LAND USE CONTROLS - FLEXIBILITY AND DISCRETION

by

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ABSTRACT

Zoning has existed in North America since the early 1900's and has evolved from the traditional self-executing Euclidean zoning approach to the recent use of flexible zoning techniques involving increased discretionary judgement by delegated boards and officials.

This study examines the evolution and increased use of flexible zoning techniques which afford greater opportunity for creativity and innovation, and allows for individualized treatment of projects compared to the traditional approach of pre-determined, rigid regulation which often inhibits and responds poorly to changing public needs.

However, because these techniques are more flexible and decisions more discretionary, they are more difficult to administer, have the potential for abuse, and involve greater public risk. The thesis examines the concept of administrative discretion, and formulates a conceptual framework which identifies three preconditions which must be provided in a discretionary zoning system in order to inform and control discretionary judgements.

First, a substantive basis is required comprised of two parts: a) a technical basis in standards; b) a policy basis in a comprehensive plan. Thirdly, procedural safeguards are required to prevent abuse, and increase openness and accountability.

The second part of the thesis examines the City of Vancouver land use control system with respect to the nature and extent of administrative discretion and its relationship to the conceptual framework. It reveals that wide discretionary powers are granted to Vancouver boards/officials (the Development Permit Board and the Director of Planning). The study concluded that the Vancouver discretionary zoning system complies with the intent of the conceptual framework; however, major deficiencies in
the Vancouver legislation and process are identified. Comments and suggestions are offered towards compliance with the conceptual framework and achievement of planning objectives.

The study revealed that there is no universal answer to the question of what is the optimum balance between flexibility and certainty in land use regulation. The two extremes of complete unfettered discretion or complete rigidity are not desired. Rather, what is needed is flexibility with restraint. Discretion must exist, yet it must be part of a continuous comprehensive planning process which offers substantive guidance and safeguards, and is exercised by competent boards/officials to whom decision making has been delegated.
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CHAPTER I

INTRODUCTION

Zoning is the single most commonly used legal device for regulating land use. Its origin can be traced back to 19th Century Germany. Although there were examples in Eastern Canada and in New England of statutes restricting building height, size, and setbacks in the early 1900s, the official start of comprehensive zoning in North America was 1916 with the passage of a zoning bylaw for New York City.

Early land use regulation was rigid, with negligible opportunity for flexibility and discretion in its administration. Such approach is referred to as Euclidean, named after a 1926 Court decision establishing the validity of zoning in the U.S.A.

Since then, however, zoning has changed and its administration has become much more demanding and time consuming. The familiar "as of right" or self-executing nature of the Euclidean zoning system has largely been replaced. Rather than resolving most land use issues when the zoning bylaw is adopted with pre-determined regulations, more development issues are being decided at the time development is proposed. This allows opportunity for greater creativity, innovation, and individualized treatment of projects. And because many of the tools are more flexible, and the decisions more discretionary, i.e. judgment by public officials is involved, they are difficult to administer and involve greater public risk.
A. Objectives of the Study

This study examines the growing use of flexible zoning techniques involving increased discretion in their administration, and the delegation of authority to officials. It also examines the necessity to control and inform this discretion, and in particular, establishes preconditions for the exercise of discretion. These preconditions, or the conceptual framework, are intended to minimize the potential for abuse, and increase rationality and comprehensiveness in decision making.

The thesis will also examine the City of Vancouver's discretionary zoning system with respect to the nature and extent of discretion granted the administration and the compliance with the conceptual framework established earlier in the thesis.

The objectives, then, are twofold. The first is to establish a conceptual framework for the proper exercise of discretion in a zoning system in order to minimize abuse, and provide a positive planning tool. The second is to determine Vancouver's compliance with such framework.

Hopefully, the findings of the study will make a contribution to the small but increasing literature on discretionary zoning, and raise some issues which may assist the City of Vancouver in its approach to land use control.
B. Definition of Terms

Several planning terms are used frequently throughout the thesis, and may be open to misinterpretation. Consequently, these terms are defined at this stage in order to better understand the complex and judgmental concept of discretionary zoning.

Discretion - Individualized application of administrative judgment which allows a variable response and solution to a problem.

Flexible Techniques - land use controls which permit wide development options through the exercise of discretion.

Discretionary Zoning a flexible land use control system whereby development approval occurs by permission and not by regulation; granted by an authority exercising discretion.

Euclidean Zoning - The traditional as of right or self-executing zoning in which regulations are explicit and rigid; administrative discretion is negligible.

Negotiation - A process whereby a developer submits a proposal to public officials, and, in the ensuing process agreement is reached on the precise nature of the development to be permitted; a primary element of discretionary zoning.
Outright Zoning - uses and development standards which are determined in advance and specifically authorized in a bylaw and require mandatory compliance.

Conditional Zoning - discretion authorized by express provision granting permission to depart from the general provisions of a zoning bylaw.

Comprehensive plan - a series of documents setting forth policies for the future of the community which taken together cover all of the critical considerations in physical development.

Policy - Broad statements of objectives of a public body that form the basis for enacting legislation or for making decisions.

Standards - specific quantitative development regulations such as lot area, frontage, yards, density, parking, performance standards.

Guidelines - interpretive statements intended to help generate a unique solution; may be a mixture of narrow standards and broad policy.
C. Scope and Limitation of the Study

This study of land use control is focused on discretionary zoning and in particular, on the controls and limits to discretion necessary to enable discretionary zoning to be a positive regulatory device.

It must be noted, however, that a discretionary zoning system relies on the entire planning process in support of its administration. As a result, the thesis will delve into several areas of planning, but often only superficially because of the vastness and complexity of related elements.

The emphasis is on administrative discretion, exercised by officials/boards exercising powers delegated by a legislative body. The study, however, recognizes the frequent difficulty in differentiating among legislative, administrative, and quasi-judicial actions, even by delegates of such powers.

D. Methodology and Sources of Data

The conceptual framework was formed from an extensive review and synthesis of planning and legal literature on land use control, with emphasis on innovations and flexible techniques involving administrative discretion. The bulk of the literature was from the U.S.A. but the differences in planning and zoning legislation between Canada and U.S.A. is recognized.
Resources for the Vancouver case study came primarily from the City administration, particularly the Planning Department. Information was gathered from their planning library and files, reports to Council, personal interviews with professional and technical planning staff, members of boards, a City lawyer, and from attending Development Permit Board and Board of Variance meetings. Extensive review was given to the provincial Vancouver Charter and City of Vancouver Zoning and Development Bylaw. The nature of the study did not necessitate the use of resources outside the City administration.

E. Organization of Thesis

Chapter I introduces the thesis, establishes the context and objectives of the study. It defines important terms, the scope and limitations, and describes the organization of the thesis.

Chapter II examines the increased use of flexible zoning techniques involving considerable administrative discretion. The basic elements of discretion are reviewed, and the need for limits and controls on discretion is identified. A conceptual framework is established in Chapter II requiring three preconditions to the exercise of discretionary zoning to minimize potential for abuse, and to provide the maximum public benefit. The response of the Courts to the discretionary zoning is also examined.

Chapter III examines five flexible zoning techniques which involve the exercise of varying degrees of discretion. Traditional techniques examined are the zoning variance and the rezoning. Recent flexible techniques include
Planned Unit Development (PUD), incentive zoning, and performance zoning. The relationship of these techniques to the conceptual framework is also analyzed.

Chapter IV is the case study of the City of Vancouver's land use control system which grants considerable discretion to boards/officials. This chapter reviews the Vancouver system against the conceptual framework established in Chapter II and draws relevant conclusions.

Chapter V is the final chapter which synthesizes the findings of the thesis and integrates the conceptual framework and case study of Chapter IV. Directions for further research are discussed.
Footnotes

CHAPTER I


3. Village of Euclid (Ohio) V. Ambler Realty Co., 272 U.S. 365, 47 S.Ct., 114 (1926)

CHAPTER II

FLEXIBLE/DISCRETIONARY ZONING - EVOLUTION AND CONCEPTUAL FRAMEWORK

This chapter begins in Section A by comparing traditional Euclidean zoning to the more recent discretionary zoning techniques, and examining the response to the increased use of the latter. Section B then examines "discretion" in its basic administrative elements, followed by a review of the discretionary zoning process.

The exercise of administrative discretion potentially opens the system to abuse and arbitrariness. To minimize the potential for abuse, but yet maintain discretionary zoning's positive elements such as flexibility and creativity, it is necessary to establish a substantive basis for the exercise of discretion and to impose procedural safeguards. Three prerequisites for discretion are discussed in Section C. Section D briefly examines the Court's response to discretionary zoning techniques, followed by a chapter summary in Section E.

A. RISE OF FLEXIBLE/DISCRETIONARY ZONING

The critics of traditional rigid Euclidean style zoning question both its performance and basic foundation. Critics charge that:

1. It can be misused to permit destruction of valuable historical sites and resources.
2. It leads to design monotony.
3. It bears little relationship to rationally developed public plans and policies.¹

4. It decides too much too soon - before there is a rational basis for determining how land should be used.²

5. It is the tail that wags the planning dog.³

6. It establishes a relatively fixed approach to land use design while development factors continually change.⁴

7. It typically takes a negative approach - can only restrict and prohibit.⁵

8. It is in conflict with reality - the system prescribes to a static end state concept of land use control.⁶

9. It is based on the unrealistic assumption that the "ideal city" is a pattern of contrasting districts that rigidly separate incompatible uses.⁷

In effect, the critics assert that the whole system is outdated and that it is incapable of dealing with the complex and often-competing social, economic, and environmental issues surrounding urban land development. It was originally expected that the zoning ordinance would determine in advance how a community's land would be used and developed, and that public debate and formal adoption of the ordinance would minimize the need for discretionary judgments in its administration. However, it has not worked out in the neat, orderly and efficient manner anticipated.

John Reps recognized that zoning had abandoned many of its principles, and that "we have unnecessarily prolonged the existence of a land use control device conceived in another era". Reps asked "would it not be desirable to construct a system of development controls in which informed discretionary judgment plays the dominant or at least a larger role?" He went on to suggest such discretion should be guided by a community plan and a set of development standards and objectives.⁸
Reps also addressed serious objections which may be raised against discretionary zoning - claiming the "new approach" violates the cherished principles of certainty and predictability that are supposed to be virtues of the present system of districts, use lists and elaborate development standards. Reps responded that:

"This theory, however, is deeply undercut by the multitude of zoning amendments, improper variances, special exception permits, floating zone approvals, and unenforced violations. What remains is the structure of certainty without the substance - a mere facade of respectable predictability masking the practice of unguided administrative and legislative discretion.

Would a system such as I have proposed, with discretionary judgments firmly based on an official plan servicing as Haar's "impermanent constitution" and guided by stated development goals and standards, fundamentally reduce the degree of certainty that now prevails? I submit that it would not, and that it would be more honest to present the meat of reality rendered of its semantic fat."9

The inclusion of discretionary authority in local land use control systems has increased tremendously. However, it is still a long way from an orderly, organized system. What exists now is the widespread use of "wait-and-see" techniques that provide communities with an opportunity to make final development decisions at the time development occurs.

To the "old" flexible techniques such as variances and rezonings have been added many new devices to meet special development considerations. These include incentive (bonus) zoning, impact zoning, floating zones, overlays, PUD, TDR, etc - each flexible device allows considerable discretionary authority to delay or respond to development which is about to occur and to specify in detail how such development is to occur. The extent of flexibility
and administrative discretion varies widely among techniques and jurisdictions. Increasing governmental discretion is a significant administrative departure from the old self-executing or as-of-right zoning system. They key ingredient of this approach is its flexibility. Because many of these tools are more flexible and decisions more discretionary, i.e. judgment by public officials is involved, they are difficult to administer and involve greater public risk.

The increasing reliance on discretionary land use controls can be attributed to many factors. Fishman identifies five factors:

1. Disillusionment with traditional techniques that limit development options;
2. Larger scale of land development involving complex interrelationships;
3. Land use controls are expected to meet wider public objectives;
4. A greater sophistication of all actors in the development process;
5. A flexible system is necessary to work within an evolving several tier system of land development control.

The trend toward flexible discretionary zoning techniques has received a mixed response. Those who favour discretionary zoning controls over traditional as-of-right system argue:

- they permit the land use control process to be more responsive to complex social, economic, and environmental objectives and problems;
- they permit wider utilization of the most appropriate planning and development methods in a given situation;
- they increase opportunity for the use of cost-saving development methods;
they more readily permit the implementation of special community objectives such as increased housing opportunity or protection of environmentally sensitive areas;

they may open up the administrative process to closer public scrutiny; and

they are much better suited to the larger scale at which most fringe area development occurs.11

Others express strong reservations about the ability of local government to administer discretionary controls wisely and see serious dangers in their growing use. Concerns include:

- the secrecy attending most negotiations, which opens up the possibility of, or at least charges of, deal making, bribery, and extortion;

- allegations that communities make arbitrary and excessive demands of developers and, conversely, that developers can often put things over on unsuspecting communities, whose citizens must then bear the resulting costs;

- the inability to predict likely development and hence the inability to plan and program future public costs;

- the uncertainty of present residents about what will be built nearby and its effect on their taxes; and

- the opportunity to exercise de facto exclusionary policies under the guise of cooperation.12

The answer to these reservations about discretionary controls does not lie in abandoning them. The benefits from the flexible techniques are considerable. They key is to assure that a solid basis and adequate safeguards exist in the use of discretionary controls. This will be discussed in Section C of this chapter.
B. DISCRETION AND DISCRETIONARY ZONING PROCESS

This section is divided into two parts. Part one examines discretion and administrative adjudication, in its basic elements, from the perspective of two legal scholars. Part two discusses the process of discretionary zoning, and in particular, negotiation.

1. Discretion and Administrative Adjudication

Discretion, in its legal sense, may be defined as:

"the latitude of decision within which a court or judge decides questions arising in a particular case not expressly controlled by fixed rules of law, according to the circumstances, and according to the judgment of the court of judge."\(^{13}\)

Or, more simply, discretion is "an individualized application of administrative judgment which allows variable response and solution to problems evolving from changing conditions"\(^{14}\)

An administrative body is said to possess discretionary power when a choice of solution to a given situation is allowed or provided for in law. Such is the case in most administrative bodies in the municipal planning setting.

A doctoral thesis by E.D. Follick entitled "The Element of Discretion Inherent in Administrative Adjudication" (1969) examines the far reaching implications of discretion inherent in administrative adjudication.\(^{15}\) Follick
concludes that with the legislative, executive, and judicial aspects of
government fused into the administrative unit, the possibilities of discretion
in each phase of administrative action are considerable. He goes on to say
that flexibility is of the essence to practical and meaningful regulation
demanded of modern government, and that discretion plays a vital role in such
adaptability.

Follick states that discretion accorded an administrative agency must
have guidelines and procedural safeguards. The legislature, in delegating
power authorizing discretion, must clearly delineate the conditions and
circumstances in which the administrative discretionary power is to operate.
However, the legislature should not grant complete discretion to an admini-
strative agency which would entirely circumvent the legislative process. He
goes on to say that the legislature should not stipulate that the
administrative adjudicative process contain the least discretion possible, for
undue restrictions would deny administrative operation of the creative and
adaptable stance intended for realistic solution of diverse and specialized
problems.

Follick stresses that both the rule-making and adjudicative agencies are
controlled through statutory requirements of the legislature and by judicial
review of procedures by the courts reducing the potential for abuse.

The discretion inherent in administrative adjudicative allows an agency
to formulate diverse policies commensurate with the objectives of the governing
legislation. The courts have requested the administrative tribunal to evolve
procedures and policies from the statutory discretion granted, rather than to rely on questionable legal precedents from the courts which have unknown applicability. The evolution of generalized procedures boundarizes discretion for the guidance of future conduct. Follick's point here can be applied to the use of discretionary zoning techniques and the need for procedural safeguards and a substantive basis for decision making in order to "boundarize" discretion.

Follick believes that the larger issue of administrative discretion is not a matter of standards, but rather that discretionary action must be subject to stipulated safeguards in order to insure fairness and due process in agency action. The presence of safeguards does not prevent discretion with respect to the substance of the agency proceedings, but rather ensures natural justice.

Follick concluded that the exploration of the many phases of administrative discretion reveals the necessity for flexibility and adaptability on the part of agency technique and organization. The times and technological change simply demands it.

J. L. Jowell in "Law and Bureaucracy" (1976) examined the merits and defects of law to control administrative discretion. His findings, in general, were that such legal techniques are often mixed blessings and that their benefits from the bureaucracy's perspective were frequently offset by their burdens from the perspective of some or all of the bureaucracy's clientele.
He found that rules could provide for relatively uniform application and certainty. Rules could also encourage administrative integrity by inhibiting arbitrariness.

On the other hand, the existence of a "rule" does not guarantee its quality, fairness, or generosity. The seeker of "individualized" justice may resent being placed in a category shielding decision makers from considering unique circumstances. The by-product of certainty and uniformity is frequently legalism and rigidity. Jowell's findings can be applied to the planning context where Euclidean zoning was the "rule" and provided uniformity and certainty. However, Euclidean zoning was seen as unacceptable and consequently, discretionary zoning with "individual treatment" is viewed as a viable substitute.

2. Process of Discretionary Zoning

Flexible zoning techniques involve more than the traditional determination of compliance by an administrative official. While they vary in procedural complexity, each requires some evaluation by local officials before approval is granted; and many require extended negotiations. A considerable element of administrative discretion enters the picture.

The injection of discretion necessitates more stages in the approval process. Substantial professional skills are needed, and more public bodies
become involved in making decisions. And often due to extended negotiations, increased time is required compared to the administration of conventional regulations. Negotiation is a bargaining process.

There are three basic interest groups involved in this process:

1. land owner/applicant/developer/consultants;
2. public review authority - planners, and elected officials, agencies of local governments; and
3. general public.17

It is the first two groups which directly participate in the negotiations, particularly the planner and applicant. The general public is generally afforded an opportunity to be heard at public hearings.

A key issue in negotiations is the need to maintain an open process within defined guidelines. The give and take of bargaining may lend itself to one side trying to take advantage of the other: "It is a human process which pits personalities against one another, and the stronger party usually wins."18

However, the negotiation process raises some important questions as to who gets to talk to who, about what and when. Statutory and common law rules of procedure usually provide that decisions are made only after a public hearing at which all interested parties have a chance to present their case. Rules of natural justice must not be ignored. Sensitive negotiations, however, do require some privacy - but privacy can go too far. Unnecessarily restrictive limitation on the negotiation process might effectively preclude
use of many flexible techniques. A balance needs to be sought between protecting the rights of all parties and recognizing the way the process works.

Meshenberg outlines the following procedural guidelines:

1. The minimum amount of negotiation should occur in private. Minutes should be taken of negotiating sessions.

2. The negotiation process should be separate from the decision making process. Decision makers should not take part in negotiations.

