transmission, direction, and the behaviour of the authorities.²⁸

The phases around a feedback loop comprise:

1. Stimuli in the form of outputs and outcomes;
2. Feedback response:

²⁷Ibid, p. 364

²⁸Ibid, p. 366

3. Information feedback about the response; and,
4. Output reaction to feedback response.²⁹

Figure 2 simply illustrates the feedback model. A more complex version is presented by Figure 3.

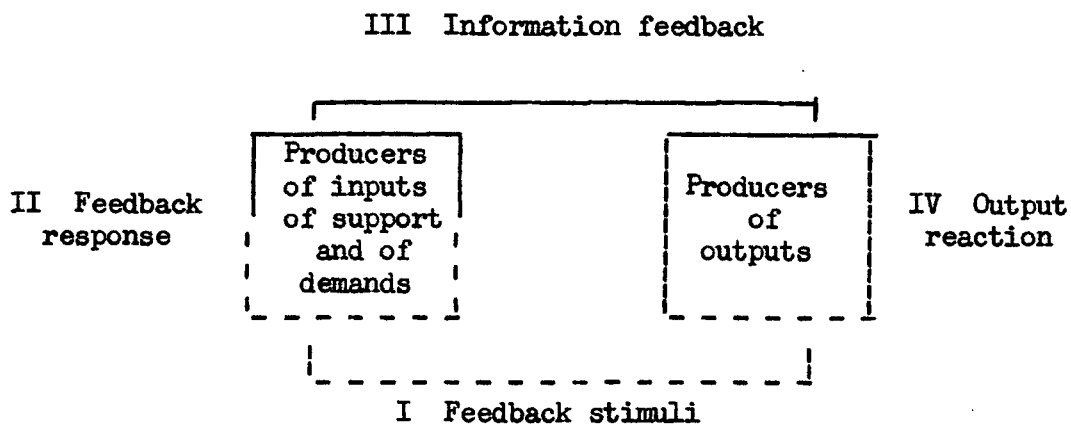


FIGURE 2 ³⁰

FEEDBACK MODEL

³⁰Ibid, Diagram 7, "The Four Phases of the Systemic Feedback Loop", p. 381.

31 Ibid, Diagram 6, "The Systemic Feedback Loop", p. 378.

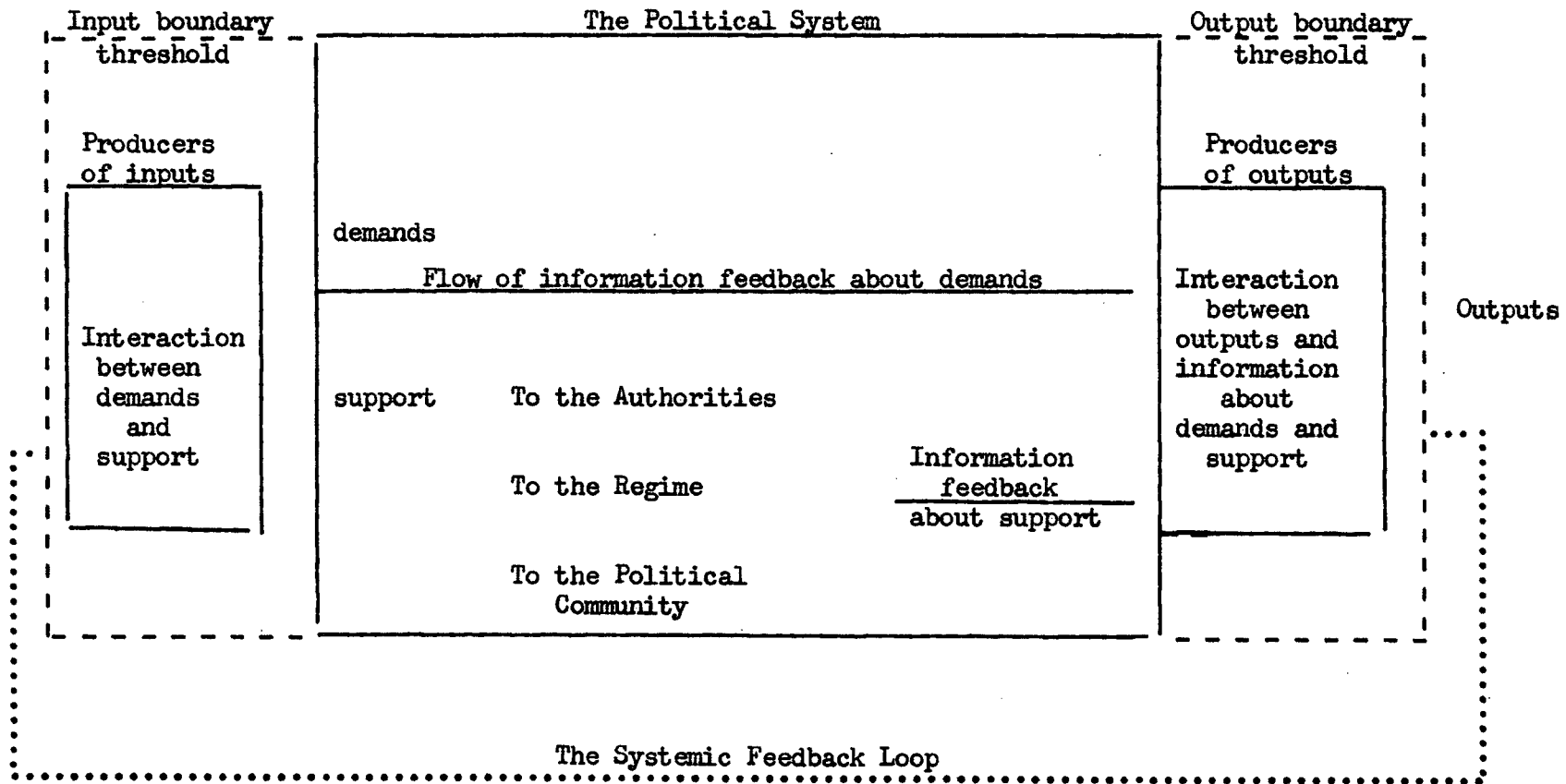


FIGURE 3 ³¹

THE SYSTEMIC FEEDBACK LOOP

As it is described, feedback conceptually includes appeal since appeal likewise is a response to an output of the system. Feedback in general includes any sort of response to any output and consequent outputs need not necessarily follow, whereas appeal as defined earlier requires a specific output by an authority reaffirming, amending, or nullifying the original output which triggered the appeal. This specific output of the authority is a decision resulting from review.

THREE CLASSES OF VARIABLES

The systems approach generates three classes of variables, known as input variables, systems variables, and output variables.³² These variables provide a means of analyzing the provisions of the Town Planning Act for procedures in regard to the planning instruments. The output variables provide the criteria for the hypothesis.

The variables are postulated on the assumption that there are measurable relationships between these variables. Even where it is not possible to establish precise relationships between the variables, the grouping or classification of facts about a system under the three classes of variables serves to clarify thinking and point to useful concepts and insights about the operation of the system.

³²Charles E. Rice, "A Model for the Empirical Study of a Large Social Organization", General Systems, Vol. VI, 1961.

Charles Rice analyzes the operation of psychiatric hospitals using the three classes of variables. He used a correlational analysis to compare the operations of different psychiatric hospitals.

Some of the material which is to be used for the input, output, and systems variables is to be found in Chapter IV. Material is also obtained from the eight replies to a questionnaire which was mailed to all of the planning authorities of the Province, and from a further analysis of the Town Planning Act. This questionnaire and the replies to it also form the basis for the test of the hypothesis.

Input variables are "...those parameters of the systems environment whose variability affects the system's functioning."³³

Systems variables are the pertinent elements internal to the system such as authorities, channels, gatekeepers, the relationship between these elements, and the manner in which the system carries out its functions.

Output variables are "...variables whose measurement would reflect the performance of any organization with respect to ..."³⁴ the goals of the organization or system.

³³Ibid.

³⁴Ibid.

CHAPTER III

THE COURTS

The role of the courts in the administrative process is described in this chapter. The general principles of judicial review are set out with a discussion of the judicial remedies. Three cases touching upon matters related to community planning heard by the Nova Scotia Supreme Court are examined. It is shown that in regard to community planning in Nova Scotia the courts are used infrequently as a review device.

The significance of the courts in the administrative process extends beyond their use as a means of review, because:

1. Legislative enactments, rules, regulations, ordinances, by-laws and administrative actions are potentially subject to judicial review; and
2. In the broader sense the judiciary are able by virtue of their power of review and as a model of behaviour in common-law countries are able to infuse certain norms of behaviour into the administrative process.

The courts influence the governmental process in four main ways:

- 1) by interpreting the meaning of legislative enactments, rules, regulations and by-laws and thus playing the role of the authoritative impartial umpire where there is a conflict or uncertainty about the meaning of the rules established by the legislature and other rule-making bodies;

- 2) by determining the legitimacy—legality of behaviour according to the rules (points of law);
- 3) by compelling compliance with the rules; and
- 4) by interjecting certain common law concepts such as natural justice into quasi-judicial activities.

The courts act as a means of appeal and review within the limits set out above. The courts may determine the legality of enactments if they are the creatures of superior legislation. For example a municipal by-law may be termed ultra-vires of the statute under which council purports to act if the enabling act granting council its powers failed to authorize the type of municipal enactment in which case council exceeded its jurisdiction and the by-law is invalid. Likewise an enactment of the provincial legislature may be deemed ultra-vires of the province if it falls within the federal jurisdiction under the British North America Act.

The court's interpretative function combined with its authoritativeness means that legislative enactments, by-laws, and so forth have to be drafted with the courts' attitude in mind because disregard will lead to litigation and possibly frustration of the legislature's intentions.

A matter to be reviewable by the courts must lie within what the legislature deems to be reviewable. The courts however preserve their right of review. The courts will only exercise review on questions of jurisdiction and law, or when a specific action or cause exists which lies within the judicial frame of reference, or where there is a specific procedure by which the matter is brought before

the attention of the courts. In each case, the court reviews the matter and finally the court issues a decision (the outcome). If the decision is unsatisfactory to the appellant or defendant, then the process of appeal and review can recommence depending upon the circumstances of the case. With variations the same basic steps are applicable in any circumstance in which an attempt is made to alter a decision.

The basic factor in judicial review in Canada is that in general, except when a statute grants appeal to courts, we have to look to the Common Law principles of judicial review.¹

The basic role and attitude of the courts toward review is elucidated in the following remark by John Willis.

The jurisdiction of the courts is very limited and no more than supervisory. They have no power to review the substance of the deciding authority's decision except (and it is becoming an important exception) questions of law on the face of the record, but they do have power to review the process whereby the decision is arrived at. They require that the authority honestly apply its mind to deciding the question it is empowered to decide and no other question. They also require that the procedure the authority adopts for hearing the dispute conforms to the fundamental rules of fair play and, in effect, set minimum standards of fairness for the process of adjudication. In a word, the courts have an inherent quasi-constitutional power to guarantee the citizen against arbitrary decision and that is all the power they have.²

An English authority on the matter of administrative law (W.O. Hart) sets out the context and consequences of judicial thinking in the following statement:

¹John Willis, "Administrative Law in Canada", Canadian Bar Review, 1961, Volume 39, p. 256.

²Ibid, p.p. 256-257.

In England ... the courts have been diffident in controlling the exercise of discretionary powers conferred by statute. Partly this flows from the omnipotence of Parliament, partly from a difficulty in fitting bare discretionary powers into a pattern of legal thinking which is focussed mainly on rights and duties and which reflects the nineteenth century laissez-faire outlook dominant in the period when the rule of strict precedent had recently been accepted and was forming the foundations for the development of the modern law. This judicial attitude recognizes that freedom of action exists in certain fields, perhaps flowing from rights. Such a field, however, is not defined positively, but merely represents an area of possible action not prohibited by duties or contravening the rights of others. Mere powers are difficult to fit into this setting. Some statutory powers can, of course, be regarded as doing no more than removing an internal bar in the constitution of the body upon which they are conferred. Other statutory powers which have an external operation cannot be so simply dealt with, but many are not only carefully defined but their exercise is made dependent upon a definable standard or the existence of some set of circumstances. The power, for instance, to condemn property for clearance as unfit for human occupation is related to a specific norm, the existence of which could, if necessary, become a justiciable matter. Such statutory powers, therefore (though still difficult for the courts to accept), are not wholly alien to judicial patterns of thought. But statutory powers which are discretionary and cannot be related in their exercise to anything approaching a legal rule, but on the contrary are to be exercised in accordance with such indeterminable ideas as policy and expediency, are almost incapable of judicial control.

In the end the courts have shown extreme reluctance to interfere with the exercise of statutory powers of a discretionary nature. Appeal, moreover, is the creature of statute and is not inherent in the grant of a discretionary power, even where the decision of an administrative body involves a point of law. In the absence of a statutory right of appeal the courts will do no more than consider whether the exercise of the power was ultra vires, whether it was exercised in good faith, and where it is of a quasi-judicial type, whether the rules of natural justice were observed in reaching the decision, having regard, however, to the nature of the deciding body. Such review provides no appeal on the merits and only a limited scope for controlling the more outrageous departures from reasonable practice.³

³W.O. Hart, "Control of the Use of Land in English Law" in Charles M. Haar, Editor, Law and Land: Anglo-American Planning Practice, (Harvard University Press and M.I.T. Press, Cambridge, Massachusetts), p.p. 18-19.

The judicial posture vis a vis administration and individual rights is described in the following terms by J.G. Pink:

... in an effort to achieve day to day working solutions to the problem (of administrative justice), microscopic distinctions must be drawn, in each area of legislation, between more "individual preferences" expendable in the interest of administrative efficiency and "individual rights" to be jealously guarded, at least for interim periods, even at the expense of decreased administrative effectiveness.... The most important issues are the standards upon which the distinction should be based, and, even more crucial, who should draw the distinction.⁴

There have been attempts to exclude judicial review by means of privative clauses of which there are two main types, a clause excluding the application of the prerogative writs, what J.G. Pink class "the comprehensive 'no certiorari' clause",⁵ and the "exclusive jurisdiction"⁶ section which grants the administrative body to determine the law as well as the facts that apply within a given subject area. These privative clauses have not effectively excluded judicial review.

Appeal to a court from a decision of an administrative body can take the form of a request for damages (very infrequent, and hardly applicable in the field covered by the Town Planning Act),⁷ an attempt to have the enactment in question declared ultra-vires, an application for a declaratory judgement, or one of the writs of

⁴J.G. Pink, "Judicial 'Jurisdiction' in the Presence of Privative Clauses", Faculty of Law Review, University of Toronto, Vol. 23, April 1965, p.p. 5-6.

⁵Ibid, p. 7

⁶Ibid, p. 8

⁷Province of Nova Scotia, Town Planning Act, R.S.N.S. 1954, Chapter 292, as amended by 1956 c. 43, 1964 c. 45, 1965 c. 51, 1966 c. 55, 1967 c. 73 (Halifax: Queen's Printer).

injunction, prohibition, mandamus, and certiorari. Injunction is an equitable remedy, whereas prohibition, mandamus, and certiorari are prerogative writs. The distinction need not concern us.

THE REMEDIES

The remedies of declaratory judgement, injunction, prohibition, mandamus, and certiorari are the most commonly used means of securing review by lower court of administrative decisions, and are therefore the subject of the following discussion.

The remedies have the following elements in common:

1. a person or group exists who has a clearly defined right which is being injured, or is likely to be injured (the preventive remedies of injunction and prohibition) by some action or lack thereof of a clearly defined court, tribunal, or administrative body and this person (plaintiff) is bringing an action for one of the remedies. In legal terms the person bringing the action must have sufficient locus standi.

2. In the consideration of one of these remedies the court will generally not review a case on its merits, but instead on a point of law, unless, the decision is so unreasonable as to constitute in the eyes of the court an excess of jurisdiction.

These two constraints on judicial review mean that judicial review can occur only under extraordinary circumstances. The position of the courts however, is significant in that administrative

behaviour has to operate within the general context of norms as interpreted by the courts.

The courts in addition, facilitate the administrative process by acting as final interpreters in the definition of words and meanings of statutes, rules, regulations, by-laws and other legal documents.

Declaratory Judgement

The declaratory judgement is a discretionary remedy which purpose is to determine legal relationships.⁸ Generally speaking it will only be granted under certain circumstances. In addition to those circumstances which have been mentioned as common to all the remedies, it has been observed that a declaratory judgement will not issue in cases whence there is no person interested in opposing the matter, or, if the judgement will not afford the plaintiff real relief, or, if the judgement would be iniquitable, cause public inconvenience, or be contrary to public policy.

The declaratory judgement, among other purposes, can be used in regard to statutes and municipal by-laws to establish:

1. Validity of the enactment;
2. Interpretation or effect;
3. Validity of administrative acts of officers of the Crown; and
4. Validity of decisions of statutory tribunals.⁹

⁸Allan Findlay, "Declaratory Judgement", The Law Society of Upper Canada (Lectures), (Toronto: Richard de Boo Ltd. 1961), p. 187.

⁹Ibid, p.p. 202-207

Injunction and Prohibition

The injunction shares with prohibition the attribute of being a preventive remedy, that is, its job is to prevent somebody from undertaking a course of action that will affect some persons' or groups' personal or property rights.

Injunction is an equitable remedy, whereas a prohibition is one of the prerogative writs. An injunction will apply to any party whether it be a trade union, a business establishment, or an administrative body, whereas prohibition will only be applied against an inferior tribunal, or a board or body which has a duty to act judicially.¹⁰ A judicial act is defined as "... an act done by competent authority upon consideration of facts and circumstances and imposing liability or affecting the rights of others."¹¹

An injunction, like prohibition and the other remedies, is discretionary, however, if a plaintiff can show that he has a right that is being violated he is generally entitled to an injunction to prevent recurrence of that violation.¹² An injunction will not be granted if it can be shown that the act complained of is trivial, or, that another adequate remedy exists.¹³

Mandamus

The writ of mandamus is issued by a court to compel some person or tribunal to carry out some duty imposed upon it by law.¹⁴ It

¹⁰B.J. Mackinnon, "Prohibition, Certiorari, and Quo Warrants" Ibid p. 243.

¹¹Ibid, p. 293.

¹²W.B. Williston, "Injunctions", p. 88 p. 88.

¹³Ibid, p.p. 89-90.

¹⁴F.A. Brewin, "Mandamus", Ibid, p. 273.

cannot be issued where the exercise of the duty in question is discretionary, that is, the person or tribunal has a choice whether or not to carry out a duty.

One of the points in the writ of mandamus is that "while mandamus lies to compel the exercise of a discretion, the Court has no power to compel the exercise of a discretion in a particular way..."¹⁵

Certiorari

"Certiorari ... is an order by the Court quashing a ruling or decision of such statutory tribunal which has gone outside its jurisdiction."¹⁶

A writ of certiorari issues:

- (a) where there is want or excess of jurisdiction when the inquiry begins or during its progress;
- (b) when, in the exercise of jurisdiction there is an error on the face of the adjudication;
- (c) where there has been an abuse of jurisdiction (as by mis-stating the complaint, etc., or disregard of the essentials of justice and the conditions regulating the functions and duty of the tribunal);
- (d) where the Court is shown to be disqualified by likelihood of bias or by interest; and
- (e) where there is fraud.¹⁷

¹⁵Bergman J.A. Pozier v. Ward (1947) 2 W.W.R. 193, 55 Man. R. 214 (1947) 4 D.L.R. 316, reversing (1947) 1 W.W.R. 807.

