LAND USE CONTRACTS REVISITED

by

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Date April 30, 1990
The changes to the British Columbia Municipal Act repealing land use contracts in 1978 by Bill 42, and the subsequent amendments leading up to Bill 62 in 1985 and Bill 30 in 1987 have been both dramatic and comprehensive in their effect on land development and the approval process. Since the repealing of land use contracts and in spite of the new amendments, B.C. planning legislation has been increasingly criticized among developers, planners, and local governments for the lack of development agreement provisions and adequate flexibility in the municipal approval process.

This thesis investigates the possibility of reintroducing land use contracts as a development agreement control in the context of current planning practices. A literature review of the evolution of municipal planning control in B.C. is conducted to provide background information for a theoretical and practical evaluation of the current system of controls in comparison to the former system of land use contracts. The theoretical evaluation is based on measuring both systems against normative criteria, whereas the practical evaluation is comprised of a local government/development industry survey and several case studies.
The following conclusions are made in this research:

- Land use contracts were introduced in response to a growing need among local governments for some legitimate legislative means of entering into development agreements with developers to require developers to assist in providing the municipal services associated with their development.

- Local government support for the land use contract was based on the ability to regulate design, ensure regulation performance, and to enter into off-site servicing and amenity agreements.

- The development industry was initially supportive of land use contracts because they offered unlimited flexibility during negotiations and the certainty of a legal contract immune to future zoning changes. Developers eventually withdrew their support for land use contracts complaining of large scale downzoning, lengthy approval delays and excessive impost fees. Many of these allegations are dispelled in this research, but the real weakness of the land use contract was that it was difficult to amend and could be used extensively to replace zoning, effectively "fettering" future council's planning powers.

- In the absence of the land use contract, many municipal governments are continuing with a land use contract practice, but without a legislative or in some instances legal basis.

- The theoretical analysis, survey and case studies determine that the
current planning legislation is adequate for the most part. There is a need however, for a land use contract mechanism to accommodate mixed use, comprehensive or complicated developments. This type of control was determined to be superior in accommodating these types of projects to the current approach of using a variety of planning mechanisms. Generally there is support among local governments and the development industry in B.C. for new land use contract legislation as long as it is more clearly defined to avoid the mistakes of its use in the 1970's.

On the basis of this analysis, the study recommends that land use contract be reintroduced but in a much more controlled and limited way.
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CHAPTER 1. INTRODUCTION

1.1. PURPOSE

This research has been inspired by the author’s personal interest in learning more about the subject of municipal land use and development control and in particular, the development control mechanism known as the land use contract. The study compares the current Municipal Act planning legislation with the 1971 land use contract legislation to determine which legislation used in practice is more effective in accommodating the persistent municipal planning concerns outlined in the following section, while satisfying the normative criteria set out in Chapter three.

In brief, a land use contract is a development agreement resulting from negotiation between a local government and a developer. It blends elements of zoning and subdivision control. The contract may override existing bylaws and usually provides various land use entitlements in exchange for municipal benefits. Land use contract legislation was available to local and regional district governments in B.C. from 1971 to 1978.

1.2. PROBLEM STATEMENT

Much has been written about the weaknesses of conventional zoning, and the potential benefits of more flexible controls such as land use contracts. Previous

See Definitions and Section 963 of the British Columbia Municipal Act for meaning of conventional zoning.
land use control studies in B.C. include the following:

- the validity of land use contracts as a means of development control; ²

- the development approval process as it relates to the cost of housing; ³

- the pros and cons of flexible development controls; and ⁴

- an historical review of land use control legislation in B.C. ⁵

Original thought on these subjects is scarce. Nevertheless, the changes to the British Columbia Municipal Act repealing land use contracts in 1978 by Bill 42 and the subsequent amendments leading up to Bill 62 in 1985 and Bill 30 in 1987, have been both dramatic and comprehensive in their effect on land development and the approval process. Preliminary research suggested that local governments are continuing to experience the following problems associated with municipal planning legislation.

- The public has increased expectations for stringent regulation of the "urban design" aspects of development. These expectations reflect a public desire for a more livable and pleasing environment -- particularly with the trend towards mixed-use higher density residential environments. This includes an interest in controlling view impacts, landscaping open space, as well as architectural details such as colour and exterior finishes. It is common knowledge that zoning can not easily achieve these objectives.