3. The public hearing should be a meaningful rather than pro forma public participation to assure the public that decisions are not made in advance.19

Meshenberg goes on to say that even with the most carefully drafted rules, not every community is able to bargain effectively in the public interest, or, more broadly, to administer the new discretionary controls. He says that the effective negotiator should demonstrate the following:

1. Competence (experienced and sophisticated)
2. Professionalism (recognize and protect public interest)
3. Ethical behaviour (non discriminatory)
4. Comprehensiveness (wide view).
5. Knowledge of regulations (understand intent of regulations and policies)20

Babcock examines the zoning process, particularly the control of discretion.21 He states that firstly, nothing is so important to a successful scheme of land use regulation as discretion in its administration. Secondly,
nothing is more subject to destructive abuse than that administrative discretion.

The remedy, according to Babcock, is not to take the discretion away, but rather to so inform and control it as to make it a positive tool. Babcock's view is that many of the innovations, dealing with new procedures, techniques, and reliance on the "plan" are not the key elements. Babcock states that one must accept that zoning is essentially political in nature, and the ideal of zoning implementing a long term comprehensive plan is a "virtual impossibility". Therefore, he states that reform should neither overly stress comprehensive planning nor eliminate discretion, but rather that "when the private sector proposes a change, the discretion to grant or deny it be exercised openly, honestly, and on the basis of as thorough an inquiry and as full a participation as possible." Babcock concludes by emphasizing his support for procedural fairness over the "plan" by saying:

"If the system can assure the free interplay of the diverse interests and can encourage compromise and accommodation among the diverse interests, then there is much less need to be concerned with plans, regulations, and procedures that seek to limit artificially the discretion of those entrusted with the zoning power."22

This section examined discretion from both the scholarly and discretionary zoning process perspective. Findings, in general, are that the use of administrative discretion, and discretionary zoning in particular, will have positive results if it is controlled and informed. Approaches to controlling/informing discretion will be examined in the balance of this chapter.
C. SUBSTANTIVE BASIS AND PROCEDURAL SAFEGUARDS FOR DISCRETIONARY ZONING DECISION MAKING

The discretionary exercise of development control takes place between the extremes of rigid traditional zoning schemes and the total absence of regulations. It is clear that discretion cannot be total; landowners need to have some reasonably clear idea of what the community is likely to accept; and public officials need to be guided by some rules beyond merely the "general welfare" in deciding on development; and the system must respect principles associated with natural justice, or the duty to act fairly.

Simply stated, prerequisites for the exercise of discretion include the existence of a substantive planning basis, and the provision of procedural safeguards. The substantive basis includes two aspects: a technical basis (standards), and a broad policy basis (a comprehensive plan).23

These three prerequisites to the exercise of discretion form the conceptual framework of the thesis and will now be discussed in more detail.

1. Substantive Basis

   (a) Technical Basis: Standards

   These are predominantly technical standards in the form of development regulations, such as bulk and site control regulations, including height, FSR, and parking. Often they include technical criteria used to calculate and
measure external effects and to develop more flexibility (i.e. performance standards pertaining to noise, traffic, sunlight, etc). These standards may be part of a given zone, or of general application. Regulation by performance allows more flexibility than does the Euclidean system of regulation by use, bulk and site control.

These standards are generally derived from the findings of an overall planning study, and used to prevent ad hoc decision making. Codification of established principles into development regulations occurs where specific limits are desired, and where discretionary judgment is to be avoided. The regulations are generally non-interpretative and rigid in their application. The specific standards are tools to implement broader objectives, forming the second part of the substantive basis, the comprehensive plan.

(b) The Policy Basis: Comprehensive Plans

This section discusses the merits of comprehensive plans as a guide in the exercise of discretionary zoning.

In general terms, a comprehensive plan sets out community goals and future patterns of development. Its legal effect is limited, due partly to its generalized concepts which are usually incapable of precise interpretation.

Early zoning saw the need to coordinate land use controls with long range planning. Most provincial enabling legislation, and the U.S.A. Standard Zoning Enabling Act, now require zoning to be in accordance with a
comprehensive plan. Notwithstanding the common legislative requirement, debate continues on the theory vs. practice of the zone/plan relationship.

However, with increasing reliance on discretionary controls where final decisions are made at the time of development, the need for a plan that gives some direction and provides a policy basis for decision making becomes more acute. Simply, the plan should become the basis against which decisions can be made.

Heeter discusses the need for a change in comprehensive planning away from the rigid long range plan, if the plan is to provide a real basis for the administration of discretionary zoning. He states that it seems that long range planning and a static Euclidean system are complementary; thus, it appears logical that rejection of the static control system for a flexible/discretionary system would also necessitate rejection of long range planning, at least to some extent. He acknowledges the need for long range planning for certain purposes; however, the emphasis should be on short range programmatic planning to work with a flexible, dynamic control system.

Babcock echoes the desire for shorter term, narrower, and program oriented planning to work with discretionary control systems:

"Planning that focuses on development of specific programs to solve individual, immediate problems in a way that contributes to the long term realization of broader goals and objectives is planning of a sort to achieve a significant role in the development of cities."

Heyman on the same subject states:
"... a physical planning process that seeks to formulate flexible, long range objectives based upon problem oriented analysis and in relation to physical, social and economic problems and goals, provides a reasoned basis for a short term program plans ... if we are to foster higher amenity levels, the dynamics of development requires flexible government response. Both flexibility and particularized requirements threaten fairness. Detailed and wise comprehensive planning, however, can provide a basis for muting that threat."26

In summary, to adapt to discretionary zoning, the plan should be flexible, policy oriented, short term program oriented, but yet with broad long term objectives. The balance between long term "vision" and short term "realism" seems necessary in the plan and is a formula that cannot easily be defined. Every situation is different, but the important point is that a plan is necessary to give direction, some certainty, and to provide a policy basis for discretionary zoning decisions. Without a broad policy basis, the use of standards become questionable, and the discretionary zoning process is more likely to operate in a piecemeal and ad hoc manner. In order to be of service to the flexible implementing tool, the plan must become part of an ongoing dynamic planning process subject to change and not a single static document.

2. **Procedural Safeguards**

The increasing use of delegated discretionary zoning places additional pressures on the process. It becomes more critical to impose safeguards to address fundamental issues of fairness, openness, and rationality.

One must not forget to balance the rules of natural justice (similar to, although more narrow than, due process in the U.S.A.) with the merits and substances of discretionary zoning techniques. In general, the rules of
natural justice involve two principles: 1) parties must be given adequate notice and opportunity to be heard (audi alteram partem); 2) the adjudicator must be disinterested and unbiased (nemo judex in causa sua).\textsuperscript{27}

A fundamental right in Canada is the rule or supremacy of law. What it means generally is government by law, not man; or, the certainty of legal procedures; or, the absence of untrammelled official power; or, the protection of the citizen against unknown and unpredictable authority. Increasing discretionary powers given to administrative officials and a consequent narrowing of the rule of law have resulted in increasing government complexity.\textsuperscript{28} Some say that with increased zoning flexibility, that certainty of law must come to mean an acceptance of procedural fairness and good faith rather than advance specification of regulations and plans.\textsuperscript{29}

De Smith says that "every authority which is under a duty to act judicially, or adjudicate, must follow the procedural requirements of natural justice". He continues "there is ample authority than an obligation to act judicially in accordance with natural justice may be incurred by a body exercising discretionary administrative powers which seriously encroach on individual interests".\textsuperscript{30} It follows then that the exercise of discretionary adjudicatory powers by a delegated administration must follow rules of natural justice.

Some place more emphasis on fair process than on standards and plans as safeguards against abuse of discretion. Babcock states that notwithstanding the importance of an overall plan in discretionary zoning, that:
"We are convinced ... that the conscientious implementation of mundane procedural safeguards will do more to rationalize local land use regulation than a book full of revolutionary ideas or a shelf full of multi-coloured master plans."31

Also, Gerecke, in a study of Canadian zoning, concluded that it was not technical deficiencies where the major problems existed, but rather the lack of emphasis on procedural innovation and fairness.32

The standards of fairness in adjudication cannot be higher than those prescribed in common law, or contrary to enabling legislation. However, there are several criteria relating to natural justice that must be respected in the discretionary zoning process. These include provision of notice, opportunity to be heard, fair and impartial decision maker, record of decision, judicial review.33

D. DISCRETIONARY ZONING AND THE COURTS

The nature of discretionary zoning techniques subjects them to allegation of abuse. In defining generally the limits to discretion, in Phaneauf v. Corp. du Village and St. Hughes, 61 Que K.B.8.3 the Appeal Court established this principle:

"The legislation cannot anticipate every case down to the smallest details. Therefore, in order to be intra vires, a bylaw need only be within the general powers of the legislature".

Administrative law has laid down some general principles for the exercise of discretionary powers by administrative bodies. The delegates may exercise
discretion only within the prescribed limits in the enabling statutes. The power shall not be used arbitrarily or discriminately. Only relevant matters shall be considered in exercising discretion. The discretionary power shall not be used for unauthorized purposes. The Courts then have concerned themselves primarily with a narrow reading of enabling statutes.34

Canadian courts generally do not interfere in the planning process unless they find jurisdictional or legal defects; e.g. improper delegation, acting beyond or without authority, unfair treatment. Laux says that "Courts should not be second guessing planners, but they should always be available to ensure that officials are not exceeding their authority".35 The Courts then will continue to play an important role in judicial review to ensure the protection of all involved.

Similarly, in the U.S.A., the Courts have found little in discretionary zoning that renders it invalid, per se, so long as it is applied fairly and equally and, increasingly, evidence is presented that the application of such techniques supports a community plan. Meshenberg reports that the Courts are increasingly supporting discretionary decisions where a direct relationship to stated community policies exist.36

Reps addresses the potential for court challenges of discretionary zoning techniques:

"We have little to fear from courts reviewing the legislative basis of such an approach to land development control. The little band of radicals in 1916 pushed the judicial clock further ahead in their time when they
introduced comprehensive zoning than we would do in ours by pressing for additional discretionary powers".37

In summary, if the substantive and procedural prerequisites for discretion as identified in Section C of this chapter are followed consistently and uniformly, in accordance with enabling legislation, it would appear that challenges to discretionary zoning will have less chance of success.

E. SUMMARY

Traditional Euclidean zoning has survived from its inception in the early 1900's. Characterized by predetermined regulations and negligible administrative discretion, it has been under increasing criticism, mainly due to its rigidity and its unresponsiveness to changing situations.

The reaction has been a rapid rise in the use of discretionary zoning, characterized by considerable delegated administrative authority and flexible techniques. Although its merits include greater innovation, creativity, and capacity to respond to development when proposed, discretionary zoning has a major potential danger for abuse.

From analysis of the literature on discretion and discretionary zoning, a conceptual framework is established which requires three prerequisites for the proper exercise of discretion in the administration of flexible zoning techniques. They are a substantive basis, comprised of 1) technical standards (regulations), and 2) broad policy basis, or comprehensive planning (dynamic,
short term oriented). Thirdly, the provision of procedural safeguards in the form of rules of natural justice are required to ensure fundamental issues of fairness and openness. These three substantive and procedural preconditions to the exercise of discretion, comprise the conceptual framework for the study.

Chapter III will examine five specific flexible/discretionary techniques with respect to their intent and their relationship to the three prerequisites. Chapter IV will examine the City of Vancouver land use control system, which has considerable administrative discretion, in the specific context of the three prerequisites outlined in this chapter.
Footnotes

CHAPTER II


5. Ibid., p. 6.


9. Ibid., p. 10.


12. Ibid., p. 2.


14. Ibid., p. 3.

15. Ibid.


19. Ibid.
20. Ibid., p. 8.
22. Ibid., p. 276.
28. Ibid., p. 1X-1.
CHAPTER III

FLEXIBLE/DISCRETIONARY ZONING - TECHNIQUES

Chapter II examined the increasing use of discretionary zoning techniques, and in particular identified three variables in the discretionary zoning process which must be properly addressed to minimize abuse of discretion and to enable positive public benefits. The prerequisites to discretion are: 1) technical standards, 2) comprehensive plan, 3) procedural safeguards.

Chapter III will incorporate the conceptual framework of Chapter II with an examination of several flexible techniques which have evolved over time in response to the perceived negative features of rigid as-of-right Euclidean zoning. Traditional responses such as the rezoning and the variance will be examined, followed by more recent flexible techniques such as PUD, incentive zoning, and impact zoning.

These techniques were selected because of their tendency to involve some degree of administrative discretion in the granting of a right to develop, and because of their operation within the conventional framework of land use regulation.

All techniques are, by themselves, neutral. Their success depends on how they are used - if the discretion granted is abused, then results may be worse than if no flexibility existed. On the other hand, if discretion is exercised in a responsible manner, respecting substantive and procedural requirements, then its role can be positive.
The extent of, and limits to, discretion in the traditional flexibility responses (i.e. variance, rezoning) are different from recent flexible techniques (PUD, incentive, impact) since the former is based on Euclidean, pre-determined regulations whereas the latter's foundation is the broader wait-and-see approach.

This review is not intended as an in-depth analysis of the performance of each technique, but is rather a broad overview of the intent of the technique, and its relationship to the discretionary prerequisites identified in Chapter II.

A. Traditional Techniques

1. The Variance

Zoning bylaws were intended from the beginning to be ordinances of general applicability that provided different regulatory standards for different sections of the community. As such, it was anticipated that there would be instances in which a particular zoning restriction would impose an unanticipated hardship upon an individual property owner. For this reason, most zoning enabling legislation has granted local authorities a safety valve, called a variance to relax the terms of the zoning ordinance in order to provide relief from "undue hardship or difficulty".1

The power to grant variations, however, is probably one of the most frequently employed and misunderstood grants of power in zoning enabling
It is a power which has frequently been abused by granting variations, especially use variations, indiscriminately without reference to the statutory conditions which qualify the authority to grant variations. Notwithstanding the existence of enabling legislation, a major complaint is that too much discretion lies with these bodies. There is a general opinion that more rules are required wherever flexibility is being considered and discretion involved.

Most variance boards are staffed by laymen and act independently. Judicial review is an issue in a small proportion of cases, and then only on the narrow grounds of an illegal granting or obvious favouritism.

Notwithstanding criticism, there is considerable support for the use of the variance procedure judging in part from its continued existence despite the introduction of more sophisticated methods of achieving flexibility.

2. Rezoning (Spot Zoning)

Spot zoning, or the practice of individually zoning small parcels in a large and otherwise homogenous area, has been used since the inception of zoning, and can probably be characterized as the first technique to inject flexibility. However, spot zoning is often criticized for its lack of inclusion in a comprehensive plan and piecemeal approach to planning.

Judicial and administrative reception to spot zoning in Canada has tended to be more receptive and liberal than the U.S.A. The Supreme Court of Canada
decision in Scarborough v. Bondi appears to recognize that it is sometimes necessary to treat land differently, and the precedential effect of this decision has tended to facilitate the use of spot zoning throughout Canada.⁶

Even the U.S.A. Courts are becoming more receptive to spot zoning, as long as an individualized zoning is "related to something broader and beyond itself". There must be evidence of "rationality" and "equality", often linked to the "in accordance with a comprehensive plan" requirement.⁷

The decision in spot zoning applications rests generally with the legislative body, which is capable of exercising considerable discretionary powers. Depending upon procedural safeguards, and commitment to the comprehensive plan, if any, or other criteria, the effect of spot zoning can be significant.

These two traditional methods of flexibility evolved from the Euclidean pre-determined land use control system, and often were "attached" to a rigid system, which made the piecemeal efforts of these two devices somewhat less successful. Policy, instead of being made broadly and generally, often fell to being made on an individual, ad hoc basis by the Board of Appeals on one hand (variance), and by the legislative body on the other (rezoning). Often, individual discretionary decisions occurred in the midst of inconsistent application of procedural safeguards, and without the benefit of a technical or policy substantive basis. Notwithstanding deficiencies, these two original techniques to inject flexibility into a rigid system continue in use today.
B. Recent Flexible Techniques

Prior to the 1960's, zoning gave the appearance of a rigid and inflexible system where each use is assigned to its proper place. Provisions for flexibility rested primarily with the variance and rezoning. Since then, there has been an increasing trend to have zoning systems whereby the terms of permissible development could be negotiated at the time of development.

This trend began with use of special permits to control the development of incompatible uses and has culminated in recent years in the use of such techniques as floating zones, incentive zoning, impact zoning, TDR, PUD. In these techniques each proposed development may be judged on the basis of its individual circumstances - use, design, amenities, hours of operation, traffic, servicing, etc., rather than on the basis of probabilities and detailed pre-stated regulations.

Following is a brief analysis of three flexible techniques and their relationship to the three prerequisites for discretionary zoning.

1. Planning Unit Development (PUD)

a) Description

One of the earliest forms of flexible zoning, PUD combines elements of zoning and subdivision regulations, permitting large scale developments to be planned and built as a unit, and allowing greater flexibility in siting
buildings, mixture of land uses, arrangement of open spaces, and the preservation of natural features. Its two key elements are the application of controls to the entire development rather than to individual parcels, and the requirement of discretionary review to assure that site designs are consistent with public objectives.

The PUD is usually included as a district within the zoning ordinance, and implemented after extensive negotiations through a public rezoning amendment (e.g. City of Vancouver CD1 zone). The one feature common to virtually all PUD ordinances is the requirement for a site plan review involving extensive negotiation and discretionary judgment made by administrators, concluding with agreement on a specific development project.

b) Relationship to Standards, Comprehensive Plan, Safeguards

The degree of prior specification of standards is often an issue in the use of the PUD technique. Neither the extreme of detailed standards for all PUD elements nor that of complete flexibility is desired. Some elements (e.g. density, open space, parking, run off, servicing) can and should be controlled through numerical standards. Other elements need not be since there are better and more flexible ways to achieve desired results. Given wide design options, it is essential that qualified professionals be involved on both sides and that clear statements of objectives exist.

PUD's offer many opportunities for achieving policies stated in a comprehensive plan - opportunities not available or even negated through the
more traditional techniques. Results such as improved housing design, mixed use developments, density variety, preservation of natural features, and other public objectives are possible under PUD. Most bylaws require PUD consistency with the comprehensive plan.

As with most flexible zoning techniques, there are a number of risks and dangers if the PUD is misused. It is essential that strong safeguards be built into the process, particularly since development options initially are so wide.

2. **Incentive Zoning (Bonus Zoning)**

   a) Description

   Incentive zoning represents a positive approach to zoning as compared to the more restrictive, negative traditional approach. Essentially, incentive zoning is a trade off between the community and the property owner. In exchange for something that the community views to be in its interests, but which it might otherwise be unable to require (e.g. open space, direct access to parking, an arcade, plaza, construction of public facility), the developer is given a bonus, usually in the form of permission to build at a higher density. Bonus provisions have been utilized most frequently in high density districts of central cities (e.g. New York, San Francisco, Vancouver).