¹⁶F.A. Brewin, p. 273

¹⁷B.J. Mackinnon, p. 300

NOVA SCOTIA CASES

In the final analysis the only way to understand judicial thinking is to examine judicial decisions. It is even more pertinent to examine decisions in the jurisdiction that this thesis is concerned about, Nova Scotia. The general remarks about judicial attitudes and the various remedies were derived second-hand from legal writers commenting upon "leading cases". The Nova Scotia Supreme Court and Court of Appeals operate within the guidelines laid down by previous decisions, precedent, and within the rules laid down by the Judicature Act of Nova Scotia, and as well, must take into consideration the attitude of the Supreme Court of Canada to which appeals can be had from the Supreme Court of Nova Scotia.

There is one serious gap in our understanding of the judicial process of Nova Scotia, and this is the role of the county courts whose decisions are not reported in law reports and are thus not accessible. Therefore, it is impossible to estimate the total number of planning and related appeals to the courts and to deduce the effectiveness of the courts as a planning appeal and review device. It can be assumed for a variety of reasons that a certain number of appeals are resolved at the county court level and never reach the Nova Scotia Supreme Court or Court of Appeals. In the same manner certain decisions of the Nova Scotia Supreme Court and Court of Appeals are not appealed to the Supreme Court of Canada.

It would be tantalizing to hypothesize about the county court situation, but, this is a matter for another study.

The Maritime Provinces Reports sets out all the cases heard by

The Supreme Court and Court of Appeals. All the Reports from Volume 18, 1944/45 to Volume 52, 1966/67 were examined for cases relating to the Town Planning Act, or which raised questions pertinent to planning. Three cases were discovered to meet the criteria. Only one case referred to the Town Planning Act, and this was in conjunction with the Halifax City Charter, another case devolved upon an interpretation of the Halifax City Charter alone, and one was an expropriation case. These cases by no means indicate the scope of the Courts' potential as a review body, but they do indicate the very limited use to which the Court is being put as a review body in planning.

The following cases were all heard by the Supreme Court of Nova Scotia.

1. Re. Ives; Re. Crichton Park Realities Limited.¹⁸

This case was an appeal from a judge-arbitrator under the Expropriation Act. R.S.N.S. 1954, c. 91, ss. 7, 19. The Crown (Nova Scotia) had expropriated two parcels of land and was dissatisfied with the decision of the arbitrator. It therefore appealed the decision of the arbitrator on the grounds that the judge-arbitrator had erred in admitting certain evidence and erred in permitting certain questions of the witnesses.

The appeal was dismissed because:

- 1) the appellants failed to allege "that the judge had erred in improperly considering some element or thing which he should not have considered or that in his valuations he acted upon

¹⁸Maritime Provinces Reports v. 52 1966/67 p. 250.

some error in principle"; and¹⁹

- 2) the judge committed no error in the application of the principles of law related to compensation, nor did he make an excessive award.

Comment

There were two issues involved in this case, one concerns the manner in which the judge went about making the award (procedure), and the other was the amount of award (substantive justice). We can presume that if the award had been excessive in the eyes of the Supreme Court, the appeal would have been allowed.

2. Re. Clarendon Development Limited.²⁰

This case falls under municipal law (The Town Planning Act, R.S.N.S., 1954, c. 292, s. 16, The Halifax City Charter, s. 103 (2), City of Halifax Ordinance 2, Rules 4, 5, 22, 24 and 40) and comprised an application for a writ of mandamus to compel the City to rezone a parcel of property which it had failed to do because Council had failed to pass the rezoning by the required two-thirds majority. The vote was 8-3 instead of the required 9-3 and the Mayor consequently ruled against the rezoning.

The Court had to decide on two questions, whether a special majority was required in this case, and the meaning of the word "affected." In effect an attempt was made to overturn the ordinance

¹⁹Ibid.

²⁰Ibid V. 51 1965/66 p. 108

in regard to this property.

The application was dismissed by the Court.

In rendering the decision, Mr. Justice Currie commented: "It is established law that the reasonableness of an ordinance is one of law for the Court. Its reasonableness is determined by an examination of all the circumstances, the objects sought to be obtained and the reason and necessity for its existence. It must not be unreasonable and oppressive as applied to certain property and as applied to the particular subject matter, even though its general purpose is valid. There is a legal presumption in favour of the reasonableness of ordinance which may be displaced by proper evidence or from what appears on the face of the ordinance. A court should be reluctant to substitute its discretion for that of the municipal authorities."²¹

No mention is made of the grounds for the issuance of a writ of mandamus.

3. Re. Johnston and the Committee on Works of the Halifax City Council.²²

This case falls under certiorari and involved an application by a property owner for the writ to quash a decision by the Committee to demolish his house on the grounds that the Committee exceeded its jurisdiction by failure to follow the rules of natural justice (Halifax City Charter ss. 109, 116, 757, Acts of 1960 c. 65, s. 13; Ordinance 50).

²¹Ibid, p.p. 108-109

²²Ibid, v. 46 1961/62 p. 345.

The order and resolution of the Committee were quashed.

It was determined that the "Committee meetings were not all attended by the total number of members appointed to that body, although all participated in the vote on the resolution."²³

Chief Justice Ilesley established two points essential to the grant of a writ of certiorari, that the Committee was bound to act judicially in this matter, and that the Committee acted contrary to the rules of natural justice.²⁴

If the Committee had not been obligated to act judicially, (1) the writ would not have been obtainable, and (2) it would not have been obliged to follow the rules of natural justice in its proceedings. As was noted earlier though, the definition of a judicial act is very broad.

SUMMARY

The role of the courts in administration was discussed. This discussion was followed by an examination of three cases heard by the Nova Scotia Supreme Court relating to planning. It was shown that the courts while having the power to nullify administrative and legislative decisions can only do so in highly restricted circumstances, where some specific right can be proven to have been affected and a person or group brings an action against the administrator or

²³Ibid.

²⁴Ibid, p.p. 345-346

administrative body. The courts are therefore review bodies in only extraordinary circumstances, as evidenced by the relative paucity of appeals arising out of planning and related legislation to the Nova Scotia Supreme Court.

CHAPTER IV

NOVA SCOTIA - THE PROVINCE AND THE PLANNING SYSTEM

This chapter contains most of the facts about the Province and its planning that are pertinent to the analysis of statutory provisions in regard to the planning instruments. Some additional materials were obtained through the responses to the questionnaire.¹ The general population, and economic and governmental characteristics of Nova Scotia are described, and the statutory processes regarding the planning instruments are also set out. This material is used in Chapter V in the formulation and test of the hypothesis.

While the reason for describing statutory processes is self-evident, the reason for setting out the other information is perhaps less clear, and thus needs explaining. First of all, this data enables the reader to have some understanding about the physical and social context of this thesis; and secondly, the information, especially about the size of population and its rate of growth provides a basis (the replies to the questionnaire are another source) for the assumption that there is a relatively low volume of demands which are being directed to the planning system.

THE PROVINCE

Population and Economy²

The population of Nova Scotia is presently 756,039³ compared to

¹See Appendix C for the replies to the questionnaire.

²Appendix E contains the tables setting out the population and employment data for Nova Scotia.

³Dominion Bureau of Statistics, Census, 1966.

737,807 in 1961. The Halifax-Dartmouth metropolitan area contains 145,537 people, 19% of the province's population.

Due to the high proportion of rural non-farm inhabitants in Nova Scotia, the Province's population has tended to be less urbanized than the rest of Canada - 54% urban as compared with the national averaged of 70%. The rural non-farm category comprised 30% of the population in Nova Scotia, compared with 19% in Canada.⁴

The rate of growth, both economic and demographic has tended to be lower than the rest of the country due in part to the very low immigration and the high rate of emigration, some 34,000 people leaving the Province in the 1951-1961 decade.⁵ Nova Scotia's population declined from an estimated 760,000 in 1964 to the present 756,039 (1966).⁶

The economic base of the Province is graphically illustrated by the distribution of employment amongst various industries, and distribution of employment within the service sector. The following tables show that the defence establishment plays a very important role in the Province's economy, directly employing some 10% of the provincial labour force in 1961. The secondary effects of the defence establishment can be felt in manufacturing, other services, and construction.⁷ Its impact is especially marked in the Halifax-Dartmouth area.

⁴Nova Scotia Voluntary Planning Board, "First Plan for Economic Development to 1968", (Halifax: Queen's Printer, February 1966), p. 24, - Citations from 1961 Census.

⁵Ibid, p. 24.

⁶Ibid, Appendix I, Table F-1. "Population, Nova Scotia and Canada".

⁷Ibid, p. 32.

Government

Nova Scotia is divided into 66 municipalities. There is no unincorporated area within the province. These municipalities are rural municipalities, cities, towns, and villages. Villages are not mentioned in the Town Planning Act, and so in this thesis the term "municipality" will henceforth not include villages. A rural municipality is the municipal authority for that part of a county which has not been incorporated as cities, towns, or villages. Thus, the county is distinct from the municipality of the county, and has no administrative or legal life. The term "county" merely refers to a geographical subdivision of the province.

The general powers of the Minister of Municipal Affairs to approve local by-laws, resolutions, ordinances, and regulations, where any Act so requires it is described as follows:

1. Where by any Act or consent of the Minister of or to any resolution, regulation, ordinance, by-law borrowing or other act or matter is required then in his discretion:

- a) he may approve or consent to all or part thereof; or
- b) if he approves or consents to a part thereof then from time to time he may approve or consent to other parts or to the remainder thereof; or
- c) he may attach any qualification, condition or stipulation subject to which his approval or consent becomes effective; or
- d) he may approve or consent subject to such amendment as he may stipulate and may direct:
 - 1) that the resolution, regulation, ordinances, by-law or other act or matter shall be effective as amended until the council which adopted it otherwise determines; or

- 11) that the resolution, regulation, ordinance, by-law, or other act, or matter shall not be effective until the council which adopted it has adopted the amendment.⁸

The Courts

The courts merit a brief mention because they are an integral part of the political process in Nova Scotia.

Nova Scotia enjoys the same judicial system as the other provinces with the Supreme Court at the apex, the Appellate Division of the Supreme Court County Courts, and Provincial Magistrate's Courts. Justices of the Supreme and County Courts are appointed by the Governor-General in Council, while provincial magistrates are appointed by the Province.

Depending upon the enabling statute, appeal may be held to the county court and thence the Supreme Court or appeal may be held directly to the Supreme Court.

Damages and Enforcement

Damages and enforcement merit a brief mention since Part II of the Act⁹ which treats this matter contains the Act's only explicit reference to the courts, and this part grants council the general power to carry out the provisions of this Act.

Section 22 enables the owner of a property which is injuriously affected by a project under an official town plan to obtain compensation from council (22(1)). If there is any question as to whether

⁸Province of Nova Scotia, Municipal Affairs Act, R.S.N.S. 1954 Chapter 186, Section 4 (Halifax: Queen's Printer).

⁹Province of Nova Scotia, Town Planning Act, R.S.N.S. 1954 Chapter 292, as amended by 1956 c. 43, 1964 c. 45, 1965 c. 51, 1966 c. 55, 1967 c. 73 (Halifax: Queen's Printer).

or not a property has been injured or about the amount and manner of payment of compensation, the matter shall be determined by arbitration (22(2)).

Section 23 sets out the situation under which compensation is not entitled. These situations occur where:

1. The injury occurs due to the passage of a zoning by-law under this Act (23(1));
2. Where the property is affected by provisions in an official town plan which "would have been enforceable without compensation if they had been contained in a zoning by-law" (22(2)); and
3. Where the person is entitled to compensation under another act and this Act, he shall not be entitled to compensation under both (22(3)).

Section 24 sets out the enforcement of the Act, enabling the clerk when authorized by council or a standing committee thereof to bring proceedings in the Supreme or County Court to obtain any or all of the remedies provided by law and set out in this section (24(1)).

24 (2) The Court or a judge thereof may hear and determine the same at any time, in Court or in chambers, and in addition to any other remedy or relief may

- a) make orders restraining the continuance or repetition of any such contravention or failure or the new or further contravention or failure in respect of the same property;
- b) make orders directing the removal or destruction of any building or structures or part thereof which is in contravention of or fails to comply with this Act, or an official town plan, by-law or regulation made under this Act, and authorizing the council or a standing committee thereof or an official of the municipality, if such

order is not complied with, to enter upon the land and premises with necessary workmen and equipment and to remove and destroy the building or structure or part thereof at the expense of the owner; and

- c) make such further order as to the recovery of the expense of any such removal and destruction, and for the enforcement of this Act, or official town plan, by-law or regulation, and as to costs, as the Court or judge deems proper;

and any such order may be interlocutory, interim or final.

Section 25 permits any duly authorized officer or servant of council to enter any property and conduct such investigations as are necessary to the purpose of the Act.

Finally, Section 26 enables council to exercise any powers granted under this Act and other acts to carry out the purpose of this Act.

Provincial and local authorities lie within the same political system. In a matter such as planning where the approval of the Minister of Municipal Affairs is required for certain types of activities, the two classes of authorities can be thought of as lying within the same, albeit loosely structured organization.

CONTENT OF THE OFFICIAL TOWN PLAN, ZONING BY-LAW, AND SUBDIVISION REGULATIONS

The official town plan, the zoning by-law, and subdivision regulations are administrative devices or instruments which are designed to accomplish certain ends which can be loosely grouped under the heading of "community planning".

The official town plan as it is described below in the Act is a very flexible instrument that can be interpreted as either a single document containing all the necessary material or a series of documents within a common frame of reference.

1.(1) Subject to the approval of the Minister any council shall have power:

- (a) to prepare a plan or plans for development, either as to the whole or any part or parts thereof, with details of development either endorsed upon the plan or contained in schedules referring to any such plan, which plan or plans and details of development shall be known as "The Official Town Plan";
- (b) from time to time make additions to and alterations in the official town plan;
- (c) to prepare co-ordinating plans for the development of harbour, railway and rapid transit and street railway and airport facilities, and to recommend plans so prepared to any railway board or public authority having jurisdiction in the matter, and to any railway or other company concerned therewith, and to use all lawful measures to secure the adoption such plans and the due cooperation of terminal, transportation, and other facilities of commerce and traffic within and about the municipality;
- (d) to make provision for any street widening project by defining the minimum distance from the centre or side line of existing or projected streets at which buildings or other structures may be erected, placed, constructed or reconstructed;
- (e) to make provision for the reservation of land for projected streets or street widening projects, and for parks and other public purposes;
- (f) to make provision for the supply of light, water, sewerage, street transit, and other facilities to the various parts of the area included in an official town plan;
- (g) to prescribe the order in which any part or parts of the development provided for in the official town plan will be carried out and the order in which any designated parts of the area included in the official town plan will be supplied with light, water, sewerage, street transit and other facilities.

(h) to make provision for the method of financing any works and expenses to be incurred in connection with or incidental to the carrying out of the development prescribed in the official town plan or any part of parts of such development.

(2) In a municipality where there is a board, a council, before adopting, amending, repealing an official town or exercising any of the powers referred to in subsection (1) shall request the board for a report thereon unless a report has been submitted by the board to the council within six months prior thereto.

It is noteworthy that in this general grant of powers to council to plan for the community there is uncertainty as to whether planning for streets, transportation facilities, parks and other public facilities can be conducted without the prior existence of an official town plan, since in the section 4 (1) dealing with these matters the official town plan is not mentioned. As Mr. J.B. Milner notes:

The Nova Scotia Act ... separately authorizes the council to prepare a plan for development to be known as "The Official Town Plan" and to prepare co-ordinating plans for harbour, railway, rapid transit, street railway and airport facilities, as well as still other plans, or other provisions, for street widening and projected streets."¹⁰

Once an official town plan has been adopted council may not undertake any public improvements inconsistent or at variance with the plan.¹¹ Whether or not such a restriction applies equally to by-laws is uncertain. The Planning Act¹² of Ontario is quite explicit in this regard stating that except under certain defined

¹⁰J.B. Milner, "Trends in Planning Law in Canada", Nova Scotia Community Planning Conference, 1966.

¹¹Town Planning Act, Section 5.

¹²Province of Ontario, The Planning Act, R.S.O. 1960, Chapter 296, (Toronto: Queen's Printer, Office Consolidation, 1967).

circumstances no by-law shall be passed that is not in conformance with the official plan.¹³

The zoning by-law is described as follows under the Town Planning Act:

12 Subject to the approval of the Minister, the council may, by by-law, to be known as a zoning by-law, make regulations for any or all of the following purposes:

- a) dividing the municipality or any portions thereof into districts, which may be described by detailed description or by the use of plans or partly by one method and partly by the other;
- b) designating certain districts within which it shall be lawful to erect, construct, alter, reconstruct, repair or maintain certain types of buildings, or to carry on certain business, trades or callings;
- c) designating certain districts within which it shall be lawful to erect, construct, alter, reconstruct, repair or maintain certain types of buildings, or to carry on certain businesses, trades or callings;
- d) designating the height, ground area, and bulk of buildings thereafter erected, constructed, altered, reconstructed or repaired;
- e) prescribing building lines and the depth, size or area of yards, courts and other open spaces to be maintained, and the maximum density of population permissible within any district, the minimum size of rooms and the means of lighting and ventilating the same;
- f) prescribing as to any district the class of use of buildings or land shall be excluded or subjected to special regulations and designating the uses for which buildings may not be erected, constructed, altered, reconstructed, or repaired, or land used, or designating the class of use which only shall be permitted;
- g) controlling the architectural design, character and appearance of any or all buildings proposed to be erected in any district, or fronting upon any street or part of a street, and prohibiting the erection of

¹³Ibid, Section 15 (1).

any building in contravention of such regulation;

h) prohibiting the erection of any building in any district or part of a district until provision has been made to the satisfaction of the council for the supply to such building of light, water, sewerage, street transit and other facilities or any of them which the council may deem necessary;

i) regulating the erection and repair of buildings, preventing the erection of wooden fences in specified areas, prohibiting the erection or placing of buildings, other than with main walls of stone, brick or concrete and roofing of incombustible material, within defined areas, and regulating the construction and dimension of chimneys.

The content of the zoning by-law as it has just been cited pre
prescribes the uses that are permissible, where these uses are to be situated, and the conditions to be attached to the situation of uses.

Subdivision regulations must include general provisions treating:

- (i) areas to be reserved for public purposes;
- (ii) width, location and gradients of streets;
- (iii) access to existing streets or highways;
- (iv) zoning provisions and building lines;
- (v) size and shape of block and lots.¹⁴

PLANNING SYSTEM

Authorities

The authorities constituted by the Town Planning Act are now described. Authorities in systems terms are those persons or agencies located in the political system which make binding decisions.

¹⁴Town Planning Act, Section 27 (1). Also, see Province of Nova Scotia (Community Planning Division, Department of Municipal Affairs) "A Model Form of Subdivision Regulations for Towns in Nova Scotia" (Halifax: N.S.: February 1964) -- included in Appendix B of this thesis.

1. The Minister of Municipal Affairs is empowered to approve the official town plan, and the zoning by-law and any amendments thereto, and to prescribe subdivision regulations, and where necessary, assume the powers of council under the Act when it has failed to carry out its duties. He is also given the power to hire such staff and assistance as may be required.

2. The Supreme and County Courts, as has been noted, are specifically granted the power to enforce the provisions of the Act and implicitly have certain review powers in questions of law and jurisdiction.