- Municipal governments want more effective guarantees from

³ See S. Bawlf, British Columbia Joint Committee on Housing, (Report of the Chairman to the Ministry of Municipal Affairs and Housing, Victoria, 1976).
⁴ See Willard Gerald Hughes, Land Use Controls - Flexibility and Discretion (Graduate Thesis, School of Community and Regional Planning, University of British Columbia, Vancouver B.C., 1982).
⁵ See S.E. Corke, Land Use Controls in British Columbia, (Research Paper 138 #3, Centre for Urban and Community Studies, University of Toronto, Toronto Ontario, 1983).
developers to ensure that what is promised during a rezoning gets built, since the use of section 215 covenants, bonding and development permits, have had limited success in achieving this end.

- Many projects are increasingly mixed use and complex and therefore are not easily controlled by the rigid formulas of zoning.

- The cost of growth has placed great pressure on a municipal finance and consequently created a situation where local governments want developers to share in this municipal burden. This can have several effects, including lower land values as developers capitalize costs and higher rents as developers pass on additional costs to consumers.

Many of these municipal concerns were prevalent during the 1950's through to the late 1960's. In fact, land use contract legislation was introduced in 1971 for the main purpose of providing a development agreement mechanism which could be used in certain instances where zoning was inadequate to accommodate these concerns and mitigate other problems of the day. However, with the repeal of the land use contract in 1978, British Columbia remains one of the few provinces (except the City of Vancouver) without development agreement legislation, yet these problems persist.

1.3. HYPOTHESIS

*It is hypothesized that the reintroduction of the land use contract, as part of the mix of the current local government planning controls, is the most effective way of accommodating mixed use, comprehensive and complicated development applications.*

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6 For example, many expanding suburban municipalities in the Vancouver Lower Mainland created quasi-legal development agreements to cope with the increasing costs of development.
1.4. STUDY METHODS AND CHAPTER ORGANIZATION

The thesis is divided into six chapters in which four study methods are employed to answer a series of questions relating to the thesis hypothesis.

Chapter 2: Evolution of Planning Controls in B.C.

Following the introduction in Chapter 1, a review of relevant planning literature and planning legislation is used to address the questions outlined below.

- What are the origins of land use and development control in B.C.?
- What are land use contracts and why were they introduced in 1971?
- How do land use contracts differ from other types of development controls?
- What was the extent of use of land use contracts?
- Why were land use contracts repealed in 1978?
- What types of planning controls are available today and how do they differ from land use contracts?

Chapter 3: Criteria and Theoretical Evaluation

Chapter three is divided into two parts -- the first presents normative criteria which are used in the second section to evaluate the theoretical strengths and weaknesses of the present system of controls and the former system of land use contracts. The main questions which form the basis for the normative criteria are outlined below.
- What should be the appropriate mix of fixed regulations and flexible development controls?

- How should these controls relate to official community plans?

- How can the appropriate mix of fixed regulations and flexible controls comply with the legal rules and principles as specified by the courts (e.g. Rules of Natural Justice)?

- How well do the former system of land use contracts and the present system of planning controls satisfy, the normative criteria?

Chapter 4: Practical Evaluation, Survey

Chapter four provides a practical analysis of the two systems based on survey results of a sample of six development industry representatives and six municipal planners. A more detailed description of the method of survey and data collection is provided at the beginning of Chapter 4. The survey was based on the questions outlined below.

- What are the current planning objectives of developers and local governments and what problems are associated with current planning legislation in achieving these objectives?

- Does land use contract legislation provide a better means of mitigating these problems and achieving their planning objectives?

- How much support is there for the reintroduction of the land use contract and how could it reintroduced, if at all?

Chapter 5: Practical Evaluation, Case Studies

A case study method is employed in this chapter which provides an empirical and objective basis for comparison of the land use contract and the current system of development control. One project built using land use
contracts is compared with one project built using the current system of development controls for each of four municipalities selected for analysis. A total of eight projects are evaluated. A more complete explanation of the reasons for choosing municipalities and the projects for review is provided at the beginning of Chapter five. Questions addressed in this analysis are outlined below.

- What were the development objectives and planning concerns that surrounded the development application?
- How was the respective planning legislation implemented to accommodate these objectives and concerns?
- What were the municipal and development benefits of implementing that system and at what cost?

**Chapter 6: Conclusions and Recommendations**

Chapter six presents the study conclusions and recommendations on the need and support for land use contracts and how they should be reintroduced, if at all.

**1.5. ASSUMPTIONS**

The rationale for municipal development objectives and subsequent regulations is difficult to determine and is therefore not attempted in this study. Rather it is assumed that public regulation of development is generally accepted by the public and will continue. Presumably local government intervention is justified in the existence of externality effects in the market place; natural monopoly; and the
need for public services.

It is also assumed that there is no perfect development control system, but rather the best we can do is attempt to improve the process to meet the demands of the time.