   Since developers are usually not restricted in bonusing, there has been little litigation on incentive zoning. Bonus provisions can be administered as of right or through a special permit process.
b) Relationship to Standards, Comprehensive Plan, Safeguards

Objectives desired from an incentive zoning approach must be stated clearly and based on careful study (i.e. they must follow a plan). The standards (bonus provisions) should be spelled out so all parties are aware of the limits, the process, and the costs/benefits, and can act accordingly. Arbitrary application is thereby reduced.

Mary Brooks in "Bonus Provisions in Central City Areas" (1970) outlines four critical steps in drafting a bonus system, that if omitted, reduces its positive effect:

1. Establish the purpose of the bonus system.
2. Select the amenities desired in the area.
3. Determine the specific bonuses to be granted.
4. Decide how to administer.10

Bonus provisions can strongly support a comprehensive plan by a positive focus on the elements that are necessary to achieve the desired results. Bonuses and incentives have been used relatively little and only to accomplish narrow public purposes. Their potential expansion to achieve wider community objectives is worthy of serious study.
3. **Performance Zoning (Impact Zoning)**

   a) **Description**

   Performance zoning employs quantitative criteria for the placement of land uses as compared to the more subjective traditional zoning districts. Instead of establishing permitted uses within a district on the basis of a lengthy list, incompatibility is avoided through specific criteria for a particular use. It is zoning by performance not by use. The use either complies with the standards or is not allowed. Impact zoning is highly flexible while protecting nearby residents. It can act as guide to change and allows for increased diversity.\textsuperscript{11}

   Better information gathering and analysis techniques have permitted greater reliance on performance standard zoning and the development of impact zoning techniques. Such techniques provide greater flexibility by allowing consideration of more variables in the decision making process.

   b) **Relationship to Standards, Comprehensive Plan, Procedural Safeguards**

   The intent of performance zoning is to replace the traditional use specifications with a broad set of numerical standards. However, the field is new and the standards are at present limited. Their most successful application to date has been industrial performance zoning (e.g. noise, glare, smoke, traffic).
A performance zoning system cannot replace the process by which a community sets the policies or objectives that their land use controls are implementing. Rather, performance zoning provides solid information for decision making, but decisions must still be made through the established process. The advantage of these models is that they allow communities to establish policies in a comprehensive plan and determine zoning matters through discretion in a more deliberate and informed manner.\textsuperscript{12}

The negotiating aspect of zoning may be reduced substantially mainly due to clearly identified guides to decision making.\textsuperscript{13} The administrative objectivity of performance standards is not questioned. However, the original determination of standards involves some degree of value judgment. Moreover, the highly sophisticated technology associated with these techniques makes administration somewhat difficult.

Impact zoning techniques are relatively new and have limitations. However, they can serve to significantly contribute to a substantive basis and if used in a process employing procedural safeguards, impact zoning techniques will serve to inform and improve the quality of discretionary decisions.

These flexible techniques are only three of a multitude of separate or cross breeds of innovation in land use control, all oriented toward the "wait-and-see" approach. One must remember that although the techniques offer much to both the community and developer, through flexible provisions allowing
innovation, they are open to abuse in that discretionary powers are used. It is clear that there must be boundaries. Total discretion is to invite abuse.

C. SUMMARY

This chapter applied the theoretical findings of Chapter II to the consideration of five flexible zoning techniques in use today which involve a considerable exercise of discretion.

Administrative discretion was negligible in Euclidean style zoning as all regulation was pre-determined. The flexibility in that system came firstly from the variance: a granting of relief from requirements of the bylaw due to "hardship" - administered by an administrative tribunal; and secondly, from spot zoning: individual parcel rezoning having little regard to a comprehensive plan, granted by the legislative body. These techniques enabled some flexibility, but were often done piecemeal, contrary to policy, and without a planning basis. They were used as a band-aid solution, ignoring the more fundamental problem of the Euclidean system.

Also, three recent flexible techniques involving the exercise of discretion were examined - PUD, incentive zoning, impact zoning. Each technique uses a "wait and see" approach, offers considerable flexibility, and can act positively to encourage innovative ways to use land and achieve community goals. With the wide discretionary powers in these techniques, it becomes paramount that such discretion be informed. Each flexible technique responds to the requirements of the conceptual framework in providing a substantive basis for decision making and including procedural safeguards in its process.
Chapter II established a conceptual framework for the exercise of discretion. Chapter III has described five flexible techniques involving discretion, and discussed the potential use of each tool in providing flexible responses to changing land use needs. In all cases, however, a discretionary judgment is part of the decision. In so doing, the importance of the provisions of the conceptual framework are demonstrated. Without a substantive basis and procedural safeguards, decision making becomes open for arbitrariness and abuse.
Footnotes

CHAPTER III


2. Ibid., p. 49.


5. Ibid., p. 67.

6. Ibid., p. 68.


8. Ibid., p. 19.

9. Ibid., p. 43.


CHAPTER IV

CASE STUDY - VANCOUVER DISCRETIONARY ZONING

A. INTRODUCTION

Chapters II and III outlined the evolution of discretionary zoning techniques involving delegation of administrative discretion to municipal officials. The study identified three prerequisites for the exercise of discretionary zoning: a technical basis (regulatory standards) and a policy basis (comprehensive plan) to inform discretion; and thirdly, procedural safeguards to prevent the abuse of delegated authority.

This chapter examines the Vancouver land use control system, and in particular the nature/extent of discretion relative to the three prerequisites. Section B reviews the enabling legislation contained in the Vancouver Charter. Section C examines the Vancouver discretionary zoning system beginning with a brief history, followed by a review firstly of Vancouver discretionary zoning legislation, and secondly the approval process. The chapter ends with conclusions pertaining to the Vancouver discretionary zoning system relative to the three prerequisites.

The study of discretionary zoning will focus on the legislation and approval process associated with development permit review where discretionary powers are exercised. In fact, figures for 1980 show that 90% of all applications for development involve discretion. Of a total of 1638 applications in 1980, only 137 were for outright uses.
It should be noted that this study is not an analysis of the performance and results of discretionary zoning, nor of processing efficiency. Rather, it is a focused examination of the nature/extent of discretion in the system as of July 1, 1982 and its compliance with the conceptual framework presented in Chapter II.

B. PROVINCIAL ENABLING LEGISLATION

This section examines the powers granted to Vancouver, by the Vancouver Charter, in particular with respect to the extent/nature of discretionary powers in land use control.

Part XXVII of the Charter specifically deals with Planning and Development, in Sections 559 to 573 (Appendix I). Sections 561 to 563 are the provisions for Official Development Plans (ODP). An ODP is a plan adopted by Council "for the future physical development of the city or any part thereof, whether expressed on drawings, reports or otherwise, and whether complete or partial".

Section 561 provides that a Council may prepare a development plan for the City or part thereof. Section 562 gives Council authority to, by bylaw, adopt the Plan as the Official Development Plan. Section 563 identifies the legal affect of adoption. It is critical to note that the Plan if adopted by bylaw in accordance with the enabling legislation, is binding on all parties. Section 563 reads:
563. (1) The adoption by Council of a development plan shall not commit
the Council to undertake any of the developments shown on the
plan.

(2) The Council shall not authorize, permit or undertake any deve­
lopment contrary to or at variance with the official development
plan.

(3) It shall be unlawful for any person to commence or undertake any
development contrary to or at variance with the official develop­
ment plan.

Section 565 grants Council the power to prepare a Zoning Bylaw. It is
not mandatory to do so. Subsections a-j of Section 565 prescribe the contents
of a Zoning Bylaw, including regulating uses, buildings, bulk standards and
creating zones of no uniform regulations requiring Council approval as to the
form of development (e.g. CD-1).

Section 565A outlines additional areas which Council may address by bylaw.
Subsection (d) is important to this study as it enables Vancouver Council to
delegate to any official/board wide powers of discretion relating to zoning
matters. Section 565A(d) reads:

(d) delegating to any official of the city or to any board composed
of such officials such powers of discretion relating to zoning
matters which to Council seem appropriate;

It is this provision which is the key to discretion in Vancouver's land
use control system. Once the powers have been delegated, the Council has no
jurisdiction therein, except that it can by bylaw remove or amend those
delegated powers.
Section 565A(i) is an important omnibus clause which gives Council the right by bylaw to prohibit uses for a variety of reasons including public safety and amenity. Section 565A(i) reads:

(i) prohibiting the erection, use or occupancy of any building or the use or occupancy of any land unless due provision is made for public safety and amenity, sanitary facilities, water supply, and drainage.

With respect to (i) it is of interest to note that delegation is not expressly granted to officials/boards. It is debatable whether subsection (d) is sufficient to give such authority, and whether subjects such as public amenity or public safety are "zoning matters" as stated in (d). In any event, boards and officials are in practice acting as though they have these powers.

Provisions for rezoning, particularly procedural safeguards, are included in Section 566.

Sections 572 and 573 specify the requirements and mandate for the Board of Variance including membership, criteria for judging appeals (i.e. hardship), and procedural safeguards.

In sum, the Charter's provisions and controls respecting discretionary zoning, and in particular development permits, are rather limited relative to the three prerequisites. Regarding a technical basis (regulations), the Council may adopt a zoning bylaw, and the contents are broadly defined. Secondly, a policy basis is provided in that an Official Development Plan may
be adopted. Thirdly, procedural safeguards are not specified with respect to development permits, except for appeals and rezonings. There are no provisions for appeal or review at a higher level than the local Board of Variance.

The Council may grant powers of discretion on zoning matters to boards and officials as deemed appropriate. However, they may not act contrary to any Official Development Plan.

In sum, the Charter grants wide discretionary powers to boards and officials. Such discretionary authority is limited only by the requirement to comply with any ODP. The Charter's control over, and requirements of, Vancouver are limited in terms of statutory prescription of required substantive criteria or administrative procedures. Vancouver then has considerable freedom of self-determination in zoning matters.

C. VANCOUVER LEGISLATION - Discretionary Zoning

1. Introduction

In 1974, the City of Vancouver made a major change in their system of land use control, opting for a more flexible system involving increased discretion by officials. This was decided after a lengthy debate and in response to complaints similar to those outlined in Chapter II (i.e. rigid bylaws hamper creativity; lack of public involvement, etc.). The former system was largely self-executing with pre-stated regulations and minimal discretion.
The new system is a mixture of fixed controls, flexible guidelines and policy statements/plans. It allows the City more discretion and enables more decision making at the time of development. The objective of the "new" zoning has been described as "neighborliness" with sunlight preservation, view protection, topographic adaption, social/recreation amenities, safety, all deemed to be part of this neighbourliness.3

Total discretionary zoning (i.e. all development at the discretion of the City) is used in a large portion of the City—in particular in areas undergoing redevelopment pressures, and where public response is most crucial and decision making more complex. Discretionary zoning means that all development is at the discretion of the approving authority—technically nothing is permitted by right and all uses and development regulations are discretionary. It is control by permission, not by regulation. This does not mean that the zoning provisions are ignored; but rather, that certain flexibility exists in administering the provisions, as long as public objectives are not unduly compromised. Areas now under such zoning include Downtown (DD), West End (WED), False Creek (FCCDD), Central Waterfront (CWD), and are all covered by Official Development Plans. All development in these areas is conditional, and discretion may be exercised within the prescribed limits of the enabling legislation. This will be discussed in more detail in part 2 of this section.

A part traditional, part discretionary approach (hereafter called traditional) is used in the balance of the City where areas are, for the most part, stable and established. Each zone includes a mixture of outright uses (no discretion) and conditional uses (discretionary). Development regulations
are rigid for outright uses, and discretionary for conditional uses (again, sufficient justification must be presented to relax the regulations). (see Figures 1 and 2).
FIGURE 1

LEGEND
VANCOUVER TRADITIONAL AND DISCRETIONARY (ODP's) ZONED AREA

- TRADITIONAL
- DISCRETIONARY (ODP's)
FIGURE 2

LEGEND

VANCOUVER OFFICIAL DEVELOPMENT PLANS (ODP) AREAS

WED - WEST END DISTRICT
DD - DOWNTOWN DISTRICT
FCCDD - FALSE CREEK COMPREHENSIVE DEVELOPMENT DISTRICT
CWD - CENTRAL WATERFRONT DISTRICT
2. Zoning and Development Bylaw 3575

The Zoning and Development Bylaw (ZDB) is the mechanism for controlling land use in the City. Its structure, not unlike most North American bylaws, includes sections on definitions, administration, enforcement, zoning districts, and regulations. Each zone has an intent clause, followed by outright approval uses (traditional zoned areas only), conditional approval uses, development regulations (e.g. Floor Site Ratio (FSR), yards) and in some cases specific provisions for the relaxation of regulations. An applicant requires an approved development permit prior to development. The approving authority for development permits is either the Development Permit Board (DPB) or Director of Planning (D of P), and in cases of appeal the Board of Variance (B of V).

Council's involvement is on a broad policy basis and it acts as approving authority for ODPs, guidelines, and policies which provide support for the discretionary land use control system. Council also decides on rezonings (by bylaw), and on rare occasions advises the DPB on development permits. In general, Council involvement in development permit review is minimal, as it has been delegated to officials/boards. There are some notable exceptions which have occurred as bylaw changes over time have provided additional safeguards with respect to certain discretionary powers exercised by the delegated authority. For example, Council must grant prior approval to floor space bonuses in the DD and WED Official Development Plan areas; to relax maximum permissible floor space in the FM-1 District; and to relax regulations for apartment housing for elderly citizens. Furthermore, Council is at times asked for advice and input on politically sensitive and
controversial applications under consideration by the DPB. The decision making on the application however rests with the delegated body, and not Council. In general, Council's involvement remains in broad policy formulation and leaves the ongoing development permit processing to delegated officials and boards.

The following review of ZDB legislation focuses on discretion and development permits. Part (a) reviews the basic administrative provisions of the ZDB, and identifies discretionary powers. Parts (b) and (c) examines Vancouver's traditional and discretionary zoning systems, respectively.

(a) Description of Legislation - Discretionary Zoning Administration

Section 3 of the Zoning Bylaw is the municipally adopted enabling legislation for defining discretionary powers in administering zoning and development permits. Section 3 (Appendix II) has evolved piecemeal over time. It is somewhat cumbersome and requires considerable interpretation and cross reference to other provisions.

Decision making on development permits rests with two authorities, the D of P and the DPB (the B of V is a third, but on appeals of decisions of the D of P or DPB on hardship grounds only, and is not considered in the study). The D of P is the head official of the Planning Department. The DPB is an administrative board composed of three voting members (senior City officials -
D of P (chairman), Director of Social Services, City Engineer) and an Advisory Panel of six citizen members. The D of P and DPB exercise powers on behalf of Council via Section 3.1.2 of the Zoning Bylaw. Section 3.1.2 reads:

It shall be the duty of the Director of Planning and the Development Permit Board to exercise on behalf of Council such powers as are hereby expressly delegated to them.

The extent and limits of their respective powers are broadly outlined in Section 3 (with additional provisions affecting the DPB contained in the DPB Bylaw, to be discussed later). The zoning districts themselves may further guide discretionary powers. However, the source of power lies in Section 3 of the Zoning Bylaw.

Section 3.3.1 recognizes discretion and gives authority to the D of P/DPB to exercise discretion in approving development permits with or without conditions, or refusing them. Discretion exists to refuse a conditional use, notwithstanding compliance with the Bylaw. Section 3.3.1 reads:

In dealing with applications for development permits the Director of Planning or the Development Permit Board may in every case and in accordance with the provisions of this By-law grant such permits either unconditionally or subject to conditions, including a limitation in time, or may refuse such permits.

The key provisions outlining the authority of the DPB and D of P are Section 3.2.4, and 3.3.3 and 3.3.4 respectively.
The DPB in 3.2.4 is granted power to relax provisions of the Bylaw (Zoning Bylaw) in exercising discretion. Section 3.2.4 reads:

The Development Permit Board, in the exercise of its jurisdiction, may relax the provisions of this By-law. In granting any relaxation, the Board shall have regard to the intent of this By-law, the regulations and policies of any Official Development Plan, and such other policies as Council may from time to time determine, including design guidelines.

Although the legislation allows relaxation of the provisions of the Zoning Bylaw, it provides clear direction to the Board to have regard for certain criteria in doing so; specifically, "have regard to" the intent of the Bylaw, regulations and policies of any ODP, and other Council policies. "Have regard to" requires consideration, different from mandatory "comply with". The jurisdiction of the DPB is all conditional uses, (except as specified in Section 3.3.3. below).

Section 3.3.3 describes the key authority of the D of P in dealing with development permits. The legislation allows the D of P to process all conditional uses not considered by the Board (i.e. those determined by staff to be relatively non-contentious). In so doing, the legislation authorizes the D of P to exercise his discretion in considering development, notwithstanding provisions of the Zoning Bylaw. However, similar to the DPB, limitations on discretion are contained in Section 3.3.4 requiring the D of P not to exercise his discretion if certain substantive issues have not in his opinion been complied with. Sections 3.3.3 and 3.3.4 read:
3.3.3 Notwithstanding the provisions of this By-law or any other By-law, and unless he receives a notice of objection from any member of the Development Permit Board, the Director of Planning may in his discretion either approve, approve subject to conditions, or refuse applications for development permits for which the consent of the Development Permit Board would otherwise be required.

3.3.4 The Director of Planning shall not exercise his discretion pursuant to subsection 3.3.3 above where, in his opinion:

(a) The development would have a significant effect on the existing immediate environment;

(b) The development would create traffic implications that could affect the general environment;

(c) The height or density of any proposed building would not be in keeping with the general building heights or density in the immediate environment;

(d) There may be possible significant buildings of heritage merit on the site or in the surrounding area that may be adversely affected by the development;

(e) The design is not of an acceptable standard and may adversely affect public amenity, in which case the Director of Planning may first request advice from the Urban Design Panel;

(f) The development is such that special public amenities could be considered for density bonus or other special advantages; or

(g) The proposed development could affect any public policy objectives, established or potential, including future transit locations and open space needs.

To clarify, Sections 3.3.3 and 3.3.4 were established for practical reasons to allow the D of P to directly process items not of major impact so
as to reduce the work load of the DPB, and enable appropriate allocation of
time and resources between them in the review of applications. Both the DPB
and D of P operate on a city wide basis (jurisdiction of the DPB was expanded
from the central city to the entire city in 1980). This will be discussed
further in Section D - Process.