3. A planning board, composed of up to seven persons including the mayor or warden (ex officio) and at least three members of council, may be established by council with the following powers and duties (3 (1)):

a) to prepare an official town plan and any variations thereof;

d) to prepare a zoning by-law and any amendments thereto;

c) to act in an advisory capacity in the carrying into effect of an official town plan and in the administration of a zoning by-law;

d) to act in an advisory capacity in all matters pertaining to town planning with the general object of serving:

- 1) economic use,
- 2) proper sanitary conditions,
- 3) amenity and
- 4) conveniences, including suitable provisions for traffic, in connection with the laying out of streets and the use of land, and of any neighboring lands for building or other purposes.

Also, the board may exercise certain powers of council with regard to subdivisions (27(4)).

4. Council, which is given the power to carry out the Act in a manner to be discussed later.

5. Servants and officers of council, who may carry out certain administrative duties.

Aside from any other consideration of a descriptive sort, there is a procedural relevance to setting out the authorities. They are the focal points toward whom the appeals are directed, and, as a corollary, are competent to carry out review. While there are procedural similarities between the official town plan and the zoning by-law, subdivision regulations are sui generis.

Community Planning Instruments

Official Town Plan

The procedures are the same for enactment, amendment, and repeal of official town plan. However, as a first step, council must have the approval of the Minister before proceeding with the preparation of an official town plan (S. 4(1)). Where a planning board exists, it may be entrusted with the preparation of the plan (S. 3(1,d)).

The steps are:

1. Official town plan is prepared by either council or the planning board.

2. Where there is a board, council submits the plan to the board for a report (s. 4(2)).

3. A notice is published about the plan. (s. 6(1,2)).
4. Council considers and determines all written objection thereto (s. 6(3)).
5. Council makes a decision, and if it decides to proceed within the adoption, amendment, or revocation of the plan sends copy of same to the Minister for approval (s. 7).
6. Minister approves "5".
7. A notice is published and the plan is filed with the county registrar of deeds (s. 9(1,2)).

The Act is silent on means of appealing an act of Council or one of its offices under the official town plan save where a person can establish that his property has been injuriously affected and that he is entitled to compensation (S. 22(1)). The appellant's only recourse is "political", i.e. that he can convince the Minister or a sufficient number of councillors of his case, or "legal"---appeal on some point of law.

Zoning By-law

The preparation of a zoning by-law requires the prior approval of the Minister (S. 12).

Procedures vary for the enactment, amendment and repeal, and variation of the zoning by-law. Adoption, amendment or repeal is not effective until approved by the Minister (S. 14).

1. Adoption

- a) Zoning by-law is prepared.
- b) Council publishes a notice of its intention to pass the zoning by-law in the area affected (S. 13(1)).
- c) Council considers and determines all written objections thereto (S. 13(a)).
- d) Council decides to adopt the plan and submits same to Minister for approval (S. 14), which includes, among other things, the report of the planning board.

2. Amendment and Repeal

Amendment and repeal can be initiated by a person who makes an application to council therefor (S. 16(1)). If there is a board, the request must be referred to the board for consideration and report (S. 16(1)). Presumably council can initiate an amendment or repeal.

- a) Person applies to council for an amendment or repeal, or conversely, council decides to secure same.
- b) Application is referred to Board for consideration and report.
- c) If council decides that it is necessary to amend or repeal the by-law, a notice is published of a hearing (S. 16 (2)).
- d) Hearing is held, "and all persons whose property would be affected by such amendment or repeal may appear in person or by attorney or by petition" (S. 16(3)), following which council may make its decision.
- e) Council confirms, amends, or repeals the by-law (S. 16(3)).
- f) However, two-thirds majority of all members of council will

be required if "a protest against the proposed amendment or repeal is presented in writing to the council no less than two days prior to the hearing, duly signed by the assessed owners of at least twenty percent of the properties affected by the proposed amendment or repeal" (S. 16(e)).

g) The Minister approves the changes (S. 14).

3. Variation

Section 20 (1) provides:

"Appeal shall lie to the council in the following cases:

- a) by any person who is dissatisfied with the decision of any official charged with the enforcement of a zoning by-law;
- b) by any person desiring to obtain the benefit of any exception in a zoning by-law;
- c) by any person claiming that owing to special conditions the literal enforcement of a zoning by-law would result in unnecessary hardship;
- d) in any other cases where provision for appeal is made by a zoning by-law.

2. No appeal shall be from the decision of the council."

Subdivisions

The procedure for the prescription of subdivision regulations and the approval of subdivisions in contrast with the procedures for the official town plan and the zoning by-law reflect different notions about the nature of the two classes of land use controls, inasmuch that subdivision regulations on the surface at least, do not affect existing rights in property to the same degree as the

other controls. Thus, except in a special class of circumstances there is no provision for hearings and the other procedural devices for fair play.

Subdivision regulations are prescribed by the Minister (s. 27(1)). The Minister is not involved in the approval of subdivision plans.

The Act sets out the following steps for the approval of subdivision plans:

1. The developer submits tentative plans to council, or the board, as the case may be.
2. Within four weeks of the submission of the tentative plan and other such material as the council or board deems necessary, council or the board must notify the applicant in writing of the objectionable features of the plan (s. 27(3)).
3. Although the Act does not specify it, the applicant then submits a copy of the final subdivision plan (s. 27(1,c)) to council or the board for approval.¹⁵ The process of submission of plans and modifications of the tentative and final plan can continue until a satisfactory set of plans is submitted to council.
4. Council or board approves the final plans, certified by the appropriate officers, and it is filed with the registrar of deeds (s. 27(2)).

Special Circumstances—Subdivisions

The special circumstances occur when a rural municipality attempts to approve a subdivision in an area lying within three miles of a city or two miles of a town (s. 27(S)).

¹⁵Nova Scotia, Community Planning Division, Department of Municipal Affairs, "A Model Form of Subdivision Regulations for Towns in Nova Scotia", Halifax, 1964. See Appendix B.

If the rural municipality does not have a board, the subdivision may be approved if the board of the city or town affected grants its approval.

If a rural municipality with a board approves a subdivision within three miles of a city or two miles of a town, the subdivision may be registered if the board forwards a true copy of the subdivision plan to the affected cities and towns, in which case within thirty days after the receipt of the plan the city or town may appeal the rural municipality's approval to the Minister and notify the board of the rural municipality of its appeal.

Section 27 "(6) The Minister may fix a time and place for the hearing of parties to such appeal and notice of the time and place of hearing the appeal shall be served by the appellant upon the municipal clerk.

(7) The giving of such notice of appeal shall stay any action in respect of the further development or sale of the subdivision in question and every part thereof until the decision of the Minister has been made and communicated to the municipality and the city or town concerned.

(8) The Minister may upon such appeal adopt, amend, alter, vary or revoke the plan of subdivision so appealed from and the decision of the Minister shall be final."

SYSTEMS VARIABLES

It is possible to translate the structures and procedures involved with the three planning instruments into systems terms and to group them under systems variables as mentioned in Chapter II.

The systems variables are grouped under "structures" and "instruments".

STRUCTURES

Authorities

The authorities are the Minister, council, the planning board, and the courts. The Minister is assisted by the Community Planning Division. The planning board plays an advisory role in that it may prepare the official town plan and zoning by-law, and make recommendations about these instruments. Also the report of the planning board is required in law (Town Planning Act) when the enactment or changes thereto are proposed concerning the official town plan and the zoning by-law, and this report has to be included by council in its submission to the Minister for approval. In addition, the planning board may exercise the power of approval over subdivision plans without the participation of any outside body. The courts are authorities in the specialized instances mentioned earlier.

Together, these authorities make authoritative decisions about the use of land.

Responding Agents

The responding agents are similar to the authorities but excluding the courts, and adding the municipal officers and servants who implement the decisions of the authorities such as the building inspector.

Receptor

Receptors are the authorities excluding the courts.

Gatekeepers

Gatekeepers are likewise the authorities who receive raw demands, for example "private appeals"¹⁶ to the Minister and convert these into

¹⁶See Appendix D.

outputs. Some authorities, for example: council mediates raw demands for re-zoning by raising a by-law which then is sent to the Minister for approval. A raw demand for rezoning may be sent directly to the Minister, who may, under the Act, order council to pass same. There is good reason to suspect that consideration of every private demand for rezoning by the Minister would lead to a demand input overload. Council as a gatekeeper serves to both reduce the number of rezoning requests that are presented to the Minister and to present these requests in such a form that they can be disposed of with less time than "raw" demands by the Minister. This does not necessarily imply that the overall time required to process a rezoning application might not be less if the procedures were changed to enable the Minister to handle raw demands for rezoning.

The Act does not mention all of the gatekeepers because, as it is demonstrated in Almonds' list of attributes of the political system, interest articulation and aggregation may be performed by various individuals and groups. The newspaper may articulate and aggregate (by selecting) demands which are floating around the community. Ratepayers' groups may summarize a diversity of demands about land use controls and present them as a single demand to the authorities, and the same may be said for the lobbyist who has special access to council or the Minister.

Aggregation and articulation may be performed by members of the political system such as civil servants and other administrative agencies.

A distinction can therefore be made between gatekeepers who are explicitly mentioned by the Act - the Authorities, and those gatekeepers not mentioned by the Act. Given the data base of the thesis, the latter class of gatekeepers can only be dealt with by conjecture.

Channels

Channels are the paths that messages follow. The Act creates a network of authorities which assigns direction to the channels, but only specifies one channel, the public hearing - a specialized device by which the community is able to transmit its opinions to the authorities. The public hearing is likewise a part of the feedback loop in that it is one means of transmitting feedback to the authorities.

The operation of a channel can be visualized thus: a person applies for rezoning to council; council may refuse the rezoning as simultaneously a gatekeeper, receptor, and authority; the channel is blocked; however, the person may reroute his application to the Minister and thus create a new channel. However as noted before, this creation of a new channel to by-pass existing and commonly used channels may be very expensive and the outcome problematical.

The planning system is investigated by examining the possible procedures under the Act concerning the official town plan, the zoning by-law, and subdivision regulations.

INSTRUMENTS

Official Town Plan

The official town plan imposes two sorts of constraints upon land

use. One is that no public work shall be undertaken which is contrary to the plan, and the other, by implication is that no by-law shall be enacted contrary to the official town plan. Since the enactment of the plan alone cannot be shown to injure any private rights then appeal cannot lie to the courts. However, provision is made for a hearing and those who are likely to be affected are allowed to present their opinions. This hearing is the only opportunity provided for in the Act for "appeal". The matter is complicated if one of the provisions of the official town plan includes a proposal for zoning in which case the hearing could raise questions pertaining to property rights in a very specific sense as well as in the more general sense. By the time a hearing is held a report from the planning board has been obtained.

Council considers the report of the planning board and the submissions in the hearing, and if it decides to go ahead with the enactment of the official town plan, sends its by-law to the Minister for approval.

Zoning By-law

The zoning by-law in contrast to the official town plan affects specific rights by assigning benefits and liabilities to definable parties, and, the Act provides for variance of a zoning by-law. Since interests are created under a zoning by-law that may be represented in an action before the courts, an additional avenue of appeal is created - to the courts. The courts are empowered to review a decision of the authority on questions of law, and jurisdiction. Furthermore

councils' power to grant variances under the Act creates a class of situations under which appeal may be held and council may review the application of the by-law in specific instances.

The specificity of the zoning by-law is further recognized in the Act which explicitly states that a person may apply to the clerk of the municipality for the amendment or repeal of a zoning by-law who shall immediately refer this to the planning board for a report thereon which is then submitted to council. Otherwise, the procedures are similar in both cases of the zoning by-law and the official town plan with respect to enactment, amendment and repeal.

However, the unique procedural aspects of the zoning by-law judicial review, and provisions for variance should be examined.

Judicial review on questions of law and jurisdiction occurs where a clearly defined party's rights have been injured or are likely to be injured by a zoning by-law. A substantive question, injury, creates an opportunity for the review of the legality of the existing or proposed action. Assuming that injury can be proven and thus sufficient locus standi created, satisfaction will be achieved by the applicant only if he can show that the action taken or about to be taken was illegal. If the action was legal, the applicant's only recourse is to council or the Minister on policy grounds.

Appeal from a decision of an official in the course of the administration of the by-law (application for a variance) may be held to council, "... but nothing herein shall be deemed to authorize the

council to waive any requirement of the by-law or to contravene any such requirement." (Section 20). This procedure is economical and clearly set out so that there is no danger that an appeal will be taken to anybody other than council.

Subdivision Regulations

The procedures for the enactment of subdivision regulations do not provide for representations by the public. Except under special circumstances where a rural municipality wishes to approve a subdivision within two miles of a city or three miles of a town, there is no provision for appeals, public hearings, or Ministerial approval when a subdivision plan is to be approved. The planning board under normal circumstances is the sole approving authority.

CONCLUSION

The population of Nova Scotia declined between 1964 and 1966. Only 54% of the Province's population lives in urban centres, and 38% of its population is classed as rural non-farm.

The organization for planning is relatively simple. Essentially, the Minister of Municipal Affairs, council, and the planning board are the only planning authorities. The Minister must approve the enactment, amendment and repeal of the official town plan, and zoning by-law. The Minister prescribes subdivision regulations, but the approval of subdivision plans resides with the planning board, or council where there is no planning board. Only council may decide

upon zoning variances and there is no statutory appeal from a decision of council. Public hearings occur precedent to the enactment, amendment, and repeal of the official town plan and zoning by-law.

In sum, it can be concluded that the administrative structure and procedures of planning in Nova Scotia reflect the low demands that are being placed upon the planning system.

CHAPTER V

THE HYPOTHESIS AND TEST OF HYPOTHESIS

The main purpose of this chapter is to set up the hypothesis and to test it. However, before the hypothesis can be treated it is necessary to discuss and analyze the input variables and output variables of the planning system.

Perhaps the portions of this chapter treating input and output variables could have been more logically included in Chapter II; however, Chapters III and IV contained information necessary to the analysis of these variables. Also, input and output variables are closely connected with the formulation and test of the hypothesis.

QUESTIONNAIRE

The questionnaire is set out in its entirety below. The individual replies are set out in Appendix C.

This questionnaire is divided into four parts: Part I, General (Questions 1-12); Part II, Objections (Questions 13 and 14); Part III, Appeal - Zoning and Official Town Plan (Questions 15-24); and Part IV, Appeal - Subdivision (Questions 25-28). There is also Question 29 which requests the respondent to submit any suggestions he might have for improving the questionnaire.

The maximum number of replies to any question is eight.

QUESTIONS

Name: _____ Municipal Unit: _____ 1966 Population _____
Chairman, Town Planning Board City, Town or Municipal Clerk
Other _____

PART 1: GENERAL

1. Do you have subdivision regulations?

Yes

No

2. Do you enforce the subdivision regulations?

Yes

No

Comments, if any: _____

3. Do you have a zoning by-law?

Yes

No

4. If the answer to (3) was yes, do you enforce this zoning by-law?

Yes

No

Comments, if any: _____

5. Do you have an Official Town Plan, approved by the Minister and registered with the county registrar of deeds?

Yes

No

6. If the answer to (5) was yes, is this Town Plan, in your opinion, an effective documents?

Yes

No

7. Do you have an active Town Planning Board?
- Yes No
8. Does the Town Planning Board meet regularly?
- Yes No
9. Does the Town Planning Board carry out the full range of duties prescribed under the Town Planning Act?
- Yes No
10. Has your municipal unit adopted a building by-law?
- Yes No
11. Do you have a building inspector or committee?
- Yes No
12. If the answer to (11) was yes, has the council or building inspector or committee assumed the Planning Board's responsibilities for the issuing of building permits?
- Yes No Comments: _____

PART II: OBJECTIONS

13. Where your Council is considering written objections to an Official Town Plan or Zoning By-law, does this take the form of an open hearing in which interested parties may make oral as well as written presentations? Please explain the manner in which your Council treats objections to the Official Town Plan or Zoning By-law.

14. Do you feel that adequate scope is given to persons objecting to an official town plan or zoning by-law?

Yes

No

Comments, if any _____

PART III: APPEAL - ZONING AND OFFICIAL TOWN PLAN

Section 20 of the Town Planning Act, as amended in 1965, provides: "When a person is dissatisfied with the decision of an official in the course of his administration of this Act or of a by-law made under this Act, he may appeal from this decision to the council by giving notices in writing of such appeal to the clerk not later than fifteen days after the decision has been communicated to him. The council may, after hearing the appellant and the Official and any other person, affirm, vary or rescind the decision of the official but nothing herein shall be deemed to authorize the council to waive any requirement of the by-law or to permit any person to contrvene any such requirement".

15. Is there any tendency for persons seeking a change or seeking to prevent a change, to petition the Minister, either before or after Council has decided on the matter?

Yes

No

Please comment: _____

16. Do you feel that a person dissatisfied with the decision of Council with regard to a zoning by-law or official town plan, should be permitted to petition the Minister?

Yes

No

Please state why: _____

17. How many appeals were heard by your Council under Section 20 of the Town Planning Act during the period January 1, 1965 to December 31, 1967?

18. How many of these appeals went from your Council to:

The Minister of Municipal Affairs _____

The County Clerk _____

The Supreme Court of Nova Scotia _____

19. If possible, briefly list the typical reasons why applicants appealed:

From the decision of your Council _____

To the Minister _____

To the Courts _____

20. In your opinion, is this provision (Section 20) of the Town Planning Act used frequently?

Yes

No

Please comment why: People don't understand their rights

Procedure is too cumbersome Community is small

Appeal cost (legal fees) too high

Other (please specify)

21. In your opinion, should the Town Planning Act relating to zoning provide for exceptions (with the exact conditions under which minor exceptions may be granted set out in the by-law or Act) or variances (a method of safeguarding the individual lot owner against the invasion of his fundamental right of private property which would result from adherence to the strict letter of the zoning by-law)?

Yes

No

Please comment _____

22. If the answer to (21) was yes, how would you like to see exceptions or variances provided for?
- _____
- _____

23. Do you feel the grounds for appeal under Section 20 should be changed?

Yes

No

If "Yes", what changes? _____

24. Which of the following forms of appeal would you prefer? Please comment.

Appeal to Planning Board _____

Appeal to separate local body _____

Appeal to regional body _____

Appeal to Provincial body _____

Other (Please specify) _____

PART IV: APPEAL - SUBDIVISION

25. Do you feel there should be some form of appeal (other than to the Minister or the Courts) to the decisions of the Town Planning Board on subdivision matters?

Yes

No

If "Yes", what form of appeal? _____

26. During the period January 1965 to December 1967, how many appeals have there been from decisions of your Planning Board or Council to

The Minister _____

The Courts _____

27. If possible, briefly list the typical grounds for appeal:

28. State any other opinions you may have regarding appeal and objections.

29. List any suggestions you have for improving or adding to this questionnaire.

INPUT VARIABLES

The input variables used in this thesis are of two general types: those pertaining to the volume, type, and distribution of demands; and those that can be defined as the general rules of the system.

The first group of input variables can be further broken down into direct and indirect input variables.

The direct input variables are so deemed because the replies to the questionnaire provide some indication of the number of appeals, the types of appeals, and the destinations of these appeals.

The indirect input variables are those about the Province which are set out in Chapter IV, namely, population, population distribution, economic base, and rate of population growth. They are termed "indirect" because they provide general indicators about the total volume of demands which are directed to the planning system. Any analysis of the demand-capacity relationship must consider all demands.