Finally it is assumed that the reader has a understanding of the fundamentals and history of zoning and discretionary development control in North America. Considerable preliminary research on these subjects was conducted, but for the purposes of being concise, a discussion of the evolution of zoning in Canada, its strengths and weaknesses, and its relationship to discretionary controls such as spot zoning, incentive zoning and conditional zoning etc., is not presented.  

1.6. SCOPE

Legislation reviewed in this study is limited to the B.C. Municipal Act because it is the municipalities covered by this legislation that experience tensions concerning the previous land use contract legislation, as well as the current system of development control.

The Vancouver development control process enabled by the unique Vancouver Charter, goes well beyond the standard notion of land use regulation by venturing into design control. This process is well entrenched, is generally accepted by the public and development community and is therefore, beyond the

7 See Porter, 1973 and Hughes, 1982 respectively.
scope of this thesis.

1.7. PRACTICAL SIGNIFICANCE

The results of this research may suggest ways in which the planning legislation in B.C. can be improved to better meet the changing needs and objectives of both the general public and development industry. In greater detail, the study does the following:

- it contributes to the small but growing body of knowledge on discretionary zoning and development contracts;
- it offers insights into how well B.C. communities using development permits/zoning have managed in practice as compared to using land use contracts;
- it suggests a normative framework which can be used to evaluate the effectiveness of present and future planning control systems;
- it dispells the myths surrounding the validity and use of land use contracts in B.C.; and
- it suggests ways in which current planning legislation can be modified to reintroduce land use contracts.

1.8. DEFINITIONS

Character -- A development that is "in character" is one that is in balance with its surroundings and has a style sympathetic to, or compatible with, the buildings, structures, vegetation and terrain to which it relates. Character could be specified by reference to a general architectural style such as Modern; Post Modern; Victorian; West Coast; or Shingle. These are very broad styles and could be more narrowly defined to describe a particular character. Description of the desired character, however, need not be based on a particular style but rather may involve identification of the overall distinctive qualities of an area.

Comprehensive -- Means of large scope, extensive coverage or range.

Comprehensive Development Agreements -- A development control mechanism
which is inclusive of several single purpose development controls and which the terms and conditions of the agreement are decided upon by City Council. Comprehensive development agreements are typically used on large scale, mixed use and complicated development applications.

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

**Conditional Zoning** -- Discretion authorized by express provision granting permission to depart from the general provisions of a zoning bylaw. Zoning approval is granted only after certain objectives or requirements are satisfied.

**Conventional Zoning** -- Otherwise know as Euclidean Zoning named after the precedent setting court case between the Town of Euclid and the State of New York. Conventional zoning amounts to the zoning powers available in the current Municipal Act where local governments may legally divide the municipality or regional district, into zones and limit, for example, the use, density and the vertical extent of of those zones. See Section 963 of the B.C. Municipal Act for greater explanation.

**Discretion** - Individualized application of political or administrative judgement which allows a variable response and solution to a problem.

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

**Fettering** -- A legal term meaning binding or preventing. Often used in context of council’s powers. For example, A council may fetter a future council from rezoning by creating a development agreement with a developer.

**Flexible Development Controls** -- Land use controls which permit development options through the exercise of political and administrative discretion.

**Form** -- Means the overall visual arrangement of the parts of a building or structure and includes its shape, siting and volume. Form is a recognizable, widely use architectural term. Specification of the building envelope is key in regulating form.

**Guidelines** -- Interpretive statements intended to help generate a unique solution; may be a mixture of narrow standards and broad policy.

**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; an important element of discretionary zoning.

**Normative Criteria** -- Standards or rules of correctness used in this thesis to test planning controls systems.
Particulars of Exterior Design and Finish -- Means specific architectural details and specific material, texture or colour of the exterior cladding or a building or structure. Regulation of exterior design should not be confused with regulation of built form and character. The regulation of built form and character in B.C. is limited to such things as a building's orientation, how it fits in the surrounding context etc. For example, a municipal government could ensure that a proposed building design comply with the surrounding overall character of an area by insisting that the building is of a certain height or width. Under existing legislation, they could not force developers to use heavy beams in a building facade to be in keeping with a Tudor Architectural style in the area. This would be considered as regulating the particulars of exterior design.

Spot Zones -- Refers to a type of zone which is created to deal with an individual development application. Usually the terms and conditions of that zone are specified at the time of rezoning.

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

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

Ultra-Vires -- Legal term meaning outside the law or without jurisdiction.

Urban Design Panels -- Some municipalities where architectural design is of significant importance have created advisory design panels consisting of lay people and professionals in the community to advice council on the potential impacts and relative architectural merits of the proposed development application.
CHAPTER 2. LAND USE AND DEVELOPMENT CONTROL IN B.C.

This chapter traces the evolution of the Town Planning Act; the inclusion of community planning in