The broad powers of the DPB and D of P are outlined in Sections 3.2.4 and
3.3.3/3.3.4. However, Section 3 further prescribes more specific provisions
for defining and guiding discretionary powers of the DPB and D of P. For
example, Section 3.2.1 and 3.2.3 grant the D of P power to relax provisions
respecting relatively minor technical matters (such as additions to buildings,
setbacks, screening, balconies). Moreover, Section 3.2.3 requires that the D
of P be satisfied that any property owner likely to be adversely affected by
such relaxation be notified.

Sections 3.2.5 and 3.2.6 grant the DPB/D of P power to relax provisions
dealing with heritage sites where literal enforcement would not allow restora-
tion of sites, again subject to certain substantive preconditions, and notifi-
cation requirements.

Furthermore, considerable power is granted to the DPB/D of P in 3.3.2
whereby any application could be refused notwithstanding compliance with the
Zoning Bylaw, if any of six conditions exist. Section 3.3.2 reads:
3.3.2 Notwithstanding the provisions of this By-law, a development permit may be refused if the development in respect of which application is made:

(a) Does not conform to an amendment to the Zoning and Development By-law for which a formal application has been made prior to the application for the development permit;

(b) Refers to a site or a portion thereof required for any civic purpose, in which case the Director of Planning shall refer the application to the City Council for authority either to negotiate with the applicant or to issue the development permit;

(c) Would prejudice the future subdivision of the property;

(d) Refers to a site where adequate drainage, sanitary facilities or water supply are not available;

(e) Would in the opinion of the City Engineer adversely affect the public safety; or

(f) Would in the opinion of the Director of Planning or the Development Permit Board adversely affect public amenity. If matters of design are involved, the application may first be referred to the Urban Design Panel for consideration and advice.

(b) Analysis of Legislation - Discretionary Zoning Administration

Sections 3.2.4 and 3.3.3/3.3.4 are the key provisions in outlining the discretionary powers of the DPB and D of P.

Considerable qualified discretion is granted to both authorities in that they can relax bylaw provisions. Section 3.2.4 requires the DPB to "have regard to" Zoning Bylaw intent, regulations, and policies of any ODP, and all
Council policies. The D of P, in considering conditional uses not handled by the DPB via 3.3.3/3.3.4, is to "not exercise discretion where ... in his opinion" seven planning criteria cannot be satisfied. These criteria are, by necessity, interpretive, judgmental, and difficult to determine (otherwise they would be quantified and provided as regulations in each zone). Nonetheless, they provide a substantive foundation for his decisions.

The other provisions of Section 3 address specific subject areas where discretionary power is further guided. Section 3.3.2 is important, however, as it specifically grants power to refuse applications notwithstanding compliance with the bylaw, if any of 6 conditions (a to f) exist. This provision reserves the right for the City to "change the rules in the middle of the game" for reasons of public interest. However, this prerogative must not be abused. Although rarely used in practice, potential exists here for abuse and uncertainty given the wide uncontrolled discretion. For example, such provisions could be used to refuse an outright use; or could facilitate political interference under the guise of planning rationale. Also, the range of eligible situations is broad and highly subjective (e.g. how is public safety or public amenity defined). One safeguard here is that any decision can be appealed to the B of V. However, in order to reduce uncertainty, the provisions should be made more specific, and at the least, provide for mandatory notification/hearing to reduce the potential for misuse.

In sum, the key provisions of 3.2.4 and 3.3.3/3.3.4 provide wide discretionary powers to the DPB and D of P. The authorities are to "have regard to" and "not exercise discretion where", in the context of specified
planning criteria. Of course, they must exercise considerable judgment in determining compliance with these interpretative criteria.

Such interpretation/judgment is a large part of discretionary zoning. The legislation in Section 3 at least, despite limitations, recognizes the need for, and provides a substantive basis to inform discretionary decisions. The framework is provided in Section 3 - the next step lies with the procedural safeguards, decision makers, and the process itself to respond to these provisions in a competent and professional manner.

Parts (c) and (d) will examine the legislation in Traditional and Discretionary zoned areas, respectively, to discern the extent and nature of discretion in these two areas.

(c) Discretion in Traditional Zoned Areas

This part reviews the traditional zoned areas to discern the extent/nature of discretion and its relationship to the three prerequisites. In these areas, discretion exists primarily with respect to conditional uses. Outright uses are permitted as a right.

To examine discretion in traditional zoned areas, a review will be done of a typical district, the RS-1 One Family Dwelling District. This zone is generally representative of the other 30 or so zones. (The RS-1 Zone Schedule is provided in Appendix III).
The intent clause is listed first, identifying the purpose of the zone. Second is outright approval uses where no discretion may be exercised. Section 3 lists the conditional approval uses allowing the discretion of the DPB, or D of P (via 3.3.3). A standard provision in all traditional zones preceeds the list of conditional uses, which outlines the basic limitations/considerations in exercising discretion. Section 3 and 3.1 of the RS-1 schedule reads:

3 Conditional Approval Uses

3.1 Subject to all other provisions of this By-law, including Section 3.3.3, and the provisions and regulations of this Schedule, the Development Permit Board may approve any of the uses listed in Section 3.2 including such conditions or additional regulations as it may decide, provided that before making a decision it:

(a) considers the intent of this schedule and the recommendations of any advisory groups, plan or guidelines approved by Council for the area; and

(b) notifies such adjacent property owners and residents it deems necessary.

Technically, the DPB is required to decide upon all conditional uses. However, as outlined earlier, the D of P via Section 3.3.3 of the Zoning Bylaw can act in place of the DPB, if the matter is deemed by staff to be noncontentious. In any event, either authority can relax any provision of the Bylaw subject to the general conditions of 3.2.4, and 3.3.3 and 3.3.4, and also can impose such conditions and additional regulations as it may decide as stated in 3.1 of RS-1.
Section 3.1(a) of RS-1 requires consideration of guidelines approved by Council, and is similar to the requirements of Section 3 of the Zoning Bylaw. Section 3.1(a) also requires consideration of the recommendations of any advisory group. The approving authority is then required to consider, but not necessarily comply with these provisions.

However, it is important to note that policies and guidelines do not exist for traditional zoned areas. Only in areas undergoing redevelopment pressures and/or having unique issues, such as Kitsilano and Fairview Slopes, are guidelines in place. Consequently, the exercise of discretion in many traditional zoned areas lacks a substantive basis in terms of policy and this could lead to arbitrary and ad hoc decision making. This is critical, given the wide discretionary powers for conditional uses, and the extensive and varied uses listed as conditional uses in traditional zoned areas.

Section 3.1(b) requires notification of adjacent owners and residents as deemed necessary. This is a procedural safeguard to open the system to the public and to enable neighbourhood views to be considered. However, this provision is optional, and as such, without further qualification, could result in no notification and no neighbourhood input. This situation in a system with considerable discretionary powers allocated to officials, represents a risk and could result in uncertainty and arbitrary decision making.

Section 4 Regulations lists development regulations. Authority is granted to relax the regulations for conditional uses (Section 3.2.4 and 3.3.3
of Zoning Bylaw), and include such conditions or additional regulations as it may decide as stated in Section 3.1 of RS-1. Regulations for outright uses cannot be relaxed.

In sum, although considerable discretion exists in the legislation with respect to the traditional zoned areas, such power is controlled somewhat by legislation which requires consideration of specified criteria, and provides for optional notification. Considerable responsibility is placed on the process followed by the approving authority. Some deficiencies exist, and will be further examined later in the chapter.

(d) Discretion in Discretionary Zoned Areas

Council has acted within the broad enabling powers of the Charter in approving ODPs for four areas of the City; the West End (WED), Downtown (DD), False Creek (FCCDD), Central Waterfront (CWD). These four areas are true discretionary zoned areas - technically, nothing is permitted outright. In each area, Council has adopted by bylaw, a Plan to regulate development within the boundaries of these areas. Included in the Plan is a combination of regulations, policies, and guidelines all involving considerable discretion. The Plan then functions in part as a regulatory zoning bylaw, and in part as broad policy statement.

A key point to remember here with respect to the limits on discretion is that the enabling provincial legislation requires compliance with any ODP. Therefore, any exercise of discretion beyond the Plan limits is without legal support.
The Downtown District Official Development Plan will be examined to determine the nature/extent of discretion and relationship to the study's three variables. (See Plan in Appendix IV).

Council approved the ODP for Downtown by Bylaw 4912 in 1975, as provided for in Section 653 of the Charter. The Plan is not part of the Zoning Bylaw. The intent of the ODP Bylaw is to regulate the development of Downtown Vancouver, and in particular to:

1. To improve the general environment of the Downtown District as an attractive place in which to live, work, shop, and visit.
2. To ensure that all buildings and developments in the Downtown District meet the highest standards of design and amenity for the benefit of all users of the Downtown.
3. To provide for flexibility and creativity in the preparation of development proposals.
4. To encourage more people to live within the Downtown District.
5. To support the objectives of the Greater Vancouver Regional District as referred to in "The Livable Region 1976/1986" as issued March 1975, to decentralize some office employment to other parts of Greater Vancouver by discouraging office developments considered inappropriate in the Downtown District.
6. To improve transportation Downtown by encouraging greater transit usage, discouraging automobile usage for journeys to work, and by maintaining automobile access for non-work trips including shopping, business and entertainment.

The ODP provides the general framework for the preparation of development proposals. Permits are processed in accordance with the Zoning Bylaw.

The ODP preamble states that "consideration of any development permit will be based upon the regulations and requirements of the ODP and upon such guidelines as Council may determine". It is emphasized that "guidelines approved by Council form an integral part of the development control procedure..."
for Downtown, and that the DPB shall be satisfied that the spirit and intent of such guidelines have been fulfilled." The ODP recognizes that flexibility should be granted to those preparing proposals, and acknowledges that "a significant degree of discretion is given to the DPB in the interpretation of regulations, policies, and guidelines".

The ODP Bylaw has a section on interpretation in which a distinction is made between regulations and interpretative requirements:

1. Regulations are set out for land use; maximum standards for building density (FSR), parking, height. Discretion exists only up to the maximum prescribed.

2. Interpretive requirements are set out with respect to permitted height, social and recreation amenities; design. These are flexible guidelines open to interpretation.

The ODP has 6 sections. Section 1 Land Use outlines 9 broad categories of use which may be permitted, "subject to such conditions and regulations as may be prescribed by the DPB". Use categories are all inclusive, from residential, commercial, office, park, institutional, to hotels. The only uses not permitted are medium and heavy industry.

Section 2 Retail Use Continuity requires the DPB to require retail uses in certain areas, and to encourage same in others. However, the conditions and design are at the discretion of DPB.

Section 3 Density is regulated by Floor Space Ratio (FSR). A maximum FSR limit is prescribed in 8 different density areas. The maximum is not given
as a right. In order to achieve the maximum, the proposal must satisfy the discretionary judgments of the DPB largely based on Council approved guidelines and policies. There is no "guaranteed" minimum.

Section 4 Height of Buildings specifies a maximum for 4 different height areas, except that the DPB, in its discretion, can permit buildings of excess height, subject to certain technical criteria as outlined in the guidelines, up to a maximum of 450 feet.

Section 5 Parking and Loading identifies certain maximum parking requirements, given the objective of reducing traffic congestion and commuter parking. Some discretion is granted the DPB, relative to surface parking design, loading space, again subject to qualifications.

Section 6 Social and Recreational Amenities and Facilities is provided in order to ensure these amenities are included for the enjoyment of downtown residents and employees. It is made up of two parts; first, is a list of ancillary facilities (saunas, day care, tennis courts) which, if provided, will not be included as part of FSR. Secondly, bonuses can be granted in the form of increased FSR if "any public, social, or recreation facilities" are provided (subject to demonstrated need for any facility and prior Council approval). Criteria are outlined to guide decisions of the DPB. No limits on the amount of the bonus is stated, but an additional and unique safeguard here is that the decision must receive prior Council approval.
In addition to ODP rigid regulations (within which discretion cannot exceed the stipulated requirements - e.g. height, parking, FSR (except if eligible for bonus)), and the ODP itself, Council has approved a set of Downtown Guidelines by resolution for the DD area to act as support documents in the exercise of discretion. The Guidelines are threefold:

1. Planning Policies - broad policy statements dealing with four subjects: growth; land use and density; movement; urban form.

2. Design Guidelines - to form the basis for development proposals and to replace the rigid yard requirements; six subjects are addressed: public open space; social and cultural; view; environment; physical design; parking.

3. Character Areas - 13 different areas in the Downtown which highlight the present and future desired character; with recommendations.

These interpretative "Guidelines" were prepared in recognition of the need for a substantive basis for decision making where considerable discretionary power exists.

3. Other Legislation

In addition to the ZDB and ODPs, there is additional legislation approved by Council which is an integral part of discretionary zoning in Vancouver. These include:
(a) Policies, Guidelines, Plans

Approximately 50 documents under various names such as policies, guidelines, and plans have been adopted by Council by resolution or bylaw since 1975 primarily to inform the public, development industry, planning staff, and approving authorities, on certain planning goals and objectives, and the ways and means of achieving them. (A complete list of these documents is included in Appendix V). Their purpose is to act as a support in the negotiation and decision making process to reduce uncertainty and arbitrariness. The importance of a substantive basis in discretionary decision making has at least been recognized judging from the number of documents under various names.

However, a major difficulty with these documents is their lack of clarity, consistency, currency, and their piecemeal application. The linkage/difference among policy, guidelines, and regulations is often not clear, and format not uniform making interpretation and application difficult. The difficulty here may not be so much with substance per se, as it is with organization and structure.7

More fundamentally, what is lacking is an overall development strategy or comprehensive plan that explicitly states Vancouver's goals and objectives. Existing now is only a scattered and implicit strategy based on assumptions and on varied plans/policies/guidelines. An overall comprehensive plan for the entire City would provide a consolidated and clearer consensus, would balance all interests, and serve as integrated guide for decision making.
(b) Development Permit Board and Advisory Panel Bylaw 4876

This Bylaw (Appendix VI) outlines the duties and membership of the Board and Panel. The Bylaw content is restricted to basic organizational issues. However, some safeguards to minimize abuse and provide for openness are included; for example, there is a requirement to hear any representations, receive submissions, and decisions are to be made in public. However, no requirement for notification is provided in the bylaw. Furthermore, an Advisory Panel of 6 citizen members is created by this bylaw to attend all meetings and make submissions to the Board prior to all decisions. These safeguards are in addition to the substantive requirements listed in Section 3.2.4 of the Zoning Bylaw.

4. Summary of Vancouver Legislation - Discretion

Vancouver's legislation grants the approving authority, the D of P and DPB, considerable discretionary powers. Their powers are limited somewhat by requirements to consider the intent of zones and regulations, policies, and guidelines. Moreover, the legislation requires notification as deemed necessary by the approving authority.

The ODP areas have an additional limit on the exercise of discretion, in that it cannot be exercised so as to contravene the Plan requirements. Relating back to the conceptual framework in Chapter II, three prerequisites
to the exercise of discretion were outlined. Vancouver legislation appears to at least recognize the need to inform and safeguard discretion. Generally, the legislation responds to the three prerequisites as follows:

1. Technical Standards: Regulations

Development regulations and standards relating to building bulk and yards are provided in all zones. Authority exists in the legislation for the D of P/DPB to relax these provisions as outlined in Section 3 of the Zoning Bylaw, notwithstanding the specific regulation. However, such relaxation shall occur only after certain interpretive preconditions are satisfied as specified in Section 3. Further, the provisions in ODPs and in conditional use sections of the ZB, grant power to impose such conditions and additional regulations as deemed necessary. However, in no circumstance can any relaxation and exercise of discretion contravene the requirements of any ODP.

Outright approval uses are specified in traditional zoning areas. Their regulations cannot be relaxed (except by the Board of Variance) as they are outside the jurisdiction of the DPB wherein authority exists to relax.

Conditional approval uses include all uses in ODP areas and those listed as such in traditional zoned areas. The D of P/DPB has authority to exercise discretion to relax the zoning provisions, up to maximum prescribed in any ODP. Again, guidance to the exercise of discretion is provided in Section 3 of the Zoning Bylaw.
2. Policy Basis: Comprehensive Plan

A substantive policy basis is provided in various forms ranging from guidelines to policies to plans outlining broad planning objectives. These apply in all ODP areas and in scattered parts of the traditional zoned areas. Although lacking in clarity and comprehensiveness, these documents do serve a useful function in guiding the exercise of discretionary judgment. However, a Citywide comprehensive plan giving ongoing direction for future growth does not exist.

3. Procedural Safeguards

Provision for notification where "deemed appropriate" exists throughout the legislation. Legislative provisions are more extensive for the DPB via provisions of the DPB Bylaw, than for the D of P where the only legislative constraints are contained in Section 3 of the Zoning Bylaw. No express provisions address issues of bias/partiality, the second component of natural justice. However, DPB meetings are public, and having an Advisory Panel provides some public scrutiny. Moreover, there always exists the opportunity to appeal the decision of the D of P or DPB to the B of V. Furthermore, there is a final option open for judicial review.

A further safeguard, albeit subtle, is that the legislative body is the master and can remove the delegated approving authority at any time. Such master-servant relationship must be recognized.
In sum, the Vancouver legislation provides wide discretionary authority to planning officials and boards. Within prescribed ODP limits and excluding outright uses in traditional zoned areas, the D of P/DPB can relax provisions where it will not, in their judgment, contravene the substantive/procedural limit to their discretion as outlined in the legislation, particularly Section 3 of the Zoning Bylaw. Further, they have authority to include such conditions and additional regulations on conditional uses as they may decide. Moreover, the legislation grants power to refuse an application that complies with the regulations. Technically speaking, there are no development rights for conditional approval uses. Notwithstanding that the legislation requires specified justification to relax provisions, and to exercise discretion, the bottom line is that the legislation provides considerable discretionary powers to planning officials and boards.\(^8\)

The Vancouver system with wide discretionary authority places pressure on the process and the planning staff in working with the legislation to achieve positive results. Section D will examine issues relative to the Process.
D. VANCOUVER PROCESS - Discretionary Zoning

1. Introduction

Discretionary zoning places considerable pressure on the process itself as was outlined in Chapter II. For example, additional inputs are necessary to properly address judgments and to provide for extensive negotiation compared to the self-executing Euclidean Zoning.

This Section examines the development permit process with the aid of a flow chart. An analysis of the process relative to the legislation and three prerequisites is provided.

Information was gathered largely from City files and resources, attending DPB meetings, and extensive interviews with technical and professional City planning staff.

2. Development Permit Process

(a) Flow Chart

Figure 3 is the stated development permit process/Flow Chart which explains the entire process starting with pre-application inquiry, through negotiation, and concluding with a decision on the issuance of a development permit.
FIGURE 3
CITY OF VANCOUVER
DEVELOPMENT PERMIT PROCESS

Source: Eight Years After
by City of Vancouver Planning
Department; October, 1981
The process is largely self explanatory; however, there are several subtle issues that require clarification, some of which may not be part of the flow chart.