The rules of the system can be entered either at the input side or the output side insofar they represent goals the achievement of which can be measured. However, the rules of the system are not specific to the planning system and can be broadly thought of as constraints or parameters which affect the functioning of the system. These rules are assumed. They are derived from certain notions in the systems theory and from the assumption that human beings tend to favour the existing state of affairs.

The basic goal of the political system and the planning subsystem is assumed to be maintenance and development at progressive levels of homeostasis. Change is acceptable to the authorities and the environment only if the goals of survival, certain values such as democracy and fairplay, and long-standing structural characteristics such as the legislature, cabinet, departmental organization are retained.

Indirect Input Variables

It was shown in Chapter IV that the Province has very few large urban centres, a small population (756,039), and a low rate of population growth. As a consequence it was assumed that the total number of demands directed to the planning system were likely to be very low. This assumption conceals the possibility that a low general rate of population growth may include significant population shifts within the Province, or a marked deficit in services which would generate a large number of planning issues, and as a consequence, a large volume of demands. It has to therefore be further assumed that the low rate of growth does not conceal large population shifts and deficits in services.

Therefore, on the basis of certain assumptions about population growth, level of services, and their relationship to demands, the indirect input variables lead to the assumption that a low number of demands are directed to the planning system.

Direct Input Variables

The pertinent direct input indicators are ascertained from the replies to questions 1, 2, 3, 4, 5, 6, 15, 17, 18, 20, and 26 of the questionnaire.

TABLE 2
SUBDIVISION REGULATIONS, ZONING BY-LAW,
OFFICIAL TOWN PLAN
(QUESTIONS 1 - 6)

	<u>NUMBER OF COMMUNITIES</u> <u>WITH</u>	<u>ENFORCING</u>
Subdivision Regulations	6	6
Zoning By-law	8	8
Official Town Plan	3	2

Three respondents in reply to question 15 indicated "no", and three indicated "yes", that there is a tendency to petition the Minister. Two replies were ambiguous.

The number of appeals heard by council in the two year period beginning January 1, 1965 and ending December 31, 1967 (Question 17) was 5. Only two communities indicated that appeals had occurred to council.

Following Question 17, Question 18 indicates the destination of the appeals after they had been heard by council. Only one appeal went beyond council. This appeal was directed to the Minister of

Municipal Affairs. This appeal to the Minister of Municipal Affairs occurred in a community where council had not heard any appeals, which suggests either that the questionnaire was badly worded, the respondent misunderstood the question, or the appellant had by-passed council.

Following was answered in the replies to Question 17.

Question 26 which asked how many appeals went from the planning board on subdivision matters to the Minister established that five communities had not experienced appeals from the planning board. Three communities indicated that appeals in the two year period had been made to the Minister, one of the respondents noting that "quite a few" appeals had been made to the Minister.

It does not appear from the questionnaire, even if the results were to be extrapolated to include all of the Province's planning units, that there is a significant volume of appeals reaching the Minister or council. The respondents included the major planning authorities of the Province.

OUTPUT VARIABLES

The definition of output variables will yield the criteria for the analysis of statutory procedures, and, as a consequence, generates a portion of the hypothesis.

According to the definition of output variables the formulation

of output variables requires first of all the formulation of goals which will be the criteria in the hypothesis, and secondly the formulation of appropriate variables grouped by goals where measure would reflect the performance of the planning system's appeal and review function.

The goals of the planning system are derived from the main requirements of a system and from certain norms about procedures. These goals are arbitrary insofar they reflect the author's opinion of what constitute significant community norms about procedures and what constitute the goals of a system. Certainly a great deal more work could be done in setting out relevant goal forms which are more logically satisfying.

Some of the goals set for them will be mutually enhancing, others will have little or no relationship with the other goals, and still others will derogate from the accomplishment of the other goals. For example, the achievement of justice and efficiency may be impossible without one or the other being weakened, however justice and systems maintenance may be mutually enhancing.

Some of the goals and specific variables are similar to the input variables, reflecting the interrelationships between the system, and its environments.

The goals and their derivation are set out with a general discussion of the variables.

The primary goal is systems maintenance which, is simply the avoidance of stress-producing demands ("demand input overload"). Since demands can produce stress both through volume and content character-

istics, the appropriate outputs are those which satisfy the environment. The appropriate systems internal adaptations are to develop a rough correspondence between channel capacity and demands.

The crucial output variables for systems maintenance is the volume, type, and destination of demands. This output variable has already been subsumed under direct input variables. This is one of the criteria of the hypothesis.

The next goal is community planning. Community planning is measured by the number of communities which have carried out the provisions of the Town Planning Act with respect to the establishment of a planning board, meetings of the planning board, and the enactment and enforcement of the planning instruments.

There are four other goals loosely termed "procedural values".

Procedural Values

Beyond the stated purposes of an instrument there are other objectives which must be sustained in the operation of any instrument if these instruments are to be effective and to lie within and sustain the democratic form of government as it is now practised in Canada. The procedural values are treated as axiomatic, that is, self-justifying, and so are not analysed. The values are described below.

1. Openness

Openness can be almost a synonym for accessibility, implying that

the inhabitants of a given political-administrative jurisdiction are given the opportunity to influence in large the policies and goals that characterise the jurisdiction, are given the opportunity to be heard on any relevant matter affecting them, and are given the opportunity to discover the reasons for any decision. The three characteristics of openness are discrete, but mutually interdependent. Some of the requirements of openness are analogous to those of "justice".

2. Efficiency

Efficiency refers to the relationship of inputs (time, money, skills, energies) to outputs. Outputs in the governmental sense when the subject matter is regulations unlike hard goods such as dams, roads, and parks are defined subjectively -- for the time being at least.

Other things being equal, efficiency is enhanced through simplicity of procedures and governmental organization. To put it in a form relevant to this thesis, the fewer the approving or reviewing authorities the more efficient is the planning process because less time and effort is consumed in securing approval. Therefore simplicity is one way to secure efficiency.

3. Effectiveness

An instrument must be able to accomplish its explicit purposes. A zoning by-law which fails to control the distribution of land use, or an official town plan which does not guide development may be deemed ineffectual. It may be inefficient in relation to other means of accomplishing the same ends, but this may not affect its

effectiveness. One measure of effectiveness is whether or not the instrument is enforced.

4. Justice

Justice is a notion that lies at the back of our minds whenever we evaluate some action by an administrator or any other person who makes allocative types of decisions. Various attempts have been made to define the quality of justice in reference to natural law and natural justice concepts but the natural law doctrines are of a metaphysical order and are ambiguously spelled out, as are rules of natural justice.

Notwithstanding the logical untidiness of the natural law doctrine some definition of natural law and natural justice is essential if appeal and review are to be treated because a good many of our arguments pro and con various procedures are in the final analysis based upon some commonly accepted notions of what is right and what is wrong.

As an absolute value, Lord Esher M. R. in *Voinet v. Barrett* noted: "Natural justice -- that is ... the natural sense of what is right and wrong".¹ Natural justice is also a procedural or instrumental value encompassing the notions of openness, fairness, and impartiality, to be realized through the two rules of "a) no man shall be judge in his own cause, and b) both sides shall be heard, or audi alteram partem."²

¹H.H. Marshall, Natural Justice, (London: Sweet and Maxwell Limited, 1959) p. 6.

²Ibid, p. 5.

HYPOTHESIS

The Hypothesis is:

The Town Planning Act of Nova Scotia does not require amendment if the statutory provisions for the enactment, amendment and repeal of the official town plan, the enactment, amendment, variation, and repeal of the zoning by-law, the enactment of subdivision regulations, and the approval of subdivision plans pursuant to the subdivision regulations are to be satisfactory in terms of:

1. Systems maintenance;
2. Community planning;
3. Openness;
4. Efficiency;
5. Effectiveness;
6. Justice.

TEST OF HYPOTHESIS

The test of the hypothesis requires not only a test of the hypothesis but also an examination of the validity of the test. The examination of the validity of the test has methodological significance, and, if properly carried out, provides the impetus to further research.

The examination of the validity of the test devolves upon the question whether or not the test measures what it should. Related questions are the issues or topics covered by the test. The test is composed of replies to a questionnaire, data from Chapter II, and general materials related to the subject matter.

The test has to establish whether or not the statutory procedures regarding the official town plan, zoning by-law, and subdivision

regulations can satisfy the requirements of systems maintenance, community planning, openness, efficiency, effectiveness, and justice.

Systems Maintenance

The test for systems maintenance was occureed mainly in the discussion of input variables. It was established that the system is not likely to suffer from demand input overload due to the relative paucity of demands, and the tendency for issues created by the demands to be resolved by council and by the planning board. Furthermore, the infrequency of appeals seems to indicate that the system's outputs tend to be satisfactory to the environment. Other replies in the questionnaire relating to hearings and appeals show that the number of appeals is not artificially reduced through factors such as lack of knowledge of procedures and rights and lack of funds, or governmental (local and provincial) about appeals.

Good Planning

Good planning measures are to a degree similar to those used to evaluate the volume of demands, namely, replies to questions 1 - 6. In addition, the use of the planning board and the questions about building by-laws (questions 7 - 11) are tabulated below.

TABLE 3
REPLIES TO QUESTIONS 1 - 11

Question	Number of Replies	
	Yes	No
1	6	
2	6	
3	8	
4	8	
5	3	5
6	1	6
7	7	1
8	6	2
9	3	5
10	8	
11	8	

The number of responses to questions 1, 2, and 6 does not total eight. Questions 1 and 2 do not apply to the City of Halifax because the City does not have subdivision regulations. The City of Halifax lacks sufficient open land to justify subdivision regulations. Also, since the City of Halifax does not have nor enforce an official Town Plan and subdivision regulations, the respondent claimed in reply to question 9 that the planning board is not carrying out its full range of duties. The Town of Stellarton's respondent offered contradictory replies to questions 1 and 2, stating that while the Town lacks subdivision regulations, it enforces subdivision regulations, so that Stellarton's replies to questions 1 and 2 had to be discarded.

The problems just noted suggest that more thought should have been applied to the preparation of the questionnaire.

Given the paucity of responses no statistical tests can be applied. The results suggest that the goal of community planning is not realized since while most of the replies indicate that the communities have and enforce subdivision regulations and zoning by-laws and have planning boards, relatively few have official town plans or have effectively functioning planning boards.

Notwithstanding the danger of extrapolating eight replies to cover all 66 municipalities, the significance of the eight planning units (noted in Chapter IV) suggests that the goal of community planning is not being realized in the Province.

Openness

It is very difficult to measure openness objectively, and this task is not accomplished here. The questionnaire and the replies to it are a poor test, instead the test is mainly derived from some general notions in political science and public administration.

There are ample opportunities to be heard set out in the procedures for the various instruments. The main policy-making role is assigned to council, an elected body while the Minister in practice has solely review functions. The planning boards' approval of subdivision plans is the only jarring note, but the board does include some council-members who are responsible to the electorate. Public hearings are required prior to the enactment

or amendment, of the official town plan and zoning by-law. Furthermore, council acts as an appeal body for zoning variances. Thus it would seem that on one respect the goal of openness is achieved.

In another respect, openness is not so apparently achieved, since Ministerial review creates the hypothetical (hypothetical that is, until evidence is collected to prove or disprove the possibility that "behind-the-scenes" manoeuvring takes place) situation in which a person dissatisfied with a decision of council can go behind council's back and attempt to influence the Minister. This possibility cannot be eliminated if ministerial review is to be retained as seems to be necessary.

Replies to questions in the questionnaire touching upon public hearings and appeals while difficult to interpret, do not seem to indicate much concern for openness. Perhaps different results might have been obtained if members of the public and council instead of planning officials had been questioned.

In conclusion, the goal of openness is realized under the Act.

Efficiency

Other things being equal efficiency is enhanced through simplicity of procedures. The crucial questions are then those that touch upon the number of authorities involved in any given class of decisions. The number of appeals also reflects upon the efficiency of governmental processes since an appeal may complicate the performances of a given task by involving authorities and

necessitate the redoing of certain tasks.

The number of appeals to council and other governmental authorities as already shown has been low. Also, there has been little tendency to appeal from a decision of council or planning board regarding the official town plan, zoning by-law, or subdivision regulations.

The procedures set out in the Town Planning Act for the official town plan, zoning by-law, and subdivision regulations appear to be fairly simple. Only three governmental authorities are formally involved, namely, the Minister of Municipal Affairs, council, and the planning board.

The preceding remarks suggest that the statutory procedures in regard to the official town plan, zoning by-law and subdivision regulations sustain the goal of efficiency.

Effectiveness

The test for effectiveness lies in the replies to questions 2, 4, 6, 7, 8, 9, 15, 18, and 26.

Questions 15, 18, and 26 concern the number and destinations of appeals. The replies to these questions on appeal show that the decisions of officials, the planning board, and council are substantially acceptable to the community. More information could have been obtained if a question had been inserted about the outcomes of appeals, that is, about the numbers of decisions that were reversed and sustained on appeal.

The response to questions 2, 4, 6, 7, 8, and 9 were set out in Table 5. These questions focus upon the enforcement and

and implementation of the intentions of the Town Planning Act. The results indicate that while subdivision regulations and zoning by-laws are effective planning controls, official town plans are not effective guides to action. The planning board according to the replies to question 9 is not an effective body. Question 8 about the regularity of planning board meetings is not as significant as Question 9 as a test of effectiveness.

The test for effectiveness is inconclusive.

Justice

The two rules of natural justice, right to a fair hearing, and no man shall be judge in his own case, are not effectively met in the procedures set out in the Town Planning Act since there is no avenue of appeal to an independent tribunal from the decision of an official. Furthermore, there is no appeal from council in the instance of variances to an outside, more impartial body. However, under section 20 of the Act, council is required to hear the appellant.

Some dissatisfaction with the existing manner of handling appeals was expressed in the replies to the questionnaire.

The seven respondents who commented on appeal structure (the respondent for Stellarton did not offer any opinions on this matter) all felt that appeals should be heard by some body other than council, either an independent appeal body, or the Minister of Municipal Affairs.

Conclusion about the Hypothesis

The test of the hypothesis indicates that the procedures regarding the official town plan, zoning by-law, and subdivision regulations set out under the Town Planning Act are:

1. Satisfactory with regard to the goals of systems maintenance, openness, and efficiency; and,
2. Fail to achieve good planning, and justice.

The test yields inconclusive results for effectiveness and, so it is not known whether or not the procedures sustain the goal of effectiveness.

Given the conflicting results obtained from the test of the hypothesis, the hypothesis is not valid.

However, methodological weaknesses in the preparation of the conceptual framework, the hypothesis, the questionnaire, and the paucity of replies suggest that a more appropriate verdict for the hypothesis is "not proven".

CHAPTER VI

CONCLUSIONS

This thesis had its origins in the remarks made by Mr. R.S. Lang, Director of the Community Planning Division in Nova Scotia, about the lack of a planning appeal and review system in Nova Scotia and the deleterious consequences of this lack.

It was quickly discovered that if this thesis was going to deal with some of the issues posed by Mr. Lang, it would have to deal with the realm of issues contained under the heading of statutory provisions for procedures in the enactment, amendment, and repeal of the official town plan, the enactment, amendment, variation, and repeal of the zoning by-law, the enactment of subdivision regulations, and the approval of subdivision plans under the Town Planning Act.¹

A hypothesis had to be developed which would provide an effective test of the procedures contained in the Act. And furthermore, an effective test of the hypothesis would have to be devised.

In order to handle the questions raised by the procedures in a systematic fashion and to develop a meaningful hypothesis, a conceptual framework was created. This conceptual framework was based upon systems theory. The hypothesis was derived from the output variables of systems theory.

¹Province of Nova Scotia, Town Planning Act, R.S.N.S. 1954, Chapter 292, as amended by 1955 c. 43, 1964 c. 45, 1965, c. 51, 1966 c. 55, 1967 c. 73 (Halifax: Queen's Printer).

Systems theory was selected for the conceptual framework since in the author's opinion it is the only method of analysis which is sufficiently comprehensive to include all the issues raised by the procedures and which provides a sufficiently sharp tool for analysis of the questions posed. Also, systems theory has potential for further development through the refinement of concepts and data collection.

The usefulness of systems theory is a function of the ability to establish measurable relationships between the input, systems, and output variables. These relationships were not established, one of the reasons being the inability to postulate or define sufficiently precise variables. Much of the potential of systems theory was not realized through this lack in the definition of variables. However, systems theory did provide a means of developing and organizing the concepts and facts about the procedures for the planning instruments and did provide the theoretical rationale for the hypothesis.

The main verdict was "not proven".

The hypothesis was tested by means of a questionnaire mailed to every planning authority in the Province, through economic and population data about the Province set out in Chapter II, and general notions derived from the fields of political science and public administration.

The burden of the test of the hypothesis lay with the results

obtained from the questionnaire. Unfortunately, only eight replies were received. However, the planning authorities that responded represented some of the most populous communities in the Province so that with some justification the results could be extrapolated for the whole Province.

The nature of the replies and second thoughts about the questionnaire indicated serious shortcomings in the form of the questionnaire.

More fruitful results would have been obtained if some questions had been asked about the professional planning staff available to the various planning authorities, if the term "active planning board" had been defined through itemization of the attributes of an "active planning board", and likewise if the matter of enforcement had been handled more precisely. Also, some overlap and ambiguity in the questions could have been eliminated.

Finally, in regard to the weaknesses of data collection, a critical defect was the lack of information about the procedures within the Department of Municipal Affairs and the volume and type of planning questions handled by the Department. Without this information a reasonably accurate picture could not be obtained about the possible existence of a "demand input overload" situation.

The role and function of the courts in planning was discussed in general and specific terms in Chapter III. This discussion seemed to lie slightly outside the mainstream of the thesis. Notwithstanding, the notions developed in the discussion of role of the courts proved

useful in analyzing procedures, and furthermore indicated the very limited role that the courts play in the planning process in Nova Scotia.

While this thesis failed in conclusively proving or disproving the hypothesis it was a success as an attempt to develop a frame of reference for treating questions related to community planning. It points directions for further research. Insofar it creates a valid conceptual framework the treatment of planning-related questions and poses valid questions for further study, this thesis has fulfilled the author's main objectives.

BIBLIOGRAPHY

A. BOOKS

1. Almond, Gabriel, A. and James S. Coleman, editors. The Politics of Developing Areas. Princeton, N.J.: Princeton University Press, 1960.
2. Beck, J. Murray. The Government of Nova Scotia. Toronto: University of Toronto Press, 1957.
3. Benjafield, D.G. and H. Whitmore. Principles of Australian Administrative Law. Third Edition. Sydney: The Law Book Company, 1966.
4. Branch, Melville C. Planning Aspects and Applications. New York: John Wiley and Sons Inc., 1966.
5. Chapin, F. Stuart Jr. Urban Land Use Planning. Second Edition. Urbana: University of Illinois Press, 1965.
6. Easton, David. A Framework for Political Analysis. Englewood Cliffs, N.J.: Prentice Hall Inc., 1965.
7. Easton, David. A Systems Analysis of Political Life. New York: John Wiley and Sons Inc., 1965.
8. Easton, David, ed. Varieties of Political Theory. Englewood Cliffs, N.J.: Prentice Hall Inc., 1966.
9. Garner, J.F. Administrative Law. London: Butterworth Ltd., 1963.
10. Golembiewski, Robert T., Frank Gibson and Geoffrey Y. Cornog, editors. Public Administration Readings in Institutions, Processes, Behaviour. Chicago: Rand McNally and Company, 1966.
11. Green, Philip P. Jr. Cases and Materials on Planning Law and Administration. Chapel Hill: Institute of Government University of North Carolina, 1962.
12. Griffith, J.A.B. Central Departments and Local Authorities. Toronto: University of Toronto Press, 1966.
13. Gross, Bertram M. The Managing of Organizations The Administrative Struggle, Volumes I and II. New York: The Free Press of Glencoe, 1964.