(b) **Description of Process**

The D of P and DPB are the key figures since they are the final decision makers. However, their decision is preceded by considerable administrative activity.

Applications for outright approval uses (non discretionary) are handled according to the Bylaw and are not considered further in this study.

If application is for a conditional approval use, than a senior planning staff member determines if the applicant should go before the D of P or DPB for decision, as provided for in Section 3.3.3 of the Zoning Bylaw.

This staff determination (to refer to either the D or P or DPB for decision) is not based on legislative direction but is an internal administrative arrangement whereby the DPB is only assigned the "major applications" (those deemed to be of major impact, complexity, or controversy). The D of P considers those applications deemed to be "relatively minor, or non-contentious". Of all conditional use applications submitted, the D of P considers 90%; and the D of P, personally considers a few of these. The balance are considered by staff designated by him.
The staff judgment on who decides (D of P or DPB) is important because applications submitted to the DPB are processed more rigorously than those considered by the D of P. Even so, the option does remain to refer an item to the DPB at a later stage if "deemed necessary by staff" (e.g. considerable citizen input, major issues arise).

In any event, the application proceeds through an initial process including circulation to other departments, and plan checking. Since the legislation grants discretion to relax provisions, a varying amount of negotiation occurs between the staff and applicant. Staff is to "have regard" to the regulations and intent of the zone, any approved Council policies, guidelines, or plans, and to exercise sound judgment accordingly. Trade-offs are common among the varying objectives of the different parties involved. The Urban Design Panel and any local area planning committees are advised of the application and provide input. The option also exists to notify nearby property owners by letter. The decision to notify is at the discretion of staff, to in effect, determine for a neighbourhood whether a proposed project warrants their input. All comments received are considered in rendering a decision. If considerable response is received, a public meeting may be held to clarify positions and seek compromises prior to any decision.

For non DPB scheduled items (i.e. those deemed minor, non contentious), the D of P (or designate) will make a decision on the application after gathering all the necessary information, in accordance with the discretionary powers that are granted. No further steps are generally required.⑨
For items going to the DPB, further safeguards and steps in the process are required. The item goes before a development permit staff committee (Senior City Officials) for recommendation prior to the DPB meeting. Also, it is City policy to place a notice of the application in the newspaper, and post a sign on the property (1976 Council policy), at least 10 days prior to the meeting. The DPB meetings held every Monday are open to the public. The Board hears a presentation on each item from planning staff with a recommendation to approve with/without conditions, or to refuse. A written staff report is also submitted advising of the application's compliance with the zone or plan in question, relationship to Council guidelines and policies, and the response, if any, to notification and advertisement. The applicant is then given the opportunity to be heard, as is anyone else. Prior to a decision, the Chairman (D of P) requests input from each member of the Advisory Panel (representatives from the general public, design professionals and development industry). The three member Board then votes in public on the application and gives reasons for their decision. In cases of dispute or if further input is needed, the Board may request prior Council advice.

Any decision of the D of P or DPB can be appealed to the Board of Variance.

(c) **Analysis of Process**

The Flow Chart shows the importance of the process to the discretionary zoning system. The need for competent decision makers has been referred to earlier. However, it is also important for all the component parts of the process to be effective. Planning Department staff are, in particular, key
actors in the process given the wide administrative options open to them. Moreover, they have a major influence on the outcome since the decision maker is often not involved until presented with their final recommendation. Consequently, staff responsible for negotiation must exhibit the qualities identified in Chapter II: competence, professionalism, ethical behavior, sound judgment, comprehensiveness, and knowledge of regulations.

Of course, the staff and decision makers are limited in their role by many factors including the provisions in the legislation, the process itself, and quality of documents adopted to inform the exercise of discretion. The linkage among policies, guidelines and regulations must be clear, and the substance be comprehensive and current to be of assistance in the process.

The Vancouver development permit process and use of discretion has been under some scrutiny by the City itself and some outside bodies since its inception in 1974. For example, three separate reviews and formal discussion occurred in 1978 and 1979 focusing primarily on the development permit process. The general consensus of these reviews was that the basic flexible discretionary development control system and the D of P/DPB system was working well. Criticisms related to the length of time of uncertainty for applications. It was felt the process took too long, was too complex, and that there was no certainty until a decision was made. The recommendation from these reviews was primarily to increase the speed of the process, thereby reducing the time of uncertainty. Substantive issues relating to a substantive planning basis and procedural safeguards, while addressed, were of relatively less significance.
Some staff have acknowledged that time pressures and pre-occupation with the process and expediency has resulted, at times, in a "fly by the seat of your pants, based on experience" approach. Such expedient response may be politically acceptable and may reduce criticism in the short term, but decisions without proper foundation could undermine planning objectives and the discretionary zoning process.

In general, however, staff expressed basic satisfaction with the process, notwithstanding their recognition that pressures for expediency may have at times resulted in only essential elements being analyzed and "somewhat superficial" treatment of all the issues. However, despite deficiencies, Planning staff (including the D of P) are supportive of the current system, and the nature and extent of discretionary powers they possess.

The question of fairness/impartiality/bias arises as the decision makers (DPB, D of P) are city officials (as required by the Charter). Both the fact and appearance of fairness is required in decision making. Several national studies have been done on the relative advantages of different decision process systems, with a variety of conclusions. No firm answer exists. However, Vancouver should examine this issue carefully to see if an alternate system (e.g. Hearing Examiner) may achieve a greater public benefit.

The issue of appeals also raises concern. First, the author suggests that provision of appeal is necessary given the wide discretionary powers granted. However, the current mechanism, the Board of Variance, may not be appropriate. The Board of Variance is a lay body established to consider
minor variances because of hardships, and its capacity to address the complexities and subtleties of major projects is questionable. Again, examination could be given to other options such as widening the Board's mandate, the creation of a Provincial appeal body, or even appeal to the legislative, policy making body, City Council.

3. **Summary of Process**

The stated process, in general, mirrors the legislation in that it provides the mechanism for discretionary decision making as prescribed.

The study's three prerequisites are incorporated into the process. A substantive basis in terms of regulations and policy is the foundation for the extensive negotiations which occur. Procedural safeguards are included in the process such as notification, appeal, advertisement, signage, and input from non-city bodies, although many are optional.

The discretionary zoning process is an administrative arrangement combining legislative requirements with administrative procedures deemed relevant by Planning staff. Consequently, considerable leeway and responsibility is given to all participants in the process, in particular, the planning staff. Given the wide discretionary administrative options available to staff in the process, it is often difficult to comprehend or predict the steps or outcome of the process. While acknowledging that substantive provisions must be interpretive in a discretionary zoning system, the process of decision making should not be. A nebulous process can enhance the power of
those in control, thereby making process comprehension difficult and threatening overall fairness. It may therefore be concluded that there is need to clarify, document and increase certainty in the process.

The process analysis and its complexity demonstrates the importance of coherence in all of its components. Competent planning staff is required, in particular negotiators who make judgments/trade-offs on applications and finalize recommendations.

Also, the process and Flow Chart shows there are less procedural safeguards required of the D of P in the exercise of discretion, than the DPB. As a result, the potential for abuse increases given the D of P's wide discretionary powers.

From a review of external studies of the system indicated earlier in this section, staff reports to Council, and interviews with staff describing constant pressures for rapid permit issuance, it seems there may be a higher relative priority on process expediency than on planning substance and procedural safeguards. If such a judgment is accurate, planning objectives could be compromised.

In sum, notwithstanding that the legislation and process addresses the three prerequisites of the study, there are several critical deficiencies which could jeopardize the success of Vancouver's discretionary zoning system. Section E, the final part of this chapter consolidates the findings and concludes this study.
Figure 4 is a chart which summarizes in matrix form several variables associated with the exercise of discretion in the issuance of development permits by the two decision makers examined in the study, the D of P and DPB (the B of V is also included for information). In particular, the chart outlines the approving authorities' relationship to the three prerequisites to the exercise of discretion, and should be of assistance in comprehending the conclusions and in clarifying Vancouver's discretionary zoning system and its conformance with the three prerequisites of the study.
### Conceptual Framework

#### Three Preconditions to Discretionary Zoning Decisions

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<th>Area of Jurisdiction</th>
<th>Extent/Nature of Discretion</th>
<th>Substantive Basis</th>
<th>Procedural Safeguards</th>
<th>Number of Applications (1980)</th>
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<td><strong>Director of Planning (D of P)</strong></td>
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*For information only (not part of study)*
E. CONCLUSIONS

A. Wide discretionary powers are granted to, and exercised by, Vancouver planning boards and officials.

B. The Vancouver discretionary zoning legislation and process, in general terms, complies with the intent of the conceptual framework outlined in Chapter II, which required three preconditions prior to the exercise of discretion to prevent abuse and ad hoc decision making. A substantive basis is required in two forms: (1) Technical Basis: Standards; (2) Policy Basis: Comprehensive Plan. Thirdly, procedural safeguards are required in the process to prevent abuse of delegated discretion. In general:

1) Specific technical standards or development regulations are provided for each zone in the Zoning Bylaw and regulation provisions of ODPs, where it is deemed necessary to make requirements specific.

2) A broad policy basis is found in a series of documents (approximately 50) approved by City Council since 1974 under various names, such as policies, plans, guidelines. In general, these documents are intended to be somewhat flexible and interpretive to provide direction and foundation in making individual discretionary decisions. However, no city-wide comprehensive plan exists.
3) **Procedural safeguards** are outlined in the Zoning Bylaw, ODP, DPB Bylaw, resolutions of Council and internal administrative procedures. Safeguards include notification provisions, right of appeal, and in certain situations right to hearing, posting of signs, public meetings, input from non city bodies, etc.

C. Notwithstanding apparent broad compliance with the conceptual framework, several major deficiencies in the Vancouver discretionary zoning system can be identified relative to the three prerequisites. The study concludes that the following deficiencies exist creating the potential for abuse, and arbitrary decision making:

**Deficiencies relating to Substantive Prerequisites (Technical Standards and Policy Basis)**

1. Confusion exists among documents approved by Council intended to provide a substantive basis to guide discretionary judgments. More than 50 documents under titles such as guidelines, policies, plans, have been adopted. However, in general, they do not provide a workable foundation for decision making but often inhibit change and create delay, in so far as their intent is not explicit and their application is often out of date. The linkages among regulations, guidelines, and policies are often not clear, nor are the implementation mechanisms to achieve policy. The difficulty may not be so much with substance per se, as it is with organization and structure. Consequently, increased uncertainty results.
Comment:

Consideration should be given to a program to clarify, update and refine all support documents; consolidate and separate all regulatory and policy documents; to codify guidelines where established principles exist; to ensure policy is properly implemented. A substantive basis is critical to the system. When a proper framework exists, it becomes easier for the planning substance to be useful. Discretion must be seen as objective decision making based on sound policies/guidelines rather than arbitrary action of a delegated authority.

2. Conditional uses in traditional zoning areas have a minimal policy basis for the exercise of discretion. No official development plan exists, and only in scattered areas does a Council Plan/policy/guideline apply. Therefore, there is a potential for ad hoc and piecemeal decision making in these areas.

Comment:

Consideration should be given to preparation of a flexible, policy oriented comprehensive city-wide plan; or at the least develop interim policy statements/development guidelines for all non ODP portions of the City to guide the exercise of discretion.
Deficiencies Relating to Procedural Safeguards

3. The act and method of notification is discretionary for conditional approval uses. As such, it potentially threatens the openness of the discretionary zoning system as it allows relaxation of regulations without the input of the neighbourhood directly affected.

Comment:

Consideration should be given to notification being required for all conditional uses such as within a 200 foot radius of a site. It is recognized that this places an increased burden on process. However, in a discretionary system both the fact and appearance of fairness and openness should outweigh process inconveniences. In fact, some say the only safeguard in a discretionary zoning system is full public review. A second, more expeditious alternative, would be to advertise all conditional uses in the newspaper prior to decision, and allow public input.

4. Little public documentation of the process exists outside of the broad legislative provisions. As such, uncertainty, misunderstanding, mistrust, and public nonconfidence results. Considerable administrative leeway exists in the discretionary planning process and heavy pressures on staff exist in making
preliminary administrative decisions throughout the process, prior to decision by D of P or DPB. Moreover, the process often appears confusing and inconsistent.

Comment:

Consideration should be given to preparation of a public process guide. This would include the philosophy and intent of the process, followed by legislative and administrative procedures. This includes outlining options open to staff in the process, and criteria used in judgment. Such process guide would check power, and improve predictability and public confidence in the system.

5. Unbiased and impartial decision making is threatened if the decision maker is also the negotiator. This can occur as the negotiator may be directly involved in the decision, as the D of P, or on his behalf. Notwithstanding safeguards in place and the need for expertise in the decision making, there is concern that there be substantial freedom from bias.

Comment:

One option is to require that the decision maker not be part of the negotiation process. Again, the fact and appearance of fairness is important. Consideration could even be given to
assigning decision making power to a qualified individual or
commitee outside the system, such as the Hearing Examiner
approach, where expertise and public awareness still exists,
but is more likely to be free from bias and partiality.

6. Safeguards are less rigorous for the D of P, relative to DPB,
notwithstanding the powers and jurisdiction can be very
similar. Potential for abuse by the D of P appears greater.

Comment:

Consideration should be given to increasing the procedural
safeguards in the exercise of discretion by the D of P. A
possible solution would be to advertise all items to be
considered by him. It may also be helpful to provide a public
record indicating the rationale for decisions, including
compliance with policies and guidelines, and minutes of any
negotiations and meetings. Again, the fact and appearance of
fairness is critical to instill and maintain confidence and
increase accountability.

7. Appeal is limited to the Board of Variance, a lay body with
limited expertise and jurisdiction. Potential exists for
unfair and unqualified consideration, given the complexity of
applications before them for decision.
Comment:

Consideration should be given to widening the mandate and membership of the Board of Variance; or creating a Provincial appeal or review agency; or even providing for direct appeal to Council. In any event, the provision of the right to appeal a decision to a qualified body is necessary given wide powers delegated to boards and officials.

General Comments

8. Consideration should be given to establishing a monitoring system, whereby the discretionary zoning system and all its components (policies, regulations, guidelines) could be monitored against realistic objectives for the system on a regular basis; such as every two years, with an overall review required every five years.

9. Every effort should be made to ensure high standards are maintained for selection of key negotiating staff and decision makers.

10. Amendments to the Zoning Bylaw have occurred piecemeal over time in response to ongoing pressures. Consequently, the Bylaw may not be as clear and precise as desired in intent and interpretation. A comprehensive rewrite would more clearly establish the rules, and increase predictability and certainty.
F. SUMMARY

The study concludes that Vancouver discretionary zoning complies with the overall intent of the conceptual framework. However, major deficiencies exist as stated in this chapter and should be corrected to achieve greater public benefits from the system.

Improving the quality and organization of the substantive basis will make application of discretion more reasoned. Providing additional procedural safeguards will lessen the possibility of ad hoc and arbitrary decision making. This will increase certainty and public confidence in the system. The substantive basis and procedural safeguards, in effect, act as checks/balances and police the system to ensure maximum public benefit. Unnecessarily restrictive limitations on the discretionary zoning process might effectively preclude many benefits. A balance needs to be sought between protecting the rights of all parties and the practicalities of the way the process works.

Implementing the study's suggestions into an already established and workable system, although requiring additional time and resources, should help to achieve a still better system more in accord with the prerequisites that have been identified.
FOOTNOTES

CHAPTER IV

1. City of Vancouver Planning Department, 8 Years After, 1981, p. 2.

2. This requirement is different from the provisions for the balance of the Province under the Municipal Act where the Official Community Plans are only binding on the actions of Councils.


4. This applies to the maximum floor space for commercial uses and the transfer of floor space within the FM-1 (Fairview Slopes) area.

5. This applies to the C-3A (Commercial) District; contains unique provisions for Council to decide in place of DPB.

6. The only exception here is that there is authority to refuse even an outright use if any of six conditions exist as identified in Section 3.3.2 of the Zoning Bylaw. The "last resort" provision, however, is rarely used.

7. The difficulty seems to be related to the organization and structure of these support documents. For example, Council approved in 1975 a set of "planning policies" as part of the Downtown ODP. The following four major policies exist for land use and density:

"1) Do not increase commercial office densities.
2) Encourage residential developments to occur downtown.
3) Encourage conservation of areas valued by the community.
4) Adjust density controls to permit some commercial development and also encourage residential development."

However, these policies are extremely broad, have no time frame, and no implementation mechanism. To be more useful, what is needed, at least, is a more specific statement of the objective (even quantified), followed by outlining the nature and extent of the program necessary to achieve it. The linkage between the policy and regulatory tool must be clearer.

8. In examining the Vancouver legislation, several side issues arise regarding the extent of discretion, where the legislation is silent or the intent is open to some interpretation. While this area is not central to the thesis and the conceptual framework, it is of interest in a more legal sense. Little reported case law exists in B.C. on this.

For example, the enabling legislation in Section 3.2.4 gives authority to the DPB to "relax provisions". While this clearly allows authority to be
less restrictive, does it also give power to be more restrictive, or to impose stricter requirements (e.g. require a 30 foot height limit when 45 foot is permitted). While this occurs in practice, its authority may be questioned.

Also, with respect to approving a use not listed in a zone, the legislation is silent and does not specifically preclude it. For example, the legislation says in 3.3.3 "notwithstanding provisions...", wherein approving a use not listed could be interpreted as intra vires. However, such action would be tantamount to a rezoning (a legislative act), and would not likely occur given the direction to consider guidelines, etc. in making a decision. However, no clear position on this is stated in the Vancouver legislation.

9. The Flow Chart indicates a staff committee meeting considering items dealt with by the D of P, prior to the D of P making a decision. However, in practice, this does not occur as the staff committee meeting considers only items scheduled for the DPB.

10. Three reviews were undertaken in 1978, 1979:
   c) UDI, AIBC, City Hall Liaison Committee on Development Permit Process, 1979.
CHAPTER V

EPILOGUE

Chapters II and III examined the rise of flexible zoning techniques involving increasing administrative discretion delegated to officials by legislative bodies. A conceptual framework was established which specified three preconditions to the exercise of discretion. A substantive basis is required in two forms: first, technical basis: standards, and secondly, policy basis: comprehensive plan. Thirdly, procedural safeguards are required to minimize potential for the abuse of discretionary powers. Chapter III examined five specific flexible techniques in use today involving a considerable exercise of discretion. The need for each technique to respond to the conceptual framework was demonstrated.