14. Haar, Charles M., editor. Law and Land: Anglo-American Planning Practice. Cambridge: Harvard University Press and the MIT Press, 1964.
15. Jaffe, Louis L. Judicial Control of Administrative Action. Boston: Little, Brown and Company, 1965.
16. Kent, T.J. Jr. The Urban General Plan. San Francisco: Chandler Publishing Co., 1964.
17. Litterer, Joseph A. The Analysis of Organizations. New York: John Wiley and Sons Inc., 1965.
18. Marshall, H.H. Natural Justice. London: Sweet and Maxwell Ltd., 1959.
19. Meehan, Eugene J. The Theory and Method of Political Analysis. Homewood, Illinois: The Dorsey Press Inc., 1965.
20. Robson, W.A. Justice and Administrative Law A Study of the British Constitution. London: Stevens and Co., 1951.
21. Rowat, Donald C., editor. The Ombudsman - Citizen's Defender. London: George Allen and Unwin Ltd., 1965.
22. Scott, William G. The Management of Conflict Appeal Systems in Organizations. Homewood: Richard D. Irwin Inc., and the Dorsey Press, 1965.
23. Smith, S.A. de. Judicial Review of Administrative Action. London: Stevens and Sons Ltd., 1959.
24. Wade, H.W.R. Administrative Law. Oxford: The Clarendon Press, 1966.
25. Wade, H.W.R. Towards Administrative Justice. Ann Arbor: University of Michigan Press, 1963.
26. Young, Stanley and Charles E. Summer Jr. Management: A Systems Analysis. Glenview: Scott, Foreman and Company, 1966.

B. PUBLIC DOCUMENTS

1. Dominion Bureau of Statistics. Census, 1966. Ottawa: Queen's Printer, 1967.
2. Province of Alberta. The Planning Act. Edmonton: Queen's Printer, 1965, R.S.A. 1963, Chapter 43, and An Act to Amend the Planning Act, 1967, Chapter 60.

3. Province of Newfoundland, The Urban and Rural Planning Act. St. Johns: The Queen's Printer, 1965, No. 28.
4. Province of Nova Scotia, Department of Municipal Affairs. "A Model Form of Subdivision Regulations for Towns in Nova Scotia." Halifax: Queen's Printer, 1964. (mimeo)
5. Province of Nova Scotia, Department of Trade and Industry Economics and Development Division. Nova Scotia - An Economic Profile Volume V, 1967. Halifax: Queen's Printer, 1967.
6. Province of Nova Scotia. Municipal Affairs Act. Halifax: Queen's Printer, R.S.N.S. 1954, Chapter 186.
7. Province of Nova Scotia. Town Planning Act. Halifax: Queen's Printer, 1962, R.S.N.S. 1954, Chapter 292 and the following amendments: 1964, Chapter 45, 1965, Chapter 51, 1966, Chapter 55, and 1967, Chapter 73.
8. Province of Nova Scotia, Voluntary Planning Board, First Plan for Economic Development to 1968. Halifax: Queen's Printer, 1966.
9. Province of Ontario, Ontario Municipal Board, Sixtieth Annual Report. Toronto: Queen's Printer, 1965.
10. Province of Ontario, The Planning Act. Toronto: The Queen's Printer, 1967, R.S.O. 1960, Chapter 296.

C. ARTICLES AND PERIODICALS

1. Bakke, E. Wight. "Concept of the Social Organization", General Systems, Volume IV, 1959.
2. Bertalanffy, Ludwig von. "General System Theory - A Critical Review". General Systems, Vol. VII, 1962.
3. Brewin, F.A. "Mandamus". The Law Society of Upper Canada Lectures (1961). Toronto: Richard de Boo Ltd., 1961
4. Dunham, Allison. "Property, City Planning, and Liberty". Law and Land: Anglo-American Planning Practice.
5. Easton, David. "Categories for the Systems Analysis of Politics". Varieties of Political Theory.
6. Findlay, Allan. "Declaratory Judgement". The Law Society of Upper Canada Lectures (1961). Toronto: Richard de Boo Ltd., 1961.

7. Hall, A.D. and R.E. Fagen. "Definition of System". General Systems. Vol. I, 1956.
8. Hart, W.O. "Control of the Use of Land in English Law". Law and Land: Anglo-American Planning Practice.
9. Layfield, F.H.B. "Planning Decisions and Appeals". Law and Land: Anglo-American Planning Practice.
10. Milner, J.B. "An Introduction to Subdivision Control Legislation". Canadian Bar Review, Vol. 43, 1965.
11. Milner, J.B. "An Introduction to Zoning Enabling Legislation". Canadian Bar Review, Vol. 40, 1962.
12. Milner, J.B. "Legal Requirements in Zoning Procedure". Nova Scotia Community Planning Conference, Oct. 20-21, 1966. Halifax: Institute of Public Affairs, Dalhousie University, 1966.
13. Milner, J.B. "Trends in Planning Law in Canada" Nova Scotia Community Planning Conference, Oct. 20-21, 1966. Halifax: Institute of Public Affairs, Dalhousie University, 1966.
14. Millward, P.J. "Judicial Review of Administrative Authorities In Canada". Canadian Bar Review, Vol. 39, 1961.
15. Pink, J.G. "Judicial 'Jurisdiction' in the Province of Privative Clauses". Faculty of Law Review University of Toronto, Vol. 23, April, 1965.
16. Rapoport, Anatol. "Some System Approaches to Political Theory." Varities of Political Theory.
17. Rice, Charles, E. "A Model for the Empirical Study of a Large Social Organization". General Systems, Vol. VI, 1961.
18. Tepper, Ronald and Bruce Toor. "Judicial Control Over Zoning Boards of Appeal: Suggestions for Reform". UCLA Law Review Volume 12 #3, March 1965.
19. Waterman, J.B. "Right to a Hearing and Natural Justice". Faculty of Law Review, University of Toronto, Vol. 22, April 1964.
20. Willis, J. "Administrative Decision and the Law: The Canadian Implications of the Franks Report." University of Toronto Law Journal, 1959.
21. Willis, John. "Administrative Law in Canada". Canadian Bar Review Vol. 39, 1961.
22. Williston, W.B. "Injunctions". The Law Society of Upper Canada Lectures (1961). Toronto: Richard de Boo Ltd., 1961.

23. Young, O.R. "A Survey of General Systems Theory". General Systems Vol. IX, 1964.
24. Young, O.R. "The Impact of General Systems Theory on Political Science". General Systems, Vol. IX, 1964.

D. REPORTS

1. Lang, R.S. "Community Planning in Nova Scotia 1967". Address to the Nova Scotia Community Planning Conference, Amherst, N.S., November 9-10, 1967, mimeo.
2. Milner, J.B. Tentative Proposals for the Reform of the Ontario Relating to Community Planning and Land Use Controls. Toronto: Ontario Law Reform Commission, 1967.

E. UNPUBLISHED MATERIAL AND OTHER SOURCES

1. Dhillon, Jagdev Singh. "The Zoning Board of Appeal: A Study of Its Role In the Implementation of Municipal Planning Policy in British Columbia". Unpublished MSC Thesis, April 1966. Division of Community and Regional Planning University of British Columbia, Vancouver.
2. Lang, R.S., Director of the Community Planning Division, Department of Municipal Affairs. Nova Scotia. Letter, February 28, 1968.

F. COURT CASES

1. Pozier v Ward (1947) 2 W.W.R. 193, SS Man. R. 214 (1947) 4 D.C.R., reversing (1947) 1 W.W.R. 807.
2. Re Clarendon Development Limited (1965) 51 M.P.R. 108.
3. Re Johnston and the Committee on Works of the Halifax City Council (1961) 46 M.P.R. 345.

APPENDIX A

A SUMMARY OF THE TOWN PLANNING ACT

CHAPTER 292

REVISED STATUTES OF NOVA SCOTIA 1954

AS AMENDED BY

1956, c. 43

1960, c. 48

1964, c. 45

1965, c. 51

1966, c. 55

1967, c. 73

A SUMMARY OF THE TOWN PLANNING ACT

The Town Planning Act has 57 sections which are set out under six parts. The six parts of the Act are summarized here to provide the reader of this thesis a guide to the Act.

PART I

OFFICIAL TOWN PLAN AND ZONING BY-LAW

Part I contains sections 2 to 21 and establishes the basic planning framework, that is, provides for creation of planning boards, sets out council's and the board's planning powers and establishes the content of the official town plan, and the zoning by-law and the procedures for their enactment, amendment, variation, and revocation.

PART II

DAMAGES AND ENFORCEMENT

Part II contains section 22 to 26. It establishes the circumstances under which council may or may not be compelled to pay damages to a property owner affected by the exercise of council's powers under the Act, the powers of council with respect to the removal of structures and payment therefor to council, the right of authorized servants or officers to enter properties and court enforcement of such right, and the power of council to enforce this Act.

PART III

SUBDIVISIONS

Part III treats the matter of subdivisions in sections 27 to 30. It provides for the prescription of subdivision regulations, the

powers of council, the board, building inspector, and minister with respect to subdivisions.

PART IV

ADMINISTRATION

Part IV enables: 1) the Minister to hire the necessary staff and assistance, and delegate such duties as he deems necessary; and 2) council to levy funds for the expenses of a board. Also it provides: 1) that any powers conferred under this Act are in addition to any other powers granted to council under other acts; and 2) that existing by-laws may be adopted if satisfactory to the Minister: and that the Act shall not affect existing powers or duties. This Part includes sections 32 to 36.

PART V

METROPOLITAN PLANNING COMMISSIONS

Part V provides for the establishment of planning commissions encompassing two or more municipalities, setting out the conditions under which this may take effect and the powers and duties of such commission. Part V runs from section 37 to 46. This Part does not apply to the City of Halifax, the City of Dartmouth and the Municipality of the County of Halifax.

PART VI

HALIFAX-DARTMOUTH AND COUNTY REGIONAL PLANNING COMMISSION

Part VI creates the Halifax-Dartmouth and County Regional Planning

Commission and establishes its powers, duties, and procedures. It contains sections 47 to 57.

APPENDIX B

A MODEL FORM OF SUBDIVISION REGULATIONS
FOR TOWNS IN NOVA SCOTIA

A MODEL FORM OF SUBDIVISION REGULATIONS
FOR TOWNS IN NOVA SCOTIA

Prepared by the
Community Planning Division
Department of Municipal Affairs
Province of Nova Scotia
Halifax, N.S.

February, 1964

EXPLANATION

These model regulations are composed of two parts. Part I contains the standard form of subdivision regulations that many towns have been using as a guide in the past four years. They are authorized by Section 27 (1) of the Nova Scotia Town Planning Act. Part II is a special supplement to Part I and may be adopted under Section 27 (9) of the Nova Scotia Town Planning Act. Part II is recommended for adoption as it will insure performance by the subdivider.

These model regulations are designed as a guide only, and may have to be altered somewhat for the particular needs of each town by the planning board or town council. For example, if a town wishes to include the laying of sewer or water mains, or both, in Part II of this model, then this can conveniently be done by entering the necessary words in the various sections of the proposed regulation.

Part I is a regulation that the Minister may prescribe. If you wish it to apply to your Town we will require resolutions passed by your Council and by your Planning Board asking the Minister to prescribe it; these must be accompanied by a copy of the regulations as a schedule to the resolutions.

Part II is a regulation that your Planning Board prescribes by a resolution of its own with approval of the Council. If you wish to adopt it, you should send to us two copies certified by the Secretary of the Planning Board to have been adopted by the Board, and also certified by the Town Clerk to have been approved by the Council.

PART I

IN THE MATTER of the Town Planning
Act, and in the Matter of the

The Council of being a
..... where no special Act of Legislature applies with respect
to subdivision, having requested the Minister of Municipal Affairs to
prescribe regulations, with respect thereto, the said Minister, pursuant
to Section 27 of Chapter 292 of the Revised Statutes, 1954, the Town
Planning Act, hereby prescribes for the
the following regulations respecting subdivisions of land:

Subdivision Regulations

(Prescribed under Part III, Chapter 292, Revised Statutes Nova Scotia
1954, the Town Planning Act.)

Procedure to be adopted for tentative plans

1. Any person proposing to subdivide property may submit tentative plans of the proposed subdivision to the Board for its approval
2. The Board may endorse such comments as are considered appropriate on the plans prior to their return to the submitter.
3. Any tentative plans submitted must be in duplicate, drawn to a scale of not smaller than 50 feet to 1 inch, may be based on deed description of property to be sub-divided, but not necessarily as surveyed, and shall show the following:
 - (a) name and address of submitter;
 - (b) name and address of owner if not submitter;

- (c) name of owners of all abutting properties;
- (d) proposed size and shape of lots and blocks;
- (e) proposed width, grade, and location of streets;
- (f) access to existing streets;
- (g) areas, if any, reserved for public purposes;
- (h) north point, scale and date.

Procedure to be adopted for the approval of final plans

4. A final plan of subdivision when submitted for the approval of the Board shall be accompanied by:
 - (a) a request in writing of the owners of the land shown on such final plan for the approval of the subdivision by the Board;
 - (b) a statement signed by the submitter or submitters that he or they is or are the owners of the land shown thereon;
 - (c) a written agreement duly executed by the owner of the property, that he will construct all streets shown on the said plan, including paving and installation of curbs and gutters, and will lay water and sewer mains in such streets according to the specifications laid down in the regulations of the Town relating thereto, and will convey the streets to the Town within five days after the Town has so requested.
5. The approval or disapproval of the Board attested to by the signature of the Chairman must be signified on one copy of the plan and returned to the submitter within four weeks of submission.
6. A final plan of subdivision, must be submitted for the approval of the Board in duplicate showing:

- (a) name and address of submitter;
 - (b) name of proposed subdivision;
 - (c) the boundaries of the property surveyed, with accurate distances and bearings as determined by survey in the field, with closure error not exceeding one unit per thousand units by compass and one unit per three thousand units by transit;
 - (d) the length and bearings of the boundary lines of all lots, streets, rights of way, and easements as laid out; length of arc, degrees and points of curvature, radii, and tangent bearings in the case of curved lines;
 - (e) the width of all streets and rights of way;
 - (f) the accurate location of one or more permanent monuments;
 - (g) the proposed lot numbers, and street names;
 - (h) any reservations, private or otherwise;
 - (i) contours for road grades and drainage;
 - (j) location of houses and buildings on adjoining properties;
 - (k) north point (True or Magnetic) scale and date.
7. Such final plans of subdivision shall also:
- (a) have a clear space or binding margin of at least one inch in width;
 - (b) conform to the requirements for registration in the Registry of Deeds;
 - (c) be certified by a Provincial Land Surveyor of Nova Scotia, in the manner required by the Registry Act and any other Act in force at the time of application for approval of subdivision.

General provision

8. Any street or road, whether a new street or road, or an extension of an existing street or road, must have a right of way of at least fifty feet; but this minimum shall be increased to such width as is necessary to meet the current requirements of the Department of Highways.
9. Where cul-de-sacs are used to develop odd shaped remnants of the subdivision or to fit the street pattern to the topography of the tract, they shall be determined by a turn-around having a minimum radius of 45 feet from the centre of the cul-de-sac.
10. Streets shall intersect one another at right angles, or as nearly at right angles as possible.
11. Where one street meets or intersects another, either street or both streets may cross the other; but no additional street may enter at or approximately at that intersection unless the topography of the area makes any other reasonable plan difficult or impossible.
12. A street shall not enter or intersect one on which traffic is heavy if there is another street so intersecting it on the same side within a distance of one thousand feet measured along the side line of the street on which traffic is heavy.
13. Where a street in an adjoining subdivision abuts the boundaries of a subdivision submitted to the Board, a street in the latter shall be laid out in prolongation of such street unless it would be in violation of these regulations.

14. A lot having an area and lot frontage less than the area and lot frontage prescribed in the following schedule will not be approved by the Board except as set out in Section 15 hereof;

I R-1 Residential

	Min. Lot Area	Min. Lot Frontage on Bldg. Line
(a) Single Family(one dwelling)	15,000 sq. ft. in areas with no sewer service	75 ft.
	6,000 sq. ft. in areas with sewer service	60 ft.

II R-2 Residential

(a) Single Family(one dwelling)	15,000 sq. ft. in areas with no sewer service otherwise 6,000 sq. ft.	60 ft.
(b) Semi-detached(two dwellings) built about a central vertical axis	as above	60 ft.
(c) Duplex (two dwellings) placed one above the other	as above	60 ft.
(d) Row (three or more dwellings contained in one building each separated from the other vertically)	3,500 sq.ft. for each unit with a combined min. of 16,500 sq.ft.	Minimum combined frontage 110 ft.
(e) Apartments (three or more dwellings contained in one building)	2,000 sq.ft. per unit with a minimum combined area of 8,000 sq. ft.	as above
(f) Nursing and Rest Homes	same as above	60 ft.

III R-3 Residential

- (a) All residential
R-1 and R-2 Uses

(b) Trailer Courts	2,500 sq. ft.	25 ft.
--------------------	---------------	--------

IV General Commercial

(a) Any building used for retail or wholesale trade and the storage or warehousing of goods wares, or merchandise.	3,000 sq. ft.	30 ft.
---	---------------	--------

- | | | |
|---|----------------|---------|
| (b) Workshop subsidiary to permitted retail uses | 3,000 sq. ft. | 30 ft. |
| (c) Business or professional office | 3,000 sq. ft. | 30 ft. |
| (d) Garage or service station for the selling of gasoline and oils, automobile accessories and the minor adjustment of vehicles | 12,000 sq. ft. | 120 ft. |

V Local Commercial

- | | | |
|---|--|---------|
| (a) Apartments (two or more dwellings contained in one commercial building) | 2,000 sq. ft. per unit with a minimum combined area of 4,000 sq. ft. | 75 ft. |
| (b) Any building used for retail trade. | 3,000 sq. ft. | 30 ft. |
| (c) Business or professional office | 3,000 sq. ft. | 30 ft. |
| (d) Garage or Service Station for the selling of gasoline and oils, automobile accessories and the minor adjustments of vehicles. | 12,000 sq. ft. | 120 ft. |

VI Industrial

- | | | |
|-------------------------------|----------------|---------|
| (a) Garage or Service Station | 12,000 sq. ft. | 120 ft. |
|-------------------------------|----------------|---------|

15. Approval may be given to the subdivision of land into lots all or some of which do not meet the requirements of Section 14, if

- (a) any undersized lot so formed is to be added to and become part of another lot which meets the requirements of Section 14 or which appears on a registered plan or deed, and if
- (b) any remaining parcel or parcels meet the requirements of Section 14.

16. Blocks of land shall be designed so that streets shall intersect at right angles as far as possible.

17. Blocks shall not exceed 1,200 feet in length.

Recommended to the Minister

DEPUTY MINISTER OF MUNICIPAL AFFAIRS

Prescribed this _____ day of _____, 1964.

MINISTER OF MUNICIPAL AFFAIRS

PART II

Resolved by the Town Planning Board of the Town of
 that the following regulations be and the same is
 hereby prescribed subject to the approval of the
 Town Council and of the Minister of Municipal Affairs.