Chapter IV examined the Vancouver discretionary zoning system to determine the extent/nature of discretion relative to the conceptual framework. The study revealed that first, wide discretionary powers were delegated to administrative officials/boards. Secondly, the Vancouver system complied with the intent of the conceptual framework, but several major deficiencies existed. The deficiencies, in general, were that a basic framework existed in the legislation and process, but that insufficient attention was given to a substantive basis in decision making and the provision of procedural safeguards. Some suggestions were made to tighten up the system thereby reducing potential for abuse, increasing certainty, rationality, and public confidence in the system.
What has become increasingly evident in this study, both from the literature and from the Vancouver study, is the necessity for a land use control system to have all components firmly established and working effectively. This is particularly true in the case of discretionary zoning where considerable discretionary authority is delegated, and rules are not determined in advance, nor is the process self-regulating. In addition to the preconditions of substance and procedure, the study revealed an area which justifies restatement; that being the need for negotiators and decision makers to be of the highest competence and expertise to make the subtle judgments and tradeoffs that are necessary.

The nature of discretionary zoning is such that if the system cannot be kept finely tuned, and responsive to rapidly changing public needs, then its capacity to be a positive regulatory tool diminishes. In such a case, it may be more desirable to revert to the former Euclidean approach or at least to provide reduced flexibility/discretion; in so doing, at least certainty is increased notwithstanding rigidity and other deficiencies of the Euclidean approach.

This study does not promote reverting to a Euclidean system; nor, however, does it suggest using a complete discretionary system without safeguards. Sufficient evidence exists - some of which has been provided in the thesis - to discount either extreme position.

The study acknowledges the need in modern society for increased delegation by the legislative body to administrative officials. The question becomes
"how much is enough", and to what extent should provision of delegated powers be ascertainable. The appropriate balance between flexibility and predictability will always be questioned. This duality will never be resolved to everyone's satisfaction. Evidence of this exists throughout the literature and from the Vancouver study. One must acknowledge that discretionary zoning is largely judgmental, and often there may be no universal answer. It is a human, creative process, and will often mean different things to different participants. The system is by necessity complex.

Moreover, uncertainty will always exist in a discretionary zoning system. Administrative changes can reduce the time of uncertainty, but will never be able to negate it. Positive changes to substance (basis) and procedure will increase certainty, but uncertainty will always exist to some degree in discretionary zoning by design and desire.

Earlier in the thesis, discretion was defined as "individualized application of administrative judgment which allows a variable response and solution to a problem". In order to instill confidence in a discretionary zoning system, this discretionary action must be seen to be an objective decision based on sound principles rather than an arbitrary whim of an official. The discretionary prerogative must not be abused.

Unless conscious efforts are made to establish, maintain and monitor an effective and current discretionary zoning system, it will not achieve maximum public benefit. Results will erode and compromise the valid public purpose intended for it, and increase the potential for abuse and capricious action.
No doubt, the risks are greater in utilizing a discretionary zoning system, but the potential benefits are also greater. A discretionary zoning system should be used only if the City, desirous of greater public benefits, is prepared to support such desires with a planning process involving a discretionary zoning mechanism which incorporates the preconditions outlined in the thesis.

Babcock in *City Zoning* (1979) states that:

"First, nothing is so important to a successful scheme of land use regulation as discretion in its administration; second, nothing is more subject to destructive abuse than administrative discretion"^2

Here, the remedy to the potential for abuse is not to take discretion away, but rather to inform and control it so as to make it a positive tool.

**RELEVANCY OF STUDY TO PLANNING**

It must be remembered that discretionary zoning is, simply, a tool in the planning process. Discretionary zoning does not constitute planning. It is a mechanism in the broader planning spectrum, whereby planning goals and objectives can be implemented; notwithstanding that the contrast between the "tool" and the "plan" or the "planning process" is more difficult to determine in discretionary zoning than in the Euclidean approach.

In this context, the land use control system is only as good as the planning which it attempts to implement. If a comprehensive plan does not
exist, or is outdated, or if linkages among support documents such as policies, guidelines, regulations, are not clear, the chances for success of a discretionary zoning approach are reduced.

As was stated earlier in the thesis, the concept of planning changes somewhat with a discretionary system. While still acknowledging the capacity of long range planning to serve certain purposes, the emphasis lies on short range programmatic planning as a more appropriate partner to a flexible, discretionary zoning system. The land use control system and the plan must be dynamic and work together within an ongoing planning process, supported by procedural safeguards. All three prerequisites must be provided and work together to achieve the maximum public benefit, within a comprehensive planning process.

DIRECTIONS FOR FURTHER RESEARCH

This thesis examined only one area of discretionary zoning, albeit important, that being the need for certain preconditions to the exercise of discretionary powers by delegated officials. The emphasis was on zoning structure and administration.

A logical follow up to this work is to examine the results of a discretionary zoning system, such as Vancouver's. Such a study could examine a random number of projects approved under the system, against a feasible set of objectives, in order to make a judgment on whether the final product was better than could be achieved under a more traditional zoning approach. What
were the discretionary elements (e.g. density, design, use, intensity, etc.)? The study could also examine the product relative to stated objectives contained in policies, guidelines, plans, and the incorporation of procedural safeguards into the process. This would provide an additional and practical link to the relatively new study of discretionary zoning.

This study has also touched on other more basic land use control issues which require examination. For example, the thesis discussed the difficulty of a proper balance between flexibility and certainty. Can there be a universal answer? Are there certain elements that should be mandatory, and others discretionary?

A more fundamental issue arises. What does the rise of discretionary zoning techniques mean for the future of planning? Is there likely to be increasing decision making responsibility on the planning official? What does this mean to the planning process and to the organization and structure of the planning institution, and to planning education?

The above are but a few of many issues requiring further examination in years to come as innovation is sought in land use control mechanisms and in the entire planning process.
CHAPTER V


BIBLIOGRAPHY

Books


**Journals and Reports**


By-Laws and Publications


Extracts from the Vancouver Charter Concerning Planning Powers

PART IX Buildings

Interpretation 304. In this Part, unless the context otherwise requires, “building” includes structures of every kind, excavations in respect of any structure, and everything so attached to a structure as to constitute it real property;

“construction” includes erection, repair, alteration, enlargement, addition, demolition, removal, and excavation.

306. The Council may make by-laws:—

(r) For requiring that in the construction of any building suitable provision shall be made off the street to accommodate such number of motor-vehicles as the Council may by by-law prescribe, and for defining and classifying such buildings, and for differentiating and discriminating according to such classification in respect of the accommodation to be provided as aforesaid;

(s) For requiring that in the construction of any building used for commercial or industrial purposes, or where by the nature of its proposed use quantities of articles, materials, or merchandise will be delivered to or taken from such building, suitable provision shall be made off the street for accommodating such number of vehicles as the Council may prescribe and for off-street loading and unloading of articles, materials, or merchandise delivered to or taken from such building, and for defining and classifying such buildings, and for differentiating and discriminating according to such classification in respect of such provision, and, in the discretion of the Council, for designating the areas where such provision shall be required, as aforesaid and for providing that in the discretion of the Council the by-law provision enacted pursuant to this paragraph may be waived and, in lieu thereof, Council may by by-law accept payment of such sum of money as may be deemed appropriate by Council.

PART XXVII Planning and Development

Interpretation

559. In this Part, or in any by-law made thereunder, unless the context otherwise requires:

“Building” and “Construction” mean “Building” and “Construction” as defined in section 304.
"Certificate of use and occupancy" means a certificate issued by the Director of Planning or such other persons as are authorized by Council, designating the authorized use or occupancy of any land or building;

"Development" means a change in the use of any land or building, including the carrying-out of any construction, engineering or other operations in, on, over, or under land or land covered by water.

"Development Plan" means a plan or plans for the future physical development of the city or any part thereof, whether expressed on drawings, reports or otherwise, and whether complete or partial.

"Non-conforming" as applied to a development means that such development was lawful when it took place but, by reason of a zoning by-law subsequently passed, does not conform to the uses permitted or regulations prescribed by such by-law. "Non-conformity" shall have a corresponding meaning.

"Official Development Plan" means any development plan, whether complete or partial, which has been adopted under this Part.

"Owner" shall include the agent or representative of a person owning or in possession of real property or in receipt of the rents or profits therefrom whether on his own account or as agent or trustee for any other person.

"Structural Alteration" includes any work or construction which involves any change, modification, replacement or repair of any supporting member of a building including the bearing walls, columns, beams, or girders thereof.

"Zoning By-law" shall include a Zoning and Development By-law.

Appointment of Director of Planning

560. The Council may appoint a Director of Planning who shall have such duties and powers as the Council may from time to time prescribe.

Power of entry to inspect.

560A. The Director of Planning or anyone authorized by him shall have power to enter on to any land or into any building at any reasonable time for the purpose of inspecting such land or building in order to ascertain if the provisions of a zoning by-law are being or have been carried out.

Development Plans

561. The Council may have development plans prepared or revised from time to time. Such plans may:

(a) Relate to the whole city, or to any particular area of the city, or to a specific project or projects within the city;

(b) Be altered, added to, or extended;

APPENDIX I

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(c) Designate land for streets, lanes and other public thoroughfares and for the widening of streets, lanes, and other public thoroughfares; designate sites for parks, schools, and public buildings; and designate areas for special projects, including those which require development or redevelopment as a whole.

**Council Powers Respecting Official Development Plan**

562. The Council may, by by-law:

(a) Adopt as the official development plan, or as a part thereof, any development plan prepared under section 561 or

(b) Revise or amend the official development plan or any part thereof.

**Undertakings, Official Development Plan**

563. (1) The adoption by Council of a development plan shall not commit the Council to undertake any of the developments shown on the plan.

(2) The Council shall not authorize, permit or undertake any development contrary to or at variance with the official development plan.

(3) It shall be unlawful for any person to commence or undertake any development contrary to or at variance with the official development plan.

**Power to Acquire Lands in Addition to Those Essential to Project**

564. (1) Where a project is shown upon an official development plan, the Council may acquire any real property it considers essential to the carrying-out of the project, and in addition acquire other adjacent or neighbouring real property. Such additional real property may include:

(a) The remnants of parcels, portions of which are essential to carrying out the project;

(b) Any lands which may be injuriously affected by the project;

(c) Any lands which, if allowed to be built upon without restriction, might become the site of buildings or structures which would prejudicially affect the full enjoyment of any building forming part of the project or the architectural effect thereof;

(d) Any lands which the Council is of the opinion could be conveniently and profitably resubdivided or rearranged and developed as part of the project.

**Power to Purchase or Expropriate**

(2) The Council shall have the same right to purchase or expropriate the additional lands as it has to purchase or expropriate the other adjacent or neighbouring real property.
lands immediately necessary for the carrying-out of the project under this Act.

(3) Any expenses incurred in acquiring additional lands shall be met as part of the project, and the proceeds of any sale or other disposition of the lands so acquired shall be applied, in so far as they are required, in reduction of the cost of carrying out the project.

Zoning by-law 565. The Council may make by-laws:

(a) dividing the city or any portion thereof into districts or zones of such number, shape or size as Council may deem fit;

(b) regulating, within any designated district or zone, the use or occupancy of land and land covered by water for or except for such purposes as may be set out in the by-law;

(c) regulating, within any designated district or zone, the construction, use, or occupancy of buildings for or except for such purposes as may be set out in the by-law;

(d) regulating the height, bulk, location, size, floor area, spacing, and external design of buildings to be erected within the city or within designated districts or zones;

(e) prescribing, in any district or zone, building lines and the area of yards, courts, and open spaces to be maintained; and regulating in any district or zone the maximum density of population or the maximum floor-space ratio permissible;

(f) designating districts or zones in which there shall be no uniform regulations and in which any person wishing to carry out development must submit such plans and specifications as may be required by the Director of Planning and obtain the approval of Council to the form of development;

(g) delegating to the Director of Planning or such other persons as are authorized by Council the authority to certify the authorized use or occupancy of any land or building;

(h) providing for certificates of use or occupancy and providing that the use or occupancy of any land or building other than in accordance with the certificate of use or occupancy applicable to such land or building shall constitute a violation of the by-law and shall render the owner of the land or building liable to the penalties provided in the by-law;

(i) authorizing the collection of a fee for a certificate of use or occupancy, which fee may vary according to the type of use or occupancy or the value of the land or building used or occupied;

(j) describing the zones or districts by the use of maps or plans, and the information shown on such maps or plans shall form part of the by-law to the same extent as if included therein.

APPENDIX I
JUNE 1981
By-Laws

565A. Council may make by-laws:

(a) prohibiting any person from undertaking any development without having first obtained a permit therefor. Such permit shall hereinafter be referred to as a 'development permit';

(b) providing that a development permit may be limited in time and subject to conditions, and making it an offence for any person to fail to comply with such conditions;

(c) providing that no building permit shall be issued for the construction of any building until a development permit has first been obtained;

(d) delegating to any official of the city or to any board composed of such officials such powers of discretion relating to zoning matters which to Council seem appropriate;

(e) providing for the relaxation in any case where literal enforcement would result in unnecessary hardship of any provision of;

(i) a zoning by-law (provided, however, that such power to relax shall not be used to permit any construction to provide for multiple occupancy in a one-family dwelling district nor to permit in such a district the use or occupancy of a dwelling as a multiple occupancy dwelling unless it was so used or occupied as at April 1st, 1977),

(ii) a by-law prescribing requirements for buildings. Such relaxation may be limited in time and may be subject to conditions. The by-law may authorize such relaxation by the Director of Planning or by any board constituted pursuant to clause (d);

(f) providing for the payment of a fee upon application for a development permit, which fee may vary accordingly to the value or type of development for which the permit is sought;

(g) providing that the use or occupancy of any land or building in contravention of the provisions of a zoning by-law or the conditions of a development permit shall constitute a violation of the zoning by-law and shall render the owner of the land or building liable to the penalties provided in the by-law;

(h) prohibiting the use or occupancy of any land or buildings on or in which a development has taken place since the eighteenth day of June, 1956, without a development permit;

(i) prohibiting the erection, use or occupancy of any building or the use or occupancy of any land unless due provision is made for public safety and amenity, sanitary facilities, water supply, and drainage.
Amendment or Repeal of Zoning By-law

566. (1) The Council shall not make, amend or repeal a zoning by-law until it has held a public hearing thereon, and an application for re-zoning shall be treated as an application to amend a zoning by-law.

(2) Council may by by-law require every person applying for an amendment to the zoning by-law to accompany the application with a fee to be prescribed by by-law.

(3) Notice of the hearing, stating the time and place of the hearing and the place where and the times within which a copy of the proposed by-law may be inspected, shall be published in not less than two consecutive issues of a daily newspaper published (or circulating) in the city, with the last of such publications appearing not less than seven days nor more than fourteen days before the date of the hearing.

(4) At the hearing all persons who deem themselves affected by the proposed by-law shall be afforded an opportunity to be heard in matters contained in the proposed by-law, and the hearing may be adjourned from time to time.

(5) After the conclusion of the public hearing the Council may pass the proposed by-law in its original form or as altered to give effect to such representations made at the hearing as the Council deems fit.

(6) Notwithstanding the provisions of this section, where any street or part thereof has been stopped up under the provisions of any Act and the ownership thereof is transferred to the owner of an adjoining parcel of land, then the land formerly comprising the street or part thereof so stopped up shall be deemed to be zoned for the same purpose for which the parcel of which it has become a part is already zoned unless the Council by resolution shall otherwise direct.

(7) Notwithstanding the provisions of this section, where any land zoned pursuant to this Part has been transferred to the city for street purposes, whether such street is established or opened up by the city or not, such land shall be deemed not to be zoned unless the Council by resolution shall otherwise direct.

By-laws Governing Restrictions as to Height of Buildings, Size of Courts and Yards

567. Where the provisions of the zoning by-law impose requirements for a lower height of buildings, or a less percentage of a lot that may be occupied, or require wider or larger courts or deeper yards than are imposed or required by the provisions of the building by-law, the provision of the zoning by-law shall govern; but where the provisions of the building-by-law impose requirements for a lower height of buildings, or a less percentage of lot that may be occupied, or require wider or larger courts or deeper yards than are required by the zoning by-law, the provisions of the building by-law shall govern.
Nonconforming Buildings

568. (1) Non-conformity shall be divided into two types:

(a) Non-conformity with respect to the use which is made of the premises;

(b) Non-conformity arising out of change in the regulations governing matters other than the use which may be made of the premises.

(2) A building lawfully under construction at the time of coming into force of a zoning by-law shall for the purpose of that by-law be deemed to be a building existing at that time.

(3) A lawful use of premises existing at the time of coming into force of a zoning by-law, although such use is not in accordance with the provisions of the by-law, may be continued; but, if such non-conforming use is discontinued for a period of ninety days, any future use of those premises shall be in conformity with the provisions of the by-law. The Board of Variance shall have power to allow relaxation of this provision.

(4) No additions or structural alterations except those required by Statute or by-law shall be made to a non-conforming building without:

(a) the approval of the Board of Variance if the non-conformity is in respect of use;

(b) the approval of the Director of Planning if the non-conformity is in respect of regulations only.

Fire Damage to Nonconforming Building

(5) Where a non-conforming building is damaged or destroyed by fire to the extent of sixty per centum (60%) or more of its value above its foundations as determined by the City Building Inspector, whose decision shall be subject to review by the Board of Variance, it shall not be repaired or reconstructed without the approval of:

(a) the Board of Variance if the non-conformity is in respect of use;

(b) the Director of Planning if the non-conformity is in respect of regulations only.

Change in Nonconforming Use

(6) A change in the non-conforming use of land or buildings may be permitted in accordance with the provisions of the Zoning and Development By-law.
Property Injuriously Affected

569. (1) Where a zoning by-law is or has been passed, amended, or repealed under this Part, or where Council or any inspector or official of the city or any board constituted under this Act exercises any of the powers contained in this Part, any property thereby affected shall be deemed as against the city not to have been taken or injuriously affected by reason of the exercise of any such powers or by reason of such zoning and no compensation shall be payable by the city or any inspector or official thereof.

(2) Notwithstanding that the Board of Variance has relaxed the provisions of a by-law enacted under this Part, in determining the compensation payable by the city for the taking of lands for the widening of a street in respect of which a building line has been fixed, the city is not liable to pay compensation for or in respect of any building erected in contravention of the by-law fixing the building line.

(3) Upon the acquisition of such lands by the city, the owner shall, upon demand by the city, remove such building or part thereof, as the case may be, and, in default thereof, the city may remove the same and the costs of such removal and any other costs incident thereto shall be a debt due to the city payable by the owner of the property recoverable by action and shall be a charge on the balance of the land unless sooner paid to the city.

Withholding of Permit Pending Passage of Zoning By-law

570. (1) Prior to the adoption of a zoning by-law, or of an official development plan, or of an amendment to a zoning by-law, or of an alteration, addition, or extension to an official development plan, the Council may cause to be withheld the issuance of any development or building permit for a period of thirty days from the date of application for such permit.