Streets in Subdivision

1. (1) In this Regulation:

"Board" means Town Planning Board of the Town;

"Council" means the Town Council of the Town;

"Town" means Town of

(a) Where reference in this regulation is made to construction of streets, paving and installation of curbs and gutters, it means such construction, paving and installation according to the specifications laid down in the regulations and by-laws of the Town.

2. The owner of every subdivision shall, before final approval of such subdivision is given,

(a) construct all streets shown thereon and pave such streets
 install curbs and gutters thereon; and

(d) deposit with the Board a deed, duly executed, conveying to the Town the title in and to said streets, in fee simple, free from incumbrances;

3. The Board shall not give final approval to any subdivision until the requirements of Section 2 have been complied with, except as set out in Section 4.

4. (1) In the alternative to the requirements of Section 2, the owner may, at his option, before final approval of the subdivision is given,

- (a) deposit with the Board a deed duly executed, conveying to the town the title in and to the streets in the subdivision; in the case mentioned in clause (b) (i) the deed shall be for all the streets; in the case mentioned in clause (b) (ii), it shall be for all the streets in the area in the subdivision mentioned in his notice and this shall from time to time be followed by deeds for the streets in the area mentioned in each subsequent notice; and
 - (b) sign, execute, and file with the Board,
 - (i) an agreement under seal to construct the streets shown on said plan and to pave said streets and to install curbs and gutters thereon, all within a period of time set out in such agreement and in accordance with this regulation, particularly subsection (4) of this Section; and also a bond of indemnity for twice the amount estimated by the Board as the cost of performing the said work in the subdivision; or
 - (ii) a notice to the Board that he proposes to develop the subdivision by instalments, indicating the area which he proposes to develop first (and from time to time thereafter, indicating the further area he then proposes to develop) and execute and file with the Board an agreement to construct the streets within the specified area shown on said plan and to pave said streets and to install curbs and gutters thereon, all within a period of time set out in such agreement and in accordance with this regulation, particularly subsection (4) of this Section; and also a bond of indemnity for twice the amount estimated by the Board as to the cost of performing the work in the area covered by the agreement.
- (2) A bond of indemnity required hereby shall be in favour of the Town duly executed by the owner and by a duly approved guarantee company, conditioned on the carrying out and completion of the agreement in accordance with the terms thereof and in accordance

with this regulation and with other by-laws and regulations of the Town relating to subdivisions and to such work, which bond of indemnity shall not be subject to cancellation, termination or expiration during the period of time for completion of the work, as set out in the agreement.

(3) If, in the opinion of the owner, the amount estimated by the Board as the cost of performing the work is excessive, he may require the Board to arbitrate the amount, in which case proceedings shall be as nearly as possible in accordance with the Arbitration Act, Chapter 13, R.S. 1954.

(4) An owner who has sold ten lots out of the said subdivision, in front of which streets have not been constructed and paved, and curbs and gutters have not been laid, shall forthwith proceed to construct the street or streets in front of said lots and to pave said streets and to install curbs and gutters thereon, and shall not sell any other lots from the said subdivision until he has done so; the word "sold" and the word "sell" as used herein, include the execution of an agreement of sale or of an option to sell; this shall be one of the terms of the agreement hereinbefore mentioned.

(5) If the owner has complied with subsection (1) hereof, the Board may approve the entire subdivision if he has complied with subclause (i) of clause (b) of said subsection (1) or may approve that part of the subdivision referred to in his notice and agreement if he has complied with sub-clause (ii) of clause (b) of said subsection. If he has any other agreement or bond out-

standing of the type contemplated by this regulation and not completely executed, by performance, the Board may withhold approval of further areas until he has performed the same.

(6) Approval of a subdivision or of part of a subdivision shall lapse and cease to be effective upon expiration of the time set out in the agreement for performance of the work, if said work has not then been completed.

5. Nothing herein contained shall be taken to require the Council to accept a deed of any street; or to restrict the Board in its decision to grant or to withhold approval of a subdivision for any cause whatever.

APPENDIX C

REPLIES TO QUESTIONNAIRE

QUESTIONS

Name: W.B. Thomas Municipal Unit: County of 1966 Cape Breton Population: 40,325
 Chairman, Town Planning Board City, Town or Municipal Clerk
 Other Director of Reg. Planning

PART 1: GENERAL

1. Do you have subdivision regulations:

Yes ☒ No

2. Do you enforce the subdivision regulations:

Yes ☒ No Comments, if any: Not too well

3. Do you have a Zoning by law?

Yes ☒ No

4. If the answer to (3) was yes, do you enforce this Zoning By-Law?

Yes ☒ No Comments, if any: _____

5. Do you have an Official Town Plan, approved by the Minister and registered with the county registrar of deeds:

Yes No ☒

6. If the answer to (5) was yes, is the Town Plan, in your opinion, an effective document?

Yes No. —

7. Do you have an active Town Planning Board?

Yes ☒ No

8. Does the Town Planning Board meet regularly?

Yes No ☒

9. Does the Town Planning Board carry out the full range of duties prescribed under the Town Planning Act?

Yes ☒ No.

10. Has your municipal unit adopted a building bylaw?

Yes ☒ No

11. Do you have a building inspector or ~~committee~~?

Yes ☒ No

12. If the answer to (11) was yes, has the Council or Building Inspector or Committee assumed the Planning Board's responsibilities for the issuing of building permits:

Yes ☒ No

Comments: _____

PART II: OBJECTIONS

13. Where your Council is considering written objections to an Official Town Plan or Zoning Bylaw, does this take the form of an open hearing in which interested parties may make oral as well as written presentations? Please explain the manner in which your Council treats objections to the Official Town Plan or Zoning Bylaw.

Yes. No experience of appeals - yet!

14. Do you feel that adequate scope is given to persons objecting to an official town plan or zoning bylaw?

Yes ☒

No

Comments, if any: _____

PART III: APPEAL - ZONING AND OFFICIAL TOWN PLAN

Section 20 of the Town Planning Act, as amended in 1965, provides: "When a person is dissatisfied with the decision of an official in the course of his administration of this Act or of a by-law made under this Act, he may appeal from this decision to the council by giving notice in writing of such appeal to the clerk not later than fifteen days after the decision has been communicated to him. The council may, after hearing the appellant and the Official and any other person, affirm, vary or rescind the decision of the official but nothing herein shall be deemed to authorize the council to waive any requirement of the by-law or to permit any person to contravene any such requirement".

15. Is there any tendency for persons seeking a change or seeking to prevent a change, to petition the Minister, either before or after Council has decided on the matter?

Yes

No. ☒

Please comment: Not aware of any such action.

16. Do you feel that a person dissatisfied with the decision of Council with regard to a zoning bylaw or official town plan, should be permitted to petition the Minister?

Yes ☒

No

Please state why: 1. Remove deliberations from local arena.
2. Local prejudice inimical & considered judg

17. How many appeals were heard by your Council under Section 20 of the Town Planning Act during the period January 1, 1965 to December 31, 1967?

None

4.

18. How many of these appeals went from your Council to:

- . The Minister of Municipal Affairs _____
- . The County Court _____
- . The Supreme Court of Nova Scotia _____

19. If possible, briefly list the typical reasons why applicants appealed:

- . From the decision of your Council? _____

- . To the Minister _____

- . To the Courts _____

20. In your opinion, if this provision (Section 20) of the Town Planning Act used frequently?

Yes No. ☒

Please comment why: ☒ People don't understand their rights

Procedure is too cumbersome

Community is small

Appeal

cost (legal fees) too high

Other (Please specify) County P.D.

meets irregularly x

21. In your opinion, should the Town Planning Act relating to zoning provide for exceptions (with the exact conditions under which minor exceptions may be granted set out in the bylaw or Act) or variances (a method of safeguarding the individual lot owner against the invasion of his fundamental right or private

SEE REPLY ON "SYDNEY" QUESTIONNAIRE.

property which would result from adherence to the strict letter of the zoning bylaw)?

yes

No

Please comment:

SEE OVER.

22. If the answer to (21) was yes, how would you like to see exceptions or variances provided for?

SEE REPLY TO SYDNEY

QUESTIONNAIRE.

23. Do you feel the grounds for appeal under Section 20 should be changed?

Yes ☒

No ☐

If 'Yes', what changes? To define more clearly the grounds and to make Council more involved in the Planning Process

24. Which of the following forms of appeal would you prefer? Please comment.

Appeal to Planning Board - Sequence.

Appeal to separate local body

Appeal to regional body

☒

1.

Appeal to Provincial Body

2.

Other (Please specify) NOTE THIS SEQUENCE: PECULIAR TO COUNTY

IV. APPEAL - SUBDIVISION

25. Do you feel there should be some form of appeal (other than to the Minister or the Courts) to the decisions of the Town Planning Board on Subdivision matters?

Yes ☒

No ☐

If "Yes", what form of appeal? To Region - see 24

Is this question not duplicating

#24?

26. During the period January 1965 to December 1967, how many appeals have there been from decisions of your Planning Board or Council to:-

. The Minister None

. The Courts None

27. If possible, briefly list the typical grounds for appeal:

28. State any other opinions you may have regarding appeal and objections.

Under the present 'County' system where Council meets
irregularly and not more frequently than 4 times per year,
at irregular intervals, it is impossible to conduct formal
hearings, appeals, etc. as presently understood and permitted.
See also remarks under "Sydney" re. periods of time for
appeals.

29. List any suggestions you have for improving or adding to this questionnaire.

The questionnaire assumes normal municipal
administrative systems exist and function in the
Province, and that adequate legal opinion is always
available both locally and at the Provincial level. This
has been proven to be an erroneous assumption in the
past! Seems more study of current practices might
be useful before final questionnaire.

Date Sent: 130

Date Received: _____

QUESTIONS

Name: W.B. Thompson Municipal Unit: SYDNEY 1966 Population: 30,000
☐ Chairman, Town Planning Board ☐ City, Town or Municipal Clerk
☒ Other Director of Regional Plg, City Solicitor & City Zoning Inspector

PART 1: GENERAL

1. Do you have subdivision regulations?

☒ Yes ☐ No

2. Do you enforce the subdivision regulations?

☒ Yes ☐ No Comments, if any: Not satisfactory

3. Do you have a zoning bylaw?

☒ Yes ☐ No

4. If the answer to (3) was yes, do you enforce this zoning bylaw?

☒ Yes ☐ No Comments, if any: Not too effectively!

5. Do you have an Official Town Plan, approved by the Minister and registered with the county registrar of deeds?

☐ Yes ☒ No

6. If the answer to (5) was yes, is this Town Plan, in your opinion, an effective document?

☐ Yes ☒ No

7. Do you have an active Town Planning Board?
☒ Yes ☐ No
8. Does the Town Planning Board meet regularly?
☒ Yes ☐ No
9. Does the Town Planning Board carry out the full range of duties prescribed under the Town Planning Act?
☐ Yes ☒ No
10. Has your municipal unit adopted a building bylaw?
☒ Yes ☐ No
11. Do you have a building inspector or committee?
☒ Yes ☐ No
12. If the answer to (11) was yes, has the council or building inspector or committee assumed the Planning Board's responsibilities for the issuing of building permits?
☒ Yes ☐ No Comments: With some qualifications, e.g. Liquor Store!

PART II: OBJECTIONS

13. Where your Council is considering written objections to an Official Town Plan or Zoning Bylaw, does this take the form of an open hearing in which interested parties may make oral as well as written presentations? Please explain the manner in which your Council treats objections to the Official Town Plan or Zoning Bylaw.

Yes -

As per ^{Town Planning} T.P. Act except that oral presentations are considered

14. Do you feel that adequate scope is given to persons objecting to an official town plan or zoning bylaw?

☒ Yes

☐ No

Comments, if any: _____

PART III: APPEAL - ZONING AND OFFICIAL TOWN PLAN

Section 20 of the Town Planning Act, as amended in 1965, provides: "When a person is dissatisfied with the decision of an official in the course of his administration of this Act or of a by-law made under this Act, he may appeal from this decision to the council by giving notice in writing of such appeal to the clerk not later than fifteen days after the decision has been communicated to him. The council may, after hearing the appellant and the Official and any other person, affirm, vary or rescind the decision of the official but nothing herein shall be deemed to authorize the council to waive any requirement of the by-law or to permit any person to contravene any such requirement".

15. Is there any tendency for persons seeking a change or seeking to prevent a change, to petition the Minister, either before or after Council has decided on the matter?

☒ Yes

☐ No

Please comment: _____

Usually informally.

16. Do you feel that a person dissatisfied with the decision of Council with regard to a zoning bylaw or official town plan, should be permitted to petition the Minister?

☒ Yes

☐ No

Please state why: _____

17. How many appeals were heard by your Council under Section 20 of the Town Planning Act during the period January 1, 1965 to December 31, 1967?

None

18. How many of these appeals went from your Council to:

- . The Minister of Municipal Affairs None
- . The County Court "
- . The Supreme Court of Nova Scotia "

19. If possible, briefly list the typical reasons why applicants appealed:

- . From the decision of your Council N/A

- . To the Minister N/A

- . To the Courts N/A

20. In your opinion, is this provision (Section 20) of the Town Planning Act used frequently?

- ☐ Yes ☒ No

Please comment why: ☐ People don't understand their rights
☐ Procedure is too cumbersome ☐ Community is small ☐ Appeal cost (legal fees) too high ☐ Other (please specify) _____

Provision is nebulous - there should be appeal to Council from P.B. decisions.

21. In your opinion, should the Town Planning Act relating to zoning provide for exceptions (with the exact conditions under which minor exceptions may be granted set out in the bylaw or Act) or variances (a method of safeguarding the individual lot owner against the invasion of his fundamental right of private

5.

property which would result from adherence to the strict letter of the zoning bylaw)?

☒ Yes ☒ No

Please comment: Both should be set out in Bylaw.

22. If the answer to (21) was yes, how would you like to see exceptions or variances provided for?

By local Bylaw.

23. Do you feel the grounds for appeal under Section 20 should be changed?

☒ Yes ☐ No

If "Yes", what changes?

Sec. "20"

24. Which of the following forms of appeal would you prefer? Please comment.

Priority or Seq.

- ☐ Appeal to Planning Board 1
- ☐ Appeal to separate local body
- ☐ Appeal to regional body or Minister 5
- ☐ Appeal to Provincial body
- ☐ Other (Please specify) Council 2

PART IV: APPEAL - SUBDIVISION

25. Do you feel there should be some form of appeal (other than to the Minister or the Courts) to the decisions of the Town Planning Board on subdivision matters?

☒ Yes ☐ No

If "Yes", what form of appeal? Council

26. During the period January 1965 to December 1967, how many appeals have there been from decisions of your Planning Board or Council to

. The Minister 1 (informal)
 . The Courts None

27. If possible, briefly list the typical grounds for appeal:

Household; use of land.

28. State any other opinions you may have regarding appeal and objections.

~~there~~
The whole question of 'Time' between decisions and
appeals should be carefully considered in view of
tendency to issue permits immediately following decisions.

7.

24. List any suggestions you have for improving or adding to this questionnaire.

1. Definition of "Official Town Plan" and "Zoning Bylaw" is required.
2. Who processes a "Regional" Official (Master Plan) and how?
3. Uniform coloration of Maps.
4. Act should permit formation of Urban Renewal Agencies & Regional Housing Authorities by R.P.C.^s. (Housing Rev Act does).
5. Clarify duties & powers of T.P.B.^s & Regional Planning Commissions w/c Sections 1 to 103 of T.P. Act.
6. Clarify "Official Town Plan" and "Zoning Map" Previous approvals of O.M.A. indicate Zoning Map as O.T.P.

AD

Date Sent: _____

Date Received: May 27/68

QUESTIONS

Name: L. Lubka Municipal Unit: City of 1966 Population: 86,792
Acting Chief Planner Halifax
☐ Chairman, Town Planning Board ☐ City, Town or Municipal Clerk
☐ Other _____

PART 1: GENERAL

1. Do you have subdivision regulations?

☐ Yes ☒ No

2. Do you enforce the subdivision regulations?

☐ Yes ☒ No Comments, if any: _____

3. Do you have a zoning bylaw?

☒ Yes ☐ No

4. If the answer to (3) was yes, do you enforce this zoning bylaw?

☒ Yes ☐ No Comments, if any: _____

5. Do you have an Official Town Plan, approved by the Minister and registered with the county registrar of deeds?

☐ Yes ☒ No City Council approved an Official Town Plan in 1945 but it was never approved by the Minister because that was not a requirement at the time.

6. If the answer to (5) was yes, is this Town Plan, in your opinion, an effective document?

☐ Yes ☐ No The Plan is not an effective document.

7. Do you have an active Town Planning Board?

☒ Yes ☐ No

8. Does the Town Planning Board meet regularly?

☒ Yes ☐ No

9. Does the Town Planning Board carry out the full range of duties prescribed under the Town Planning Act?

☐ Yes ☒ No 1. We do not have Subdivision Regulations and don't need them as all land is developed in the City.
2. Not implementing on Official Town Plan as we do not have one.

10. Has your municipal unit adopted a building bylaw?

☒ Yes ☐ No

11. Do you have a building inspector or committee?

☒ Yes ☐ No

12. If the answer to (11) was yes, has the council or building inspector or committee assumed the Planning Board's responsibilities for the issuing of building permits?

☒ Yes ☐ No Comments: _____

PART II: OBJECTIONS

13. Where your Council is considering written objections to an Official Town Plan or Zoning Bylaw, does this take the form of an open hearing in which interested parties may make oral as well as written presentations? Please explain the manner in which your Council treats objections to the Official Town Plan or Zoning Bylaw.

Official Town Plan is obsolete. Zoning By-law was approved in 1950 and Public Hearings were held at that time. Both written and oral objections were considered by the City Council and some changes were made as a result of objections raised. Open hearing was held to consider objections to the Zoning By-law.

14. Do you feel that adequate scope is given to persons objecting to an official town plan or zoning bylaw?

☐ Yes ☐ No Comments, if any: It appears from our experience that most people do not have a clear understanding as to what is proposed until after the Public Hearing is held, as the details and the pros and cons of the issue are usually brought out at the Hearing. (s

PART III: APPEAL - ZONING AND OFFICIAL TOWN PLAN

attached sheet

Section 20 of the Town Planning Act, as amended in 1965, provides: "When a person is dissatisfied with the decision of an official in the course of his administration of this Act or of a by-law made under this Act, he may appeal from this decision to the council by giving notice in writing of such appeal to the clerk not later than fifteen days after the decision has been communicated to him. The council may, after hearing the appellant and the Official and any other person, affirm, vary or rescind the decision of the official but nothing herein shall be deemed to authorize the council to waive any requirement of the by-law or to permit any person to contravene any such requirement".

15. Is there any tendency for persons seeking a change or seeking to prevent a change, to petition the Minister, either before or after Council has decided on the matter?

☐ Yes ☐ No

Please comment: You could answer that question better than we.

16. Do you feel that a person dissatisfied with the decision of Council with regard to a zoning bylaw or official town plan, should be permitted to petition the Minister?

☐ Yes ☐ No

Please state why: Perhaps some form of appeal in matters as important as the Official Town Plan and Zoning should be permitted

17. How many appeals were heard by your Council under Section 20 of the Town Planning Act during the period January 1, 1965 to December 31, 1967?

None

perhaps an appropriate time for public hearing.

of or objecting to a plan or Zoning changes would be after the Hearing. If a two week period were allowed between the Hearing and the final decision by Council, these petitions could be considered by Council in the interim.