(2) Where any permit is so withheld, the application therefor shall be considered by the Council within the said period of thirty days, and, if in the opinion of the Council, the development proposed in the application would be at variance or in conflict with a development plan in the course of preparation, or with an alteration, addition, or extension to an official development plan in course of preparation, or with a zoning by-law in course of preparation, or with an amendment to a zoning by-law in course of preparation, the Council may withhold the permit for a further sixty days from the expiration of the thirty-day period hereinbefore referred to, or the Council may impose such conditions on the granting of the development permit as may appear to the Council to be in the public interest.

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(3) In the event that the Council does not within the said period of sixty days adopt any such plan, alteration, addition, extension, or by-law, the owners of the land in respect of which a development permit was withheld or conditions were imposed pursuant to this section shall be entitled to compensation for damages arising from the withholding of such development permit, or the imposition of such conditions. Such compensation shall be determined by arbitration pursuant to the Arbitration Act.

Enforcement of By-law

571. (1) Any by-law passed hereunder may be enforced and the contravention of any regulation therein restrained by the Supreme Court upon action brought by the city, whether or not any penalty has been imposed for such contravention, and it shall be unnecessary for the Crown or the Attorney-General or any other officer of the Crown to be a party to such action.

(2) Any Zoning By-law passed hereunder may be enforced and the contravention of any regulation therein restrained by the Supreme Court upon action brought by the city or by any registered owner of real property or any incorporated society representing registered owners of real property in the City of Vancouver and affected by such by-law or regulation, whether or not any penalty has been imposed for such contravention, and it shall be unnecessary for the Crown or the Attorney-General or any other officer of the Crown to be a party to such action.

Board of Variance

Establishment and Membership of Board of Variance

572. In this and the following section "Board" means Board of Variance.

(1) The Council shall establish by by-law a Board of five members, two to be appointed by the Council, two to be appointed by the Lieutenant-Governor in Council, and a Chairman who shall be appointed by a majority of the other appointees. The Board shall appoint a secretary and such other officials as may be required by the Board.

(2) Each member of the Board shall hold office for a term of three years or until his successor shall be appointed, but a person may be reappointed for a further term or terms.

(3) The Council may provide, by by-law or resolution, for the remuneration of members of the Board, in such amounts as the Council thinks fit, and may also provide for the payment of a fee for the hearing of an appeal before the Board.

(4) No person who is a member of the Advisory Planning Commission or who holds any municipal office whether appointed or elected, is eligible to be appointed or to sit as a member of the board.
(5) Three members of the Board shall constitute a quorum.

(6) The Chairman may from time to time appoint a member of the Board as Acting-Chairman to preside in the absence of the Chairman.

(7) In the event of the death, resignation, or removal from office of any member of the Board, his successor shall be appointed in the same manner as such member was appointed, and until the appointment of his successor the remaining members shall constitute the Board.

(8) The Chairman may be removed at any time by the Lieutenant-Governor in Council on the recommendation of the Council.

(9) The by-law establishing the Board shall set out the procedure to be followed by the Board, including the manner in which appeals are to be lodged and the method of giving notices required under section 573.

Appeals to Board of Variance

573. (1) The Board shall hear and determine appeals:

(a) By any person aggrieved by a decision on a question of zoning by any official charged with the enforcement of a zoning by-law;

(b) By any person who alleges that the enforcement of a zoning by-law with regard to siting, size, shape, or design of a building would cause him undue or unnecessary hardship arising out of peculiarities in the site or special circumstances connected with the development. In any such case the Board may, to the extent necessary to give effect to its determination, exempt the applicant from the applicable provisions of the zoning by-law;

(c) By any person who alleges that due to special circumstances or conditions the provisions of subsection (3) of section 568 will result in undue or unnecessary hardship to him;

(d) With respect to matters arising under subsections (4) and (5) of section 568.

(e) by any person aggrieved by a decision by any board or tribunal to whom Council has delegated power to relax the provisions of a zoning by-law.

(2) The Board shall not allow any appeal solely on the ground that if allowed the land or buildings in question can be put to a more profitable use nor unless the following conditions exist:

(a) The undue or unnecessary hardship arises from circumstances applying to the applicant's property only; and
(b) The strict application of the provisions of the by-law would impose an unreasonable restraint or unnecessary hardship on the use of the property inconsistent with the general purpose and intent of the zoning by-law; and

(c) The allowance of the appeal will not disrupt the official development plan.

(3) The Board shall give notice to such owners of real property as the Board may deem to be affected by the appeal, and public notice of the hearing shall be given, if the matter is deemed by the Board to be of sufficient importance. For the purpose of determining the names of the owners deemed to be affected, reference shall be made to the records kept by the Assessor.

(4) The Board shall conduct its hearings of appeals under this section in public.

(5) The decision of a majority of the members of the Board present at a hearing shall constitute the decision of the Board, which shall be rendered in open meeting and shall be recorded in writing by the secretary. In the event of the members of the Board being equally divided, the appeal shall be disallowed.

(6) No appeal shall lie from a decision of the Board.

(7) In allowing an appeal, the Board may impose such restrictions, limitations or conditions as may seem to it to be desirable and proper in the circumstances.

(8) Council may by by-law provide that failure to comply with any restrictions, limitations, or conditions imposed by the Board pursuant to subsection (7) shall constitute an offence against the by-law.
SECTION 3

ADMINISTRATION

3.1 Duties and Powers

3.1.1 Save and except as provided in subsections 3.1.3 and 3.1.4, it shall be the duty of the Director of Planning to carry out and enforce the provisions of this By-law.

3.1.2 It shall be the duty of the Director of Planning and the Development Permit Board to exercise on behalf of Council such powers as are hereby expressly delegated to them.

3.1.3 It shall be the duty of the Director of Permits and Licenses to insure that all projects in respect of which a development permit has been issued are carried out in conformity with the terms of such development permit, for which purpose he may inspect or cause to be inspected any of such projects.

3.1.4 It shall be the duty of the Director of Permits and Licenses to keep a register of all applications for development permits and to enter therein the terms upon which a permit is issued, or the reasons for refusing the same, as the case may be, with respect to each application. Such register shall be considered a public record and shall be open for inspection by any member of the public during normal working hours.

3.1.5 The Director of Planning or his accredited representatives shall have the right of entry and may enter onto any land or into any building at all reasonable hours in order to inspect the same and to ascertain whether the provisions of this By-law are being or have been carried out. Any person interfering with or obstructing the entry of the Director of Planning or his accredited representatives onto any such land or into any such building, to which said entry is made or attempted pursuant to the provisions of this By-law, shall be deemed to be guilty of an infraction of the By-law.
3.1.6 In the granting or refusal of development permits, and in the granting of relaxations or the imposition of conditions, due regard shall be given to the spirit and intent of the By-law as the same applies to the particular development under consideration.

3.2 Relaxation

3.2.1 The Director of Planning may relax the provisions of this By-law where, due to conditions peculiar either to the site or to the proposed development, literal enforcement would result in unnecessary hardship in any of the following cases:

(a) Alterations or additions to an existing building which lacks minimum yards required by the appropriate district schedule. Any relaxation in this case shall be with respect to yard requirements only and in no case shall such yard requirements be reduced to less than 60 percent of the amount specified in the district schedule;

(b) Erection of more than one principal building on one site or structural alterations or additions to two or more principal buildings existing on the same site and located in a C or M District;

(c) Erection of more than one principal building on one site or structural alterations or additions to two or more principal buildings existing on the same site where such principal buildings consist of town houses or apartment buildings located within any R District, subject to the arrangement of such principal buildings being satisfactory to the Director of Planning;

(d) Provision of less than the required number of parking or loading spaces.

3.2.2 The Director of Planning may relax the provisions of this By-law relating to any of the following:

(a) Required setbacks to off-street parking areas where, in the opinion of the Director of Planning, the landscaping provided or to be provided is adequate to warrant such relaxation, except that in a C-1 or R District, no relaxation shall be granted which has the effect of reducing the front yard to less than the required depth of an adjoining front yard;
(b) Required screening on the boundary of a parking area serving a school, park or similar use on a site in excess of two acres, in cases where the distance between such boundary and R Districts outside the site of the principal use served by the parking area is in excess of 250 feet:

(c) The maximum projection of exterior balconies with railings into required yards, horizontal daylight control angles and limitations on building length.

3.2.3 The Director of Planning, before granting any relaxation pursuant to subsection 3.2, shall be satisfied that any property owner likely to be adversely affected is notified. Such notification shall be in the form appropriate to the circumstances. If any property owner so notified shall object, then such relaxation shall not be granted, but the applicant for such relaxation may then exercise his right of appeal to the Board of Variance, at which time the representations of the Director of Planning and of any such property owner shall be heard.

3.2.4 The Development Permit Board, in the exercise of its jurisdiction, may relax the provisions of this By-law. In granting any relaxation, the Board shall have regard to the intent of this By-law, the regulations and policies of any Official Development Plan, and such other policies as Council may from time to time determine, including design guidelines.

3.2.5 In dealing with applications for development permits for buildings, structures, lands, or parts thereof designated by Council as Municipal Heritage Sites, the Director of Planning or the Development Permit Board, as the case may be, may relax:

(a) any regulation of this By-law where literal enforcement would result in alterations that contravene section 12 of the British Columbia Heritage Conservation Act, or the similar section of any Act that may supersede the Heritage Conservation Act;

(b) any other provision of this By-law. In granting any relaxation pursuant to this subsection, the Director of Planning, or the Development Permit Board, shall have regard to the intent of this By-law, the regulations and policies of any Official Development Plan, the British Columbia Heritage Conservation Act, such other policies as Council may from time to time determine, and the recommendations of any heritage advisory group approved by Council.
3.2.6 The Director of Planning or the Development Permit Board, as the case may be, may relax any of the regulations and provisions of this By-law where literal enforcement would not allow the restoration and renovation of sites with architectural, historical, or cultural merit. Before granting any relaxation pursuant to this subsection, the Director of Planning or the Development Permit Board shall ensure that:

(a) the relaxations are requested by a person having legal interest in the site in order to conserve a building (or group of buildings) which is considered to have architectural, historical, or cultural value; and

(b) a formal resolution is received from the Heritage Advisory Committee or any other body established by Council for this purpose defining the aspects of the site that give it heritage merit, and supporting the proposed conservation work; and

(c) notification of adjoining property owners and residents is undertaken, in a manner that is determined appropriate by the Director of Planning, consideration is given to the responses received, and if there is significant objection, the matter be referred to Council; and

(d) consideration is given to the provisions of Zoning and Development By-law No. 3575 and the requirements of the District Schedule which would normally apply; and

(e) consideration is given to the policies and guidelines for the area in question as may be adopted by Council.

Unless the Director of Planning or the Development Permit Board otherwise directs, any relaxation granted under this subsection shall be valid only for as long as the building continues to exhibit those qualities as defined by the Heritage Advisory Committee in paragraph (b) above.

3.3 Development Permits

3.3.1 In dealing with applications for development permits the Director of Planning or the Development Permit Board may in every case and in accordance with the provisions of this By-law grant such permits either unconditionally or subject to conditions, including a limitation in time, or may refuse such permits.

3.3.2 Notwithstanding the provisions of this By-law, a development permit may be refused if the development in respect of which application is made:
(a) Does not conform to an amendment to the Zoning and Development By-law for which a formal application has been made prior to the application for the development permit;

(b) Refers to a site or a portion thereof required for any civic purpose, in which case the Director of Planning shall refer the application to the City Council for authority either to negotiate with the applicant or to issue the development permit;

(c) Would prejudice the future subdivision of the property;

(d) Refers to a site where adequate drainage, sanitary facilities or water supply are not available;

(e) Would in the opinion of the City Engineer adversely affect the public safety; or

(f) Would in the opinion of the Director of Planning or the Development Permit Board adversely affect public amenity. If matters of design are involved, the application may first be referred to the Urban Design Panel for consideration and advice.

3.3.3 Notwithstanding the provisions of this By-law or any other By-law, and unless he receives a notice of objection from any member of the Development Permit Board, the Director of Planning may in his discretion either approve, approve subject to conditions, or refuse applications for development permits for which the consent of the Development Permit Board would otherwise be required.

3.3.4 The Director of Planning shall not exercise his discretion pursuant to subsection 3.3.3 above where, in his opinion:

(a) The development would have a significant effect on the existing immediate environment;

(b) The development would create traffic implications that could affect the general environment;

(c) The height or density of any proposed building would not be in keeping with the general building heights or density in the immediate environment;

(d) There may be possible significant buildings of heritage merit on the site or in the surrounding area that may be adversely affected by the development;
(e) The design is not of an acceptable standard and may adversely affect public amenity, in which case the Director of Planning may first request advice from the Urban Design Panel;

(f) The development is such that special public amenities could be considered for density bonus or other special advantages; or

(g) The proposed development could affect any public policy objectives, established or potential, including future transit locations and open space needs.

3.3.5 The Development Permit Board or the Director of Planning may refer any application for a development permit to the Urban Design Panel for advice.  

(See By-law No. 4722. Appendix F)
APPENDIX III

RS-1 DISTRICT SCHEDULE

1  Intent

The intent of this Schedule is to maintain the single-family residential character of the District.

2  Outright Approval Uses

2.1  Subject to all other provisions of this By-law and to compliance with the regulations of this Schedule, the uses listed in Section 2.2 shall be permitted in this District and shall be issued a permit.

2.2  USES

2.2.A  •  Accessory Buildings and accessory uses customarily ancillary to any of the uses listed in the section, provided that:

(a) no accessory building exceeds 12 feet in height;

(b) all accessory buildings are located in the rear yard and in no case are less than 5 feet from a flanking street, subject also to the provisions of Section 11.1 of this By-law;

(c) the total area of all accessory buildings is not greater than 35 percent of the minimum rear yard prescribed in this Schedule, or 520 square feet, whichever is the greater;

(d) not more than 80 percent of the width of the rear yard of any lot is occupied by accessory buildings.

2.2.D  •  One-family Dwelling.

3  Conditional Approval Uses

3.1  Subject to all other provisions of this By-law, including Section 3.3.3, and the provisions and regulations of this Schedule, the Development Permit Board may approve any of the uses listed in Section 3.2 including such conditions or additional regulations as it may decide, provided that before making a decision it:

(a) considers the intent of this Schedule and the recommendations of any advisory groups, plan or guidelines approved by Council for the area; and
(b) notifies such adjacent property owners and residents it deems necessary.

3.2 USES

3.2.A
- Accessory Buildings and accessory uses customarily ancillary to any of the uses listed in this section, subject to the same provisions of subsection 2.2.A.
- Accessory Buildings and accessory uses not in compliance with the provisions of subsection 2.2.A.
- Aircraft Landing Place.

3.2.B
- Boarding House or Rooming House resulting from the conversion of a building where the conversion took place prior to June 18, 1956 and the use has been continual since that time, provided that any development permit granted shall be limited in time.

3.2.C
- Child Day Care Facility.
- Church, subject to the provisions of Section 11.7 of this By-law.
- Community Centre or Neighbourhood House.

3.2.D
- Deposition or extraction of material so as to alter the configuration of the land.
- Dwelling Unit or Housekeeping Unit which existed prior to and has been used continuously as such since June 18, 1956, provided that any development permit granted shall be limited in time.
- Dwelling Unit in conjunction with a neighbourhood grocery store which was in existence prior to July 29, 1980.

3.2.G
- Golf Course.

3.2.H
- Hospital, but not including a conversion from an existing building, a mental hospital or an animal hospital, subject to the provisions of Section 11.9 of this By-law.

3.2.I
- Institution of a religious, philanthropic or charitable character.

3.2.L
- Local Area Office

3.2.M
- Marina, but not including boat building and major repairs and overhaul of boats.
3.2.N • Neighbourhood Grocery Store operating immediately prior to July 29, 1980, subject to the provisions of Section 11.16 of this By-law.

3.2.P • Park or Playground.
• Parking Area ancillary to a principal use on an adjacent site.
• Public Authority Building or use essential in this District.
• Public Utility.

3.2.S • School (public or private), subject to the provisions of Section 11.8 of this By-law.
• Social Service Centre operated by a non-profit society.
• Special Needs Residential Facility, subject to the provisions of Section 11.9.
• Stadium or any similar place of assembly.

3.2.T • Tourist Court, subject to the provisions of Section 11.12 of this By-law.
• Truck Garden, Nursery or Greenhouse for propagating and cultivating.

4 Regulations

All uses approved under Sections 2 and 3 of this District Schedule shall be subject to the following regulations:

4.1 SITE AREA
4.1.1 The minimum site area for a one-family dwelling shall be 4,800 square feet.

4.1.2 Where the site is less than 32 feet in width or less than 3,600 square feet in area, the design of any new dwelling shall first require the approval of the Director of Planning or the Development Permit Board, as the case may be.

4.2 FRONTAGE — Not Applicable

4.3 HEIGHT
4.3.1 The maximum height of a building shall be the lesser of 35 feet or 2½ storeys.
4.4 **FRONT YARD**

4.4.1 A front yard with a minimum depth of 24 feet shall be provided.

4.4.2 In the case of a site having an average depth of less than 120 feet, the required front yard may be reduced in accordance with Section 11.2 of this By-law.

4.5 **SIDE YARDS**

4.5.1 A side yard with a minimum width of not less than 10 percent of the width of the site shall be provided on each side of the building, except that it need not be more than 5 feet in width.

4.5.2 In the case of a corner site, the exterior side yard shall be regulated by the provisions of Section 11.1 of this By-law.

4.6 **REAR YARD**

4.6.1 A rear yard with a minimum depth of 35 feet shall be provided, except that where the rear of the site abuts a lane, this required minimum depth shall be decreased by the lane width between the rear property line and the ultimate centre line of the lane.

4.6.2 In the case of a site having an average depth of less than 120 feet, the required rear yard may be reduced in accordance with Section 11.2 of this By-law.

4.6.3 Where a building line has been established pursuant to the provisions of Section 14.2, such building line shall be deemed to be the southerly boundary of any required rear yard on a riparian site, notwithstanding any dimension contained herein.

4.7 **FLOOR SPACE RATIO**

4.7.1 The floor space ratio shall not exceed 0.60.

4.7.2 The following shall be included in the computation of floor space ratio:

(a) all floors having a minimum ceiling height of 4 feet, including earthen floor, both above and below ground level, to be measured to the extreme outer limits of the building;

(b) stairways, fire escapes, elevator shafts and other features which the Director of Planning considers similar, to be measured by their gross cross-sectional areas and included in the measurements for each floor at which they are located.
4.7.3 The following shall be excluded in the computation of floor space ratio:

(a) balconies, canopies, sundecks and other features which the Director of Planning considers similar, permitted to a maximum total area of 8 percent of the floor area;

(b) patios and roof gardens, provided that the Director of Planning first approves the design of sunroofs and walls;

(c) parking areas, the floors of which are at or below the highest point of the finished grade around the building;

(d) child day care facilities to a maximum floor area of 10 percent of the permitted floor area, provided the Director of Planning, on the advice of the Director of Social Planning, is satisfied that there is a need for a day care facility in the immediate neighbourhood.