18. How many of these appeals went from your Council to:

- . The Minister of Municipal Affairs None
- . The County Court _____
- . The Supreme Court of Nova Scotia _____

19. If possible, briefly list the typical reasons why applicants appealed:

- . From the decision of your Council Not applicable

- . To the Minister _____

- . To the Courts _____

20. In your opinion, is this provision (Section 20) of the Town Planning Act used frequently?

- ☐ Yes ☐ No

Please comment why: ☐ People don't understand their rights
☐ Procedure is too cumbersome ☐ Community is small ☐ Appeal cost (legal fees) too high ☐ Other (please specify) In our opinion the public feels that before a decision is taken, the City's competent staff has fully examined the matter and that the decision is reasonable and hence sufficient grounds are not available for appeal. The public also is aware that Council generally respects Staffs' decision.

21. In your opinion, should the Town Planning Act relating to zoning provide for exceptions (with the exact conditions under which minor exceptions may be granted set out in the bylaw or Act) or variances (a method of safeguarding the individual lot owner against the invasion of his fundamental right of private

property which would result from adherence to the strict letter of the zoning bylaw)?

☒ Yes ☐ No

Please comment: The Zoning By-law, at present, lacks those refinements, (exception and variances). Council has the power to grant modifications but it is a cumbersome procedure for basically minor matters. We would welcome Legislation allowing exceptions and variances.

22. If the answer to (21) was yes, how would you like to see exceptions or variances provided for?

An Appeal Board set up by the Province or City for exceptions and Staff to handle minor variances.

23. Do you feel the grounds for appeal under Section 20 should be changed?

☐ Yes ☐ No

If "Yes", what changes? _____

24. Which of the following forms of appeal would you prefer? Please comment.

Leave as is

- ☐ Appeal to Planning Board _____
- ☐ Appeal to separate local body _____
- ☐ Appeal to regional body _____
- ☐ Appeal to Provincial body _____
- ☐ Other (Please specify) _____

PART IV: APPEAL - SUBDIVISION

25. Do you feel there should be some form of appeal (other than to the Minister or the Courts) to the decisions of the Town Planning Board on subdivision matters?

☐ Yes ☐ No

If "Yes", what form of appeal? At present, this is handled through

the Town Planning Board. If Appeal is permitted to City Council

this would have the effect of all subdivisions going to Council,

which we do not favour.

26. During the period January 1965 to December 1967, how many appeals have there been from decisions of your Planning Board or Council to

None

. The Minister _____

. The Courts _____

27. If possible, briefly list the typical grounds for appeal:

Not applicable

28. State any other opinions you may have regarding appeal and objections.

Not applicable

29. List any suggestions you have for improving or adding to this questionnaire.

(a) Cities should be required by the Province to have and maintain a Master Plan. At present this is permissive and should be mandatory.

(b) Meetings should be held by all parties concerned before the Town Planning Act is changed.

(c) Some form of Development Permit is needed for greater flexibility in modern complexes which have a multiplicity of uses and are not on customary single lots for each separate use.

Date Sent: MARCH 4/68Date Received: MARCH 6/68

QUESTIONS

Name: MASON Municipal Unit: New Glasgow 1966 Population: 10,000+☐ Chairman, Town Planning Board ☐ City, Town or Municipal Clerk☐ Other _____PART 1: GENERAL

1. Do you have subdivision regulations?

☒ Yes ☐ No

2. Do you enforce the subdivision regulations?

☒ Yes ☐ No Comments, if any: _____

3. Do you have a zoning bylaw?

☒ Yes ☐ No

4. If the answer to (3) was yes, do you enforce this zoning bylaw?

☒ Yes ☐ No Comments, if any: _____

5. Do you have an Official Town Plan, approved by the Minister and registered with the county registrar of deeds?

☒ Yes ☐ No

6. If the answer to (5) was yes, is this Town Plan, in your opinion, an effective document?

☒ Yes ☐ No

7. Do you have an active Town Planning Board?
☐ Yes ☐ No
8. Does the Town Planning Board meet regularly?
☐ Yes ☐ No
9. Does the Town Planning Board carry out the full range of duties prescribed under the Town Planning Act?
☐ Yes ☒ No *only subdms & zoning*
10. Has your municipal unit adopted a building bylaw?
☒ Yes ☐ No
11. Do you have a building inspector or committee?
☒ Yes ☐ No
12. If the answer to (11) was yes, has the council or building inspector or committee assumed the Planning Board's responsibilities for the issuing of building permits?
☐ Yes ☐ No Comments: _____

PART II: OBJECTIONS

13. Where your Council is considering written objections to an Official Town Plan or Zoning Bylaw, does this take the form of an open hearing in which interested parties may make oral as well as written presentations? Please explain the manner in which your Council treats objections to the Official Town Plan or Zoning Bylaw.
- We are following M's instructions at the hearing.*
- presentations*
- Open hearing - oral and written - most objections are written first, then presented to Council orally - Pkg Du present. Council listens, considers in committee and decides.*
- included Pkg b1 Pkg P1 Du*

3.

14. Do you feel that adequate scope is given to persons objecting to an official town plan or zoning bylaw?

☒ Yes☐ No

Comments, if any: _____

PART III: APPEAL - ZONING AND OFFICIAL TOWN PLAN

Section 20 of the Town Planning Act, as amended in 1965, provides:
 "When a person is dissatisfied with the decision of an official in the course of his administration of this Act or of a by-law made under this Act, he may appeal from this decision to the council by giving notice in writing of such appeal to the clerk not later than fifteen days after the decision has been communicated to him. The council may, after hearing the appellant and the Official and any other person, affirm, vary or rescind the decision of the official but nothing herein shall be deemed to authorize the council to waive any requirement of the by-law or to permit any person to contravene any such requirement".

15. Is there any tendency for persons seeking a change or seeking to prevent a change, to petition the Minister, either before or after Council has decided on the matter?

☒ Yes☐ No

Please comment: Only one case of petition to Minister - exception to rule

16. Do you feel that a person dissatisfied with the decision of Council with regard to a zoning bylaw or official town plan, should be permitted to petition the Minister?

☒ Yes☐ No

Please state why: keeps council honest but what about
Minister - Minister often weak in planning
Present "wasteful"

17. How many appeals were heard by your Council under Section 20 of the Town Planning Act during the period January 1, 1965 to December 31, 1967?

None

18. How many of these appeals went from your Council to:

- . The Minister of Municipal Affairs 1
- . The County Court No
- . The Supreme Court of Nova Scotia No

19. If possible, briefly list the typical reasons why applicants appealed:

- . From the decision of your Council personal grudge

- . To the Minister 11

- . To the Courts

20. In your opinion, is this provision (Section 20) of the Town Planning Act used frequently?

☐ Yes ☒ No

Please comment why: ☒ People don't understand their rights
☒ Procedure is too cumbersome ☒ Community is small ☒ Appeal cost (legal fees) too high ☒ Other (please specify) all these things apply
People here don't understand zoning etc. Are learning
Appeals will increase as development increases

21. In your opinion, should the Town Planning Act relating to zoning provide for exceptions (with the exact conditions under which minor exceptions may be granted set out in the bylaw or Act) or variances (a method of safeguarding the individual lot owner against the invasion of his fundamental right of private

5.

property which would result from adherence to the strict letter of the zoning bylaw)?

☒ Yes ☐ No

Please comment: _____

22. If the answer to (21) was yes, how would you like to see exceptions or variances provided for?

Subject to Minister review - and reviewed

23. Do you feel the grounds for appeal under Section 20 should be changed?

☐ Yes ☐ No

If "Yes", what changes? _____

24. Which of the following forms of appeal would you prefer? Please comment.

1) ☒ Appeal to Planning Board _____

☐ Appeal to separate local body _____

2) ☒ Appeal to regional body _____

☐ Appeal to Provincial body _____

☐ Other (Please specify) Desirable CMB type where
decision is final

System should be kept moving

PART IV: APPEAL - SUBDIVISION

25. Do you feel there should be some form of appeal (other than to the Minister or the Courts) to the decisions of the Town Planning Board on subdivision matters?

☐ Yes ☐ No

If "Yes", what form of appeal? _____

Possible OMB type as per zoning
Decision final

26. During the period January 1965 to December 1967, how many appeals have there been from decisions of your Planning Board or Council to

. The Minister 20
. The Courts 20

27. If possible, briefly list the typical grounds for appeal:

So.

28. State any other opinions you may have regarding appeal and objections.

Local boards are kept honest if press follows accounts
accurately.
To date too much is just done by councils & board.
This council & board is well advised though due to
a competent planner, engineer and all-round good
fellow.

29. List any suggestions you have for improving or adding to this questionnaire.

Plq Boards have power to recommend. I find 2 must spend a lot of time informing:

- 1) Plq. Bd.
- 2) Council.
- 3) Regional ~~Est~~ Com
- 4) Public Meeting

This is a lot of steps. It does have an interesting side effect in that we have a lot of informed people. I find as well there is very little preparation by members before a meeting. No care for that.

QUESTIONS

HALIFAX REGIONAL PLANNING COMMISSION
Name: Walt Snook Municipal Unit: Region 1966 Population: 250,000
☐ Chairman, Town Planning Board ☐ City, Town or Municipal Clerk
☒ Other Planning Director

PART 1: GENERAL

1. Do you have subdivision regulations?

☒ Yes ☐ No

2. Do you enforce the subdivision regulations?

☒ Yes ☐ No

Comments, if any: not to fullest advantage, see, that there is not more uniformity of regulations.

3. Do you have a zoning bylaw?

☒ Yes ☐ No

4. If the answer to (3) was yes, do you enforce this zoning bylaw?

☒ Yes ☐ No

Comments, if any: as above

5. Do you have an Official Town Plan, approved by the Minister and registered with the county registrar of deeds?

☒ Yes ☐ No

6. If the answer to (5) was yes, is this Town Plan, in your opinion, an effective document?

☐ Yes ☒ No

Lack of care and understanding by Council and in many cases, by other departments.

7. Do you have an active Town Planning Board?

☒ Yes ☐ No

8. Does the Town Planning Board meet regularly?

☒ Yes ☐ No

9. Does the Town Planning Board carry out the full range of duties prescribed under the Town Planning Act?

☒ Yes ☐ No

let out to let a downsize

10. Has your municipal unit adopted a building bylaw?

☒ Yes ☐ No

11. Do you have a building inspector or committee?

☒ Yes ☐ No

12. If the answer to (11) was yes, has the council or building inspector or committee assumed the Planning Board's responsibilities for the issuing of building permits?

☒ Yes ☐ No

Comments: _____

PART II: OBJECTIONS

13. Where your Council is considering written objections to an Official Town Plan or Zoning Bylaw, does this take the form of an open hearing in which interested parties may make oral as well as written presentations? Please explain the manner in which your Council treats objections to the Official Town Plan or Zoning Bylaw.

*Yes, however the matter is decided upon
the maker of the presentation and not upon
writing facts and the Master Plan.*

14. Do you feel that adequate scope is given to persons objecting to an official town plan or zoning bylaw?

☒ Yes

☐ No

Comments, if any: _____

PART III: APPEAL - ZONING AND OFFICIAL TOWN PLAN

Section 20 of the Town Planning Act, as amended in 1965, provides: "When a person is dissatisfied with the decision of an official in the course of his administration of this Act or of a by-law made under this Act, he may appeal from this decision to the council by giving notice in writing of such appeal to the clerk not later than fifteen days after the decision has been communicated to him. The council may, after hearing the appellant and the Official and any other person, affirm, vary or rescind the decision of the official but nothing herein shall be deemed to authorize the council to waive any requirement of the by-law or to permit any person to contravene any such requirement".

15. Is there any tendency for persons seeking a change or seeking to prevent a change, to petition the Minister, either before or after Council has decided on the matter?

☒ Yes

☐ No

Please comment: because the Minister is usually accessible
and many people seem to have little faith in Council.

16. Do you feel that a person dissatisfied with the decision of Council with regard to a zoning bylaw or official town plan, should be permitted to petition the Minister?

☐ Yes

☒ No

Please state why: only if person is prepared to lay
formal charges of misaction.

17. How many appeals were heard by your Council under Section 20 of the Town Planning Act during the period January 1, 1965 to December 31, 1967?

18. How many of these appeals went from your Council to:

- . The Minister of Municipal Affairs _____
- . The County Court _____
- . The Supreme Court of Nova Scotia _____

19. If possible, briefly list the typical reasons why applicants appealed:

- . From the decision of your Council _____

in most cases just because they did not get what they wanted or saw it appeal as another loophole

- . To the Minister *debt* _____

- . To the Courts *you will notice more get to the courts as all the appeals are based on law* _____

20. In your opinion, is this provision (Section 20) of the Town Planning Act used frequently?

☐ Yes ☒ No

Please comment why: ☐ People don't understand their rights
☐ Procedure is too cumbersome ☐ Community is small ☐ Appeal cost (legal fees) too high ☒ Other (please specify) *can be*

usually work and based upon dissatisfaction, not a poor decision

21. In your opinion, should the Town Planning Act relating to zoning provide for exceptions (with the exact conditions under which minor exceptions may be granted set out in the bylaw or Act) or variances (a method of safeguarding the individual lot owner against the invasion of his fundamental right of private

5.

property which would result from adherence to the strict letter of the zoning bylaw)?

☒ Yes ☐ No

Please comment: to allow for minor adjustment

22. If the answer to (21) was yes, how would you like to see exceptions or variances provided for?

decision of appeal board to not under broad
guidelines.

23. Do you feel the grounds for appeal under Section 20 should be changed?

☒ Yes ☐ No

If "Yes", what changes? to an appeal board.

24. Which of the following forms of appeal would you prefer? Please comment.

☐ Appeal to Planning Board

☒ Appeal to separate local body

☐ Appeal to regional body

☐ Appeal to Provincial body

☐ Other (Please specify)

6.

PART IV: APPEAL - SUBDIVISION

25. Do you feel there should be some form of appeal (other than to the Minister or the Courts) to the decisions of the Town Planning Board on subdivision matters?

☒ Yes ☐ No

If "Yes", what form of appeal? at same appeal level

26. During the period January 1965 to December 1967, how many appeals have there been from decisions of your Planning Board or Council to

. The Minister ☒
 . The Courts ☐

27. If possible, briefly list the typical grounds for appeal:

excess development - splitting - disintegration
with official intervention - hardship

28. State any other opinions you may have regarding appeal and objections.

must have specific laws established
"hardship" still be a major requirement

7.

29. List any suggestions you have for improving or adding to this questionnaire.

Date Sent: _____

Date Received: _____

QUESTIONS

Name: ROBERT E. COUGH Municipal Unit: COUNTY OF HAWAII 1966 Population: 90,000
☐ Chairman, Town Planning Board ☐ City, Town or Municipal Clerk
☒ Other _____

PART 1: GENERAL

1. Do you have subdivision regulations?

☒ Yes ☐ No

2. Do you enforce the subdivision regulations?

☒ Yes ☐ No Comments, if any: Hawianu subdivisions under
revision must be done with Minister
Consent.

3. Do you have a zoning bylaw?

☒ Yes ☐ No

4. If the answer to (3) was yes, do you enforce this zoning bylaw?

☒ Yes ☐ No Comments, if any: through building inspection

5. Do you have an Official Town Plan, approved by the Minister and registered with the county registrar of deeds?

☒ Yes ☐ No

6. If the answer to (5) was yes, is this Town Plan, in your opinion, an effective document?

☒ Yes ☐ No If not always felt
yes if Council would feel the same.

7. Do you have an active Town Planning Board?
☒ Yes ☐ No
8. Does the Town Planning Board meet regularly?
☒ Yes ☐ No *at least one meeting a week*
9. Does the Town Planning Board carry out the full range of duties prescribed under the Town Planning Act?
☒ Yes ☐ No *and sometimes more.*
10. Has your municipal unit adopted a building bylaw?
☒ Yes ☐ No
11. Do you have a building inspector or committee?
☒ Yes ☐ No *and also an appeal board re: building permits*
12. If the answer to (11) was yes, has the council or building inspector or committee assumed the Planning Board's responsibilities for the issuing of building permits?
☐ Yes ☐ No Comments: *Building inspector is responsible for the issuing of building permits but gets advice from Planning Board if he asks. (Rather awkward.)*
- PART II: OBJECTIONS

13. Where your Council is considering written objections to an Official Town Plan or Zoning Bylaw, does this take the form of an open hearing in which interested parties may make oral as well as written presentations? Please explain the manner in which your Council treats objections to the Official Town Plan or Zoning Bylaw.

Public hearing all interested parties are invited to speak and written objections are read by Municipal Clerk.

14. Do you feel that adequate scope is given to persons objecting to an official town plan or zoning bylaw?

☒ Yes ☒ No

Comments, if any: Council have never stopped any body from speaking

PART III: APPEAL - ZONING AND OFFICIAL TOWN PLAN

Section 20 of the Town Planning Act, as amended in 1965, provides: "When a person is dissatisfied with the decision of an official in the course of his administration of this Act or of a by-law made under this Act, he may appeal from this decision to the council by giving notice in writing of such appeal to the clerk not later than fifteen days after the decision has been communicated to him. The council may, after hearing the appellant and the Official and any other person, affirm, vary or rescind the decision of the official but nothing herein shall be deemed to authorize the council to waive any requirement of the by-law or to permit any person to contravene any such requirement".

15. Is there any tendency for persons seeking a change or seeking to prevent a change, to petition the Minister, either before or after Council has decided on the matter?

☒ Yes ☐ No

Please comment: Some times Councils members may be surveyed by the applicant, the Minister is also in this position

16. Do you feel that a person dissatisfied with the decision of Council with regard to a zoning bylaw or official town plan, should be permitted to petition the Minister?

☒ Yes ☒ No

Please state why: Not many at Minister's level, but possibly an appeal board

17. How many appeals were heard by your Council under Section 20 of the Town Planning Act during the period January 1, 1965 to December 31, 1967?

This has happened at least once in this time period but it affected the building inspector, or zoning bylaw interpretation.

18. How many of these appeals went from your Council to:

- . The Minister of Municipal Affairs _____
- . The County Court _____
- . The Supreme Court of Nova Scotia _____

19. If possible, briefly list the typical reasons why applicants appealed:

- . From the decision of your Council unhappy with decision of committee for not signing bylaw, as decision did not suit their requirements

- . To the Minister ?

- . To the Courts not to my knowledge.

20. In your opinion, is this provision (Section 20) of the Town Planning Act used frequently?

- ☐ Yes ☒ No

Please comment why: ☐ People don't understand their rights
☐ Procedure is too cumbersome ☐ Community is small ☐ Appeal cost (legal fees) too high ☐ Other (please specify) _____

21. In your opinion, should the Town Planning Act relating to zoning provide for exceptions (with the exact conditions under which minor exceptions may be granted set out in the bylaw or Act) or variances (a method of safeguarding the individual lot owner against the invasion of his fundamental right of private

5.

property which would result from adherence to the strict letter of the zoning bylaw)?

☒ Yes ☐ No

Please comment: _____

22. If the answer to (21) was yes, how would you like to see exceptions or variances provided for?

In our case, there is not enough room on this page we will elaborate later.

23. Do you feel the grounds for appeal under Section 20 should be changed?

☒ Yes ☐ No

If "Yes", what changes? *Appeal Board etc.*

24. Which of the following forms of appeal would you prefer? Please comment.

☒ Appeal to Planning Board *→ we usually get this any way*

☐ Appeal to separate local body

☐ Appeal to regional body

☒ Appeal to Provincial body *setup for entire province*

☐ Other (Please specify)

PART IV: APPEAL - SUBDIVISION

25. Do you feel there should be some form of appeal (other than to the Minister or the Courts) to the decisions of the Town Planning Board on subdivision matters?