(e) areas of undeveloped floors located above the highest storey or half-storey, or adjacent to a half-storey with a ceiling height of less than 4 feet, and to which there is no permanent means of access other than a hatch.

4.7.4 For the purpose of calculating floor space ratio in this District Schedule, the depth of a riparian site measured from the abutting street shall be the lesser of:

(a) 120 feet or

(b) the depth thereof as determined from any plan or other document of record in the Land Title Office as of the 15th day of April 1978, and relating to the boundaries thereof.

4.8 SITE COVERAGE

4.8.1 The maximum site coverage for buildings shall be 45 percent of the site area.

4.8.2 For the purpose of this section, site coverage for buildings shall be based on the projected area of the outside of the outermost walls of all buildings and includes carports, but excludes steps, eaves, cantilevered balconies and sundecks.

4.8.3 Except where the principal use of the site is a parking area, the maximum site coverage for any portion of the site used as parking area shall be 30 percent.
4.9 OFF-STREET PARKING AND LOADING SPACES

4.9.1 Off-street parking and loading spaces shall be provided and maintained in accordance with the provisions of Section 12 of this By-law.

5 Relaxation of Regulations

5.1 The Director of Planning may relax the minimum site area requirements of Section 4.1 with respect to any of the following developments on an existing lot of lesser site area on record in the Land Title Office for Vancouver:

(a) one-family dwelling.
3. DOWNTOWN DISTRICT OFFICIAL DEVELOPMENT PLAN BY-LAW

(a) By-law No. 4912 — Being an Official Development Plan By-law

(b) Schedule "A" — Downtown Zoning (ii) Official Development Plan
(a) By-Law No. 4912

(Amended 24/7/79 — No. 5268)

Being an Official Development Plan By-law.

THE COUNCIL OF THE CITY OF VANCOUVER in open meeting assembled enacts as follows:

1. That certain document entitled “Downtown Zoning (ii) official development plan”, dated October 1975 and marked “Schedule B” is hereby annexed to this By-law as Schedule “A” and shall form an integral part hereof.

2. Schedule “A” is hereby adopted as the Official Development Plan for that portion of the City of Vancouver which has been rezoned as “Downtown District (DD)” by By-law No. 4911.

3. This By-law shall come into force and take effect on and after the date of the passing hereof.

DONE AND PASSED in open Council this 4th day of November, 1975.

(Sgd) A. Phillips, Mayor

(Sgd) D.H. Little, City Clerk
(b) Schedule A
Downtown Zoning (ii) Official Development Plan

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Official Development Plan for the Downtown

APPLICATION AND INTENT

A By-law to regulate the development of that part of the City of Vancouver for which the Zoning District is described as "Downtown District (DD)".
The Downtown District is the regional centre of commercial development. It contains the greatest concentration of the working and shopping public within the region.

The well-being of this concentration of people requires more than the customary regulatory mechanisms in order that the buildings, the open spaces, the streets, the transportation systems, and other components of the urban scene can be arranged appropriately for the benefit of the general public.

The intent, in the adoption of this Official Development Plan and the accompanying guidelines, is as follows:

1. To improve the general environment of the Downtown District as an attractive place in which to live, work, shop, and visit.
2. To ensure that all buildings and developments in the Downtown District meet the highest standards of design and amenity for the benefit of all users of the Downtown.
3. To provide for flexibility and creativity in the preparation of development proposals.
4. To encourage more people to live within the Downtown District.
5. To support the objectives of the Greater Vancouver Regional District as referred to in "The Livable Region 1976/1986" as issued March 1975, to decentralize some office employment to other parts of Greater Vancouver by discouraging office developments considered inappropriate in the Downtown District.
6. To improve transportation Downtown by encouraging greater transit usage, discouraging automobile usage for journeys to work, and by maintaining automobile access for non-work trips including shopping, business and entertainment.

The Official Development Plan By-law provides the general framework for the preparation of development plans for all individual buildings or complexes of buildings.

Development Permit Applications will be made in accordance with the procedures in the Zoning and Development By-law No. 3575.

Consideration of any development permit application will be based upon the regulations and requirements of the Official Development Plan and upon such guidelines as Council may from time to time determine, including design guidelines.

A significant degree of flexibility is given to architects and others in the preparation of development proposals. A significant degree of discretion is also given to the Development Permit Board in the interpretation of regulations, policies, and guidelines.

Guidelines approved by Council form an integral part of the development control procedure for the Downtown District.

In approving any development permit application within the District, the Development Permit Board shall be satisfied that the spirit and intent of such guidelines has been fulfilled.
Interpretation

A distinction is drawn in this By-law between regulations and interpretation requirements, as follows:

1. Regulations are set out for land use; maximum standards for building density in terms of floor space ratio; maximum standards for parking and minimum requirements for loading.

2. Interpretative requirements are set out with respect to the permitted height of buildings, social and recreational amenities and facilities.

In the design and/or approval of individual developments variations are permitted in the interpretative requirements.

definitions

“Floor Space Ratio” shall mean the figure obtained when the area of all floors of all buildings on the site (measured to the extreme outer limits of the building) is divided by the area of the site;

Excluded from such calculations are:

(a) parking areas, the floor of which is below the building grade of abutting streets or lanes as may be determined by the Director of Planning.

(b) balconies, canopies, or other architectural features which in the opinion of the Director of Planning contribute to the amenity and/or environment of the Downtown District.

(c) patios or roof gardens provided that any sunroofs or walls are approved by Director of Planning.

“Hotel” shall mean a “hotel” or “motel” being a building containing not less than 16 units, being either sleeping and/or dwelling units — used as a temporary abode for tourists or transients.

“Light Industrial” shall mean any service; manufacturing, wholesaling; warehouse; or other light industrial use, as may be approved by the Development Permit Board and be compatible with the Office, Retail or other Commercial Uses as well as the Residential use of the Downtown District.

“Office Commercial” shall mean any office, including Banks and Financial Institutions.

“Retail Commercial” shall mean any Retail store, Business, Retail type service activity; or Restaurant (excluding drive-in), provided that such uses shall not include the sale of sex-oriented products without the approval of the Development Permit Board.

“Other Commercial” shall mean any other commercial use not being “Retail” or “Office”, provided that such use shall not include the sale of sex-oriented products without the approval of the Development Permit Board.

“Retail Continuity” shall mean the provision and permanent maintenance of continuous pedestrian orientated retail store type display windows or other equal and suitable display as may be approved by the Development Permit Board. Entrances to buildings, including offices; hotels; Banks; Financial Institutions; shall not exceed a total of 25 feet of frontage unless they otherwise provide approved retail continuity.

DD
JUNE 1981
Section 1

Land Use

For many years only commercial (with some light industrial) uses have been permitted throughout the Downtown. In order to increase the variety, amenity, and safety of Downtown, well-designed residential uses will be both permitted and encouraged throughout the Downtown. A mix of uses within single developments or in neighbouring sites is also permitted and encouraged.

The following uses may be permitted, subject to such conditions and regulations as may be prescribed by the Development Permit Board:

(a) Office Commercial
(b) Retail-Commercial
(c) Other Commercial
(d) Residential
(e) Hotels
(f) Light industrial
(g) Public and Institutional
(h) Social, Recreational and Cultural
(i) Parks and Open Space

Section 2

Retail Use Continuity

Subject to such conditions, regulations, and design guidelines as may be determined by the Development Permit Board:

Where indicated on Map 1, retail and similar uses shall be required on the street frontages so identified; and shall be encouraged on the other street frontages so identified.

The intent of this section is to provide continuous retail and similar uses along existing and potential pedestrian routes for the interest and enjoyment of pedestrians Downtown.

Section 3

Density

Vancouver's Downtown is and will remain the highest-density commercial area within the City and within the Greater Vancouver Region. However, in order to achieve objectives which include:
MAP 1
section 2
RETAIL USES

- ground floor retail uses required
- ground floor retail uses encouraged
— participation with and encouragement of the Greater Vancouver Regional District’s policies for Regional Town Centres,
— encouragement of residential use within the Downtown,
— encouragement of a mixture of uses in single developments, and
— high standards of design throughout the Downtown,

the permitted maximum density is varied throughout this District.

1. Subject to conformity with the guidelines, and clause 3 below, the maximum permitted density (floor space ratio) shall in no case exceed the amount shown for each of the eight density areas within the district as illustrated on Map 2 and described below:

A In the area denoted by the letter ‘A’, the maximum density for any permitted use shall be floor space ratio 9.00.

B In the area denoted by the letter ‘B’, the maximum density for any permitted use shall be floor space ratio 7.00.

C In the area denoted by the letter ‘C’, the maximum density for any permitted use shall be floor space ratio 5.00.

D In the area denoted by the letter ‘D’, the maximum density for any non-residential use shall be floor space ratio 3.00; however, an additional floor space ratio of 2.00 may be permitted for residential use.

E In the area denoted by the letter ‘E’, the maximum density for any non-residential use shall be floor space ratio 1.00; however, an additional floor space ratio of 2.00 may be permitted for residential use.

F In the area denoted by the letter ‘F’, the maximum density for any non-residential use shall be floor space ratio 5.00; however, for every square foot of residential floor area, an additional square foot of non-residential floor area shall be permitted up to a maximum additional floor space ratio of 1.00 for residential use and a maximum additional floor space ratio of 1.00 for non-residential use.

G In the area denoted by the letter ‘G’, the maximum density for any non-residential use shall be floor space ratio 4.00; however, for every square foot of residential floor area, an additional square foot of non-residential floor area shall be permitted up to a maximum additional floor space ratio of 1.00 for residential use and a maximum additional floor space ratio of 1.00 for non-residential use.

H In the area denoted by the letter ‘H’, the maximum density for any non-residential use shall be floor space ratio 2.00; however, for every square foot of residential floor area, an additional square foot of non-residential floor area shall be permitted up to a maximum additional floor space ratio of 2.00 for residential use and a maximum additional floor space ratio of 2.00 for non-residential use.

2. Hotels shall be considered to be a commercial use.

3. Within the Downtown District, residential floor area may be substituted for commercial floor area, provided however that in no case shall the density (Floor Space Ratio) of residential use exceed 3.
Section 4

Height of Buildings

The height of buildings shall not exceed the height limits shown on Map 3, except as follows:

1. The Development Permit Board may, in its discretion, permit buildings which exceed the prescribed height limits, after taking particular account of the overshadowing, view obstruction, and other environmental criteria set out in the Design Guidelines. However, in no case shall the maximum height as may be permitted exceed 450 feet.

It is the purpose of this section to ensure that new development is compatible with that existing in each of the many areas of the Downtown.

Section 5

Parking and Loading

Traffic congestion detracts from the general amenity of the Downtown. It is one of the objectives of this By-law to reduce traffic congestion particularly within the high-density core area. Parking both in terms of the amount provided and the location at which it is provided is a significant determinant of congestion.

The following requirements are intended to reduce commuter parking to a minimum and to permit parking to serve only the other essential needs of Downtown activity:

1. The provision of parking facilities may not be required with developments; however, where parking is provided it shall be subject to the following conditions and regulations:

(a) The provision of parking within the area denoted by the letter ‘A’ on Map 4 shall not exceed:

   (i) Office Commercial — not more than one space for every 1,000 square feet of such use.
   (ii) Residential — not more than one parking space for every 1,000 sq. ft. of such use.
   (iii) Other Permitted Uses — not more than one half of the permitted maximum under Clause 1(b) below.

(b) The provision of parking within the area denoted by the letter ‘B’ on the map shall not exceed:

   (i) Office Commercial — not more than one parking space for every 1,000 square feet of such use.
   (ii) Residential — not more than one parking space for every 1,000 square feet of such use.
   (iii) Other Permitted Uses — not more than the requirements set out for such uses in Section 12 of the Zoning and Development By-law No. 3575.
legend
A high density core
B remainder

MAP 4
section 5
PARKING
2. Parking garages to serve residential, retail, office or other commercial uses may be permitted by the Development Permit Board where special circumstances prevail. The Development Permit Board may require that such parking garage provide, in whole or in part, for non-commuter oriented usage.

3. Surface parking is not permitted except as follows:
   (a) Surface parking as a separate use may be permitted for a temporary period not exceeding five years, subject to such conditions as may be prescribed by the Development Permit Board.
   (b) Surface parking as an accessory use, limited in number, may be permitted where in the opinion of the Development Permit Board, there are special peculiarities of the site or the development.

Any approval granted pursuant to this clause shall be in accordance with the Design Guidelines.

4. The provision of loading spaces shall be in accordance with the provisions of Section 12 of the Zoning and Development By-law No. 3575, subject to such variations as may be determined by the Development Permit Board.

Section 6
Social and Recreational Amenities & Facilities

It is the purpose of this Section to provide in the Downtown area social and recreational amenities primarily for the enjoyment of Downtown residents and employees.

1. facilities which provide opportunities for physical fitness;
2. facilities for general recreation;
3. facilities which provide a service to the public.

Facilities or areas which contribute to physical amenity, such as parks, plazas, arcades or ornamental elements in the landscape, are not included in this Section. These items and others of a similar nature will be provided where appropriate, as part of the design of the buildings.

1. Exclusion from Floor Space Ratio

The following ancillary facilities are excluded from the floor area measurement provided that the area of such excluded facilities contained in this section does not exceed 20% of allowable FSR or 10,000 square feet, whichever is the lesser.

List of Excluded Uses:
(i)  saunas
(ii) tennis courts
(iii) swimming pools
(iv) squash courts
(v)  gymnasiums and workout rooms
(vi) games rooms and hobby rooms
(vii) day care centres
(viii) libraries (public)
(ix) other uses of a public service, social or recreational nature, which, in the opinion of the Development Permit Board, are similar to the above.

II. Bonuses for a Provision of Social and Recreational Facilities

Where a need for any public, social, or recreational facility has been demonstrated to the satisfaction of the Development Permit Board, the Board may authorize, for any building which includes one or more of such facilities, an increase in the permitted floor space ratio or density of a building, subject to prior approval by City Council.

In determining the increase in floor area or density that may be authorized, the Development Permit Board shall consider:

a) the construction cost of the facility;
b) any costs to the developer of continuing maintenance required for the facility;
c) the rental value of the increased floor area;
d) the value of any authorized relaxation of other restrictions.

If appropriate, such facilities shall be preserved in the public domain by way of a registered agreement and operated by the City or its delegates.
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PLANS, POLICIES, AND GUIDELINES

VOLUME 2 - CENTRAL AREA

CONTENTS

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A. Central Area Pedestrian Weather Protection (1979)

B. Central Broadway Urban Design (Revised 1980)

C. Downtown Guidelines
   (i) Planning Policies (1980)
   (iii) Character Areas (1982)

D. False Creek Policies (1982)


F. Granville Island: Reference Document for False Creek Area 9 (1978)

G. Robson Square Character Area Guidelines (1977)

H. Robson Street 1000 - 1200 Block Inclusive (1982)

I. West End Planning Policies and Design Guidelines

J. Yaletown Policies (1982)

STATUS (Approval Date)

A. Approved (December 12, 1978)

B. Approved (March 23, 1976; Amended February 22, 1977)

C. Approved (September 30, 1975 and December 16, 1975; Amended May 10, 1977 and January 26, 1982)


E. Approved (June 1 and September 21 1976; Reaffirmed March 9, 1982)

F. Approved (April 18, 1978)

G. Not Approved

H. Approved (January 26, 1982)

I. Approved (May 13 and 27, 1975; Amended July 8, 1975)

J. Approved (January 26 and May 11, 1982)
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A By-law to create Boards to be known as the "Development Permit Board" and "Development Permit Advisory Panel"

THE COUNCIL OF THE CITY OF VANCOUVER in open meeting assembled, enacts as follows:

1. (a) A Board, to be known as the "Development Permit Board" (hereinafter referred to as the "Board") is hereby established and appointed.

   (b) A Panel to be known as the "Development Permit Board Advisory Panel" (hereinafter referred to as the "Advisory Panel") is hereby established.

2. It is hereby declared that this by-law is passed with the intention that each section shall be independent of the other so that, should any section be declared invalid, then such section shall be severable.

3. The Board shall consist of the following persons:

   (1) From the date of the enactment of this by-law until the 29th day of September, 1975, the Director of Planning shall constitute the Board.

   (2) Thereafter the Director of Planning, the Director of Social Planning, and the City Engineer shall constitute the Board.

4. (a) The duties and functions of the Board are to receive and approve or disapprove such Development Permit applications as may by by-law be prescribed to be brought before the Board.

   (b) In the consideration of all applications brought before it, the Board shall hear any representations of the applicant as well as any other person interested in the application, and before rendering its decision shall consult with and receive any submissions of the Advisory Panel.

   (c) There shall be a Chairman who shall be the Director of Planning.

APPENDIX VI

JUNE 1981
5. The Advisory Panel shall consist of six persons to be appointed by City Council, of which two shall be representatives of the development industry, two representatives of the development professions and two representatives of the general public. The term of office of the initial appointees is one year for three of such members (being one from each of the three groups hereinbefore referred to) and two years for the remaining three. All appointees' memberships shall terminate on the expiration of their appointed term, or until their successors are appointed, whichever is the later, and all appointees shall be eligible for reappointment. No person shall be appointed to the Advisory Panel if such person:
   (i) is an alderman; is an employee of the city; or otherwise holds an elected office;
   (ii) is not an elector or has not resided in the City for at least six months immediately preceding his appointment;
   (iii) is not a Canadian citizen.

6. The function of the Advisory Panel is to act in an advisory capacity to the Board with respect to Development Permit applications which are required to be submitted to the Board, and it shall attend and participate in all meetings of the Board as provided in Section 3.

7. Any member of the Board with the approval of Council is hereby authorized to deputize a person to act on his behalf at any meeting of the Board.

8. Subject to the provisions of this by-law, the Board shall determine its own procedure provided that after the 2nd day of September, 1975, all decisions of the Board shall be delivered in public unless the Board for good and sufficient cause otherwise directs, and the Board shall state the reason for its decision. The Board may set the time, date and place of its meetings provided that the Chairman shall be at liberty to call a meeting whenever he deems it necessary.

9. The Board shall keep written minutes of all business transacted at the meetings.

10. This by-law shall come into force and take effect on the passing hereof.

DONE AND PASSED in open Council this 24th day of June, 1975.

(Sgd) Art Phillips, Mayor
(Sgd) D.H. Little, City Clerk

“I hereby certify that the foregoing is a correct copy of a By-law duly passed by the Council of the City of Vancouver on the 24th day of June, 1975, and numbered 4876.

CITY CLERK.”