☒ Yes ☐ No

If "Yes", what form of appeal? *There presently is legislation regarding an objection to a subdivision, which is rather awkward, we only use it in cases of objection. Appeal board could also be used.*

26. During the period January 1965 to December 1967, how many appeals have there been from decisions of your Planning Board or Council to

. The Minister *? quite a few*
 . The Courts

27. If possible, briefly list the typical grounds for appeal:

why council has approved of a change and the minister has not. (mainly zoning)

28. State any other opinions you may have regarding appeal and objections.

If an appeal board was set up, it with competent members it could remove the Minister or the elected representatives from embarrassing situations. But they must have strong terms of reference.

29. List any suggestions you have for improving or adding to this questionnaire.

Date Sent: 166
Date Received: _____

QUESTIONS

Name: M. E. Clayd Municipal Unit: Dartmouth 1966 Population: 61,000
☐ Chairman, Town Planning Board ☐ City, Town or Municipal Clerk
☒ Other Planning Director

PART 1: GENERAL

1. Do you have subdivision regulations?

☒ Yes ☐ No

2. Do you enforce the subdivision regulations?

☒ Yes ☐ No Comments, if any: _____

3. Do you have a zoning by law?

☒ Yes ☐ No

4. If the answer to (3) was yes, do you enforce this zoning bylaw?

☒ Yes ☐ No Comments, if any: _____

5. Do you have an Official Town Plan, approved by the Minister and registered with the county registrar of deeds?

☒ Yes ☐ No

6. If the answer to (5) was yes, is this Town Plan, in your opinion, an effective document?

☒ Yes ☐ No

7. Do you have an active Town Planning Board?

☒ Yes ☐ No

8. Does the Town Planning Board meet regularly?

☒ Yes ☐ No

9. Does the Town Planning Board carry out the full range of duties prescribed under the Town Planning Act?

☒ Yes ☐ No

10. Has your municipal unit adopted a building bylaw?

☒ Yes ☐ No

11. Do you have a building inspector or committee?

☒ Yes ☐ No

12. If the answer to (11) was yes, has the council or building inspector or committee assumed the Planning Board's responsibilities for the issuing of building permits?

☐ Yes ☐ No

Comments: *Inspector answers to P. Board.*

He has authority to issue permits for value up to \$100,000. Over this amount the Board recommends to Council who issues the permit.

PART II: OBJECTIONS

13. Where your Council is considering written objections to an Official Town Plan or Zoning Bylaw, does this take the form of an open hearing in which interested parties may make oral as well as written presentations? Please explain the manner in which your Council treats objections to the Official Town Plan or Zoning Bylaw.

Yes - Council meeting is advertised & hearings held in compliance with the existing requirements of the Planning Act.

14. Do you feel that adequate scope is given to persons objecting to an official town plan or zoning bylaw?

☒ YES
~~YES~~

☐ No

Comments, if any: _____

PART III: APPEAL - ZONING AND OFFICIAL TOWN PLAN

Section 20 of the Town Planning Act, as amended in 1965, provides: "When a person is dissatisfied with the decision of an official in the course of his administration of this Act or of a by-law made under this Act, he may appeal from this decision to the council by giving notice in writing of such appeal to the clerk not later than fifteen days after the decision has been communicated to him. The council may, after hearing the appellant and the Official and any other person, affirm, vary or rescind the decision of the official but nothing herein shall be deemed to authorize the council to waive any requirement of the by-law or to permit any person to contravene any such requirement".

15. Is there any tendency for persons seeking a change or seeking to prevent a change, to petition the Minister, either before or after Council has decided on the matter?

☐ Yes

☒ No

Please comment: The Minister is normally provided with a copy of any objections received by the City after Council approval but no appeals have been lodged to my knowledge.

16. Do you feel that a person dissatisfied with the decision of Council with regard to a zoning bylaw or official town plan, should be permitted to petition the Minister? If no other form of appeal is available,

☒ Yes

☐ No

Please state why: It gives the applicant an opportunity to have a review made by an agency that is not directly involved in the problem.

17. How many appeals were heard by your Council under Section 20 of the Town Planning Act during the period January 1, 1965 to December 31, 1967?

Estimate four or five

18. How many of these appeals went from your Council to:

- . The Minister of Municipal Affairs NONE
- . The County Court NONE
- . The Supreme Court of Nova Scotia NONE

19. If possible, briefly list the typical reasons why applicants appealed:

- . From the decision of your Council _____

N/A because of reply to 18

- . To the Minister _____

N/A

- . To the Courts _____

N/A

20. In your opinion, is this provision (Section 20) of the Town Planning Act used frequently?

- ☐ Yes ☒ No

Please comment why: ☐ People don't understand their rights

☐ Procedure is too cumbersome ☐ Community is small ☐ Appeal cost (legal fees) too high ☐ Other (please specify) A general

feeling that it still won't recommend that there is little point in appealing although the applicant is always informed of his rights.

21. In your opinion, should the Town Planning Act relating to zoning provide for exceptions (with the exact conditions under which minor exceptions may be granted set out in the bylaw or Act) or variances (a method of safeguarding the individual lot owner against the invasion of his fundamental right of private

5.

property which would result from adherence to the strict letter of the zoning bylaw)?

☒ Yes ☐ No

Please comment: This should be done by an independent non-political body (if such an armment can be found)

22. If the answer to (21) was yes, how would you like to see exceptions or variances provided for?

My answer was "no" but exceptions at variances should be provided for by an independent "body"

23. Do you feel the grounds for appeal under Section 20 should be changed?

☒ Yes ☐ No

If "Yes", what changes? To allow for variances

24. Which of the following forms of appeal would you prefer? Please comment.

- ☐ Appeal to Planning Board
- ☒ Appeal to separate local body To get an independent non-political opinion
- ☐ Appeal to regional body
- ☐ Appeal to Provincial body
- ☐ Other (Please specify)

PART IV: APPEAL - SUBDIVISION

25. Do you feel there should be some form of appeal (other than to the Minister or the Courts) to the decisions of the Town Planning Board on subdivision matters?

☐ Yes ☒ No

If "Yes", what form of appeal? _____

26. During the period January 1965 to December 1967, how many appeals have there been from decisions of your Planning Board or Council to

. The Minister _____

NONE

. The Courts _____

NONE

27. If possible, briefly list the typical grounds for appeal:

N/A

28. State any other opinions you may have regarding appeal and objections.

There should be some provision for planning subdivisions in more detail - the developer should be required to follow a development plan for land use as well as street layout etc. at present the control is limited. zoning may be changed ~~to~~ ^{on} the basis of a specific plan for

29 List any suggestions you have for improving or adding to this questionnaire.

Get opinions on composition of appeal boards.

development (i.e. for a shopping centre) but once the area is zoned to a specific zone any use may be permitted. For example a warehouse may be constructed in a commercial zone even though the original zone change was made to accommodate a neighbourhood shopping centre.

Date Sent: YACUT 4/68 173Date Received: HNW 4/68

QUESTIONS

Name: Mason Municipal Unit: STELLARTON 1966 Population: 5000
☐ Chairman, Town Planning Board ☐ City, Town or Municipal Clerk
☐ Other _____

PART 1: GENERAL

1. Do you have subdivision regulations?

☐ Yes ☒ No

2. Do you enforce the subdivision regulations?

☒ Yes ☐ No Comments, if any: _____

3. Do you have a zoning by law?

☒ Yes ☐ No

4. If the answer to (3) was yes, do you enforce this zoning bylaw?

☒ Yes ☐ No Comments, if any: Just passed Councils
do not understand system yet

5. Do you have an Official Town Plan, approved by the Minister and registered with the county registrar of deeds?

☐ Yes ☒ No

6. If the answer to (5) was yes, is this Town Plan, in your opinion, an effective document?

☐ Yes ☒ Nowe use zoning plan incorrectly to accomplish
this task.

7. Do you have an active Town Planning Board?

☐ Yes ☒ No

*use Town Council as Pkg Bd.
No citizen appointees*

8. Does the Town Planning Board meet regularly?

☐ Yes ☒ No

9. Does the Town Planning Board carry out the full range of duties prescribed under the Town Planning Act?

☐ Yes ☒ No

10. Has your municipal unit adopted a building bylaw?

☒ Yes ☐ No

11. Do you have a building inspector or committee?

☒ Yes ☐ No

12. If the answer to (11) was yes, has the council or building inspector or committee assumed the Planning Board's responsibilities for the issuing of building permits?

☐ Yes ☒ No

Comments: *Council issues permits
will propose change under new Super
Council hanging for power (Bld. In)*

PART II: OBJECTIONS

13. Where your Council is considering written objections to an Official Town Plan or Zoning Bylaw, does this take the form of an open hearing in which interested parties may make oral as well as written presentations? Please explain the manner in which your Council treats objections to the Official Town Plan or Zoning Bylaw.

*Follows M's instructions on oral presentations at meetings
One zoning change to date - no objections no changes*

14. Do you feel that adequate scope is given to persons objecting to an official town plan or zoning bylaw?

☒ Yes

☐ No

Comments, if any: _____

PART III: APPEAL - ZONING AND OFFICIAL TOWN PLAN

Section 20 of the Town Planning Act, as amended in 1965, provides: "When a person is dissatisfied with the decision of an official in the course of his administration of this Act or of a by-law made under this Act, he may appeal from this decision to the council by giving notice in writing of such appeal to the clerk not later than fifteen days after the decision has been communicated to him. The council may, after hearing the appellant and the Official and any other person, affirm, vary or rescind the decision of the official but nothing herein shall be deemed to authorize the council to waive any requirement of the by-law or to permit any person to contravene any such requirement".

15. Is there any tendency for persons seeking a change or seeking to prevent a change, to petition the Minister, either before or after Council has decided on the matter?

☒ Yes

☐ No

Please comment: _____

*No experience in Still yet.
Plg bl should have certain appointments*

16. Do you feel that a person dissatisfied with the decision of Council with regard to a zoning bylaw or official town plan, should be permitted to petition the Minister?

☒ Yes

☐ No

Please state why: _____

17. How many appeals were heard by your Council under Section 20 of the Town Planning Act during the period January 1, 1965 to December 31, 1967?

18. How many of these appeals went from your Council to:

- . The Minister of Municipal Affairs _____
- . The County Court _____
- . The Supreme Court of Nova Scotia _____

19. If possible, briefly list the typical reasons why applicants appealed:

- . From the decision of your Council _____

- . To the Minister _____

- . To the Courts _____

20. In your opinion, is this provision (Section 20) of the Town Planning Act used frequently?

- ☐ Yes ☐ No

Please comment why: ☐ People don't understand their rights
☐ Procedure is too cumbersome ☐ Community is small ☐ Appeal cost (legal fees) too high ☐ Other (please specify) _____

21. In your opinion, should the Town Planning Act relating to zoning provide for exceptions (with the exact conditions under which minor exceptions may be granted set out in the bylaw or Act) or variances (a method of safeguarding the individual lot owner against the invasion of his fundamental right of private

5.

property which would result from adherence to the strict letter of the zoning bylaw)?

☐ Yes ☐ No

Please comment: _____

22. If the answer to (21) was yes, how would you like to see exceptions or variances provided for?

23. Do you feel the grounds for appeal under Section 20 should be changed?

☐ Yes ☐ No

If "Yes", what changes? _____

24. Which of the following forms of appeal would you prefer? Please comment.

- ☐ Appeal to Planning Board _____
- ☐ Appeal to separate local body _____
- ☐ Appeal to regional body _____
- ☐ Appeal to Provincial body _____
- ☐ Other (Please specify) _____
- _____

C.

PART IV: APPEAL - SUBDIVISION

25. Do you feel there should be some form of appeal (other than to the Minister or the Courts) to the decisions of the Town Planning Board on subdivision matters?

☐ Yes ☐ No

If "Yes", what form of appeal? _____

26. During the period January 1965 to December 1967, how many appeals have there been from decisions of your Planning Board or Council to

. The Minister _____

. The Courts _____

27. If possible, briefly list the typical grounds for appeal:
- _____
- _____
- _____

28. State any other opinions you may have regarding appeal and objections.
- _____
- _____
- _____
- _____

7.

29. List any suggestions you have for improving or adding to this questionnaire.

APPENDIX D

PRIVATE APPEALS

PRIVATE APPEALS

Mr. R.S. Lang, Director of the Community Planning Division explained "private appeals" as follows in a letter dated February 28, 1968:

'Private appeals', as referred to on page 8 of my Amherst speech, means audiences granted by the Minister to developers whose applications for rezoning have been granted by the municipal authorities but have been recommended against by our Division. The developer usually appears with his solicitor and retinue of experts who try to refute my arguments; it is not a pleasant process for me. But more important, it is unfair and costly to the developers who have gone through the relatively 'open' procedure of public hearings, Planning Board meetings and appearances before Council, only to be confronted with a behind-closed-doors, further series of obstacles. On the other hand, the Minister is concerned with his own role in these matters; he doesn't consider himself a rubber stamp and yet, if he seriously considers zoning applications there is the danger that municipal councils will take the easy way out and approve everything, leaving it to us to stop the bad ones. It's an interesting dilemma."

APPENDIX E

POPULATION AND EMPLOYMENT

NOVA SCOTIA

TABLE E-1
NOVA SCOTIA
POPULATION IN COUNTIES, TOWNS, AND CITIES
1956 - 1966 ¹

	<u>1956</u>	<u>1961</u>	<u>1966</u>
<u>Annapolis County</u>	21,682	22,649	21,579
Annapolis Royal	765	800	805
Bridgetown	1,041	1,043	1,060
Middleton	1,769	1,421	1,765
<u>Antigonish County</u>	13,076	14,360	14,890
Antigonish	3,592	4,344	4,856
<u>Cape Breton County</u>	125,478	131,507	129,572
Dominion	2,964	2,999	2,960
Glace Bay	24,416	24,186	23,516
Louisburg	1,314	1,417	1,617
New Waterford	10,381	10,592	9,725
North Sydney	8,125	8,657	8,752
Sydney (City)	32,162	33,617	32,767
Sydney Mines	8,731	9,122	9,171
<u>Colchester County</u>	34,640	34,307	35,700
Stewiacks	1,024	1,042	982
Truro	12,250	12,421	13,007
<u>Cumberland County</u>	39,598	37,767	35,933

¹Nova Scotia, Department of Trade and Industry, Economics and Development Division, Halifax, Nova Scotia, Nova-Scotia - An Economic Profile Volume V, 1967, Table 1, pp. 57-59, and Dominion Bureau of Statistics Census, 1966.

	<u>1956</u>	<u>1961</u>	<u>1966</u>
<u>Cumberland County</u> (continued)			
Amherst	10,301	10,788	10,551
Oxford	1,545	1,471	1,426
Parrsboro	1,849	1,834	1,835
Springhill	7,348	5,836	5,380
<u>Digby County</u>	19,869	20,216	19,827
Digby	2,145	2,308	2,305
<u>Guvssborough County</u>	13,802	13,274	12,830
Canso	1,261	1,151	1,190
Mulgrave	1,227	1,145	1,124
<u>Halifax County</u>	197,943	225,723	244,948
Dartmouth	21,093	46,966	58,745
Halifax City	93,301	92,511	86,792
<u>Hants County</u>	24,889	26,444	26,893
Hunstport	1,298	1,381	1,438
Windsor	3,651	3,823	3,765
<u>Inverness County</u>	18,235	18,718	18,152
Inverness	2,026	2,109	2,022
Port Hawkesbury	1,078	1,346	1,866
<u>Kings County</u>	37,816	41,747	42,249
Berwick	1,134	1,282	1,311
Kentville	4,937	4,612	5,176
Wolfville	2,497	2,413	2,533

	<u>1956</u>	<u>1961</u>	<u>1966</u>
<u>Lunenburg County</u>	34,207	34,998	36,114
Bridgewater	4,445	4,497	4,755
Lunenburg	2,859	3,056	3,154
Mahone Bay	1,109	1,103	1,296
<u>Pictou County</u>	44,566	43,908	44,490
New Glasgow	9,998	9,782	10,489
Pictou	4,564	4,534	4,254
Stellarton	5,445	5,327	5,191
Trenton	3,240	3,140	3,229
Westville	4,247	4,159	4,147
<u>Queen's County</u>	12,744	13,155	12,807
Liverpool	3,500	3,712	3,607
<u>Richmond County</u>	10,961	11,374	11,218
<u>Shelburne County</u>	14,604	15,208	16,284
Clarke's Harbour	945	945	1,002
Lockport	1,207	1,231	1,284
Shelburne	2,337	2,408	2,654
<u>Victoria County</u>	8,185	8,266	8,001
<u>Yarmouth County</u>	22,392	23,386	23,552
<u>Yarmouth County</u>	8,095	8,636	8,319
<u>TOTALS</u>	694,717	737,007	756,039

TABLE E-2
LABOUR FORCE BY INDUSTRY, NOVA SCOTIA AND CANADA, 1951 AND 1961

Industry	1951		1961	
	Nova Scotia Number	%	Canada ¹ Number	%
Primary Agriculture	23,273	10.6	822,667	15.6
Primary Forestry	5,899	2.7	129,625	2.5
Primary Fisheries	9,747	4.4	50,464	1.0
Mining	15,570	7.1	103,839	2.0
Manufacturing	36,874	16.7	1,357,755	25.7
Power and Utilities	2,567	1.2	61,806	1.2
Construction	16,391	7.4	350,815	6.6
Transportation, Storage and Communication	18,164	8.2	402,569	7.6
Services	88,462	40.1	1,928,727	36.5
Industry Unspecified	3,638	1.6	67,351	1.3
Total	220,585	100.0	5,276,639	100.0
1 Excludes Yukon and NWT			236,819	100.0
2 Includes Yukon and NWT			532,782	9.5
			2,966,682	52.4
			158,593	1.7
			6,471,850	100.0

NOTE: The 1951 data not based on new Standard Industrial Classification used in 1961

Source: DBS, Census, 1951 and 1961

²Nova Scotia Voluntary Planning Board, "First Plan for Economic Development to 1968" (Halifax: Queen's Printer, February 1966), Table F-5.

TABLE E-3 ³LABOUR FORCE IN THE SERVICE SECTORNOVA SCOTIA, 1951 and 1961

Category	1951	1961	% Increase
Retail	23,656	27,160	14.8
Wholesale Trade	8,587	9,603	11.8
Finance, Insurance and Real Estate	3,559	5,652	58.8
Community, Business and Professional Services	17,057	27,380	60.5
Personal, Domestic and Miscellaneous Services	14,909	17,573	17.9
Public Administration	7,513	9,342	24.3
Totals	75,281	96,730	28.5
Defense	15,376	27,474	78.7
Total Services and Defence	90,657	124,184	37.0

Source: Census of Canada, 1951 and 1961

NOTE: The 1951 data were changed to conform to the new Standard Industrial Classification used in the 1961 census.

³Ibid, Table F-6

TABLE E-4 ⁴LABOUR FORCE IN THE SUPPORTING SECTORSNOVA SCOTIA, 1951 and 1961

Sector	1951	1961	% Change
Construction	16,391	15,524	-5.3
Transportation	15,521	16,863	+8.6
Storage	289	216	-25.3
Communication	2,354	5,456	+131.8
Electricity, Gas and Water	2,567	2,427	-5.6
Totals	37,122	40,486	+9.1

Source: Census of Canada, 1951 and 1961

⁴Ibid, Table F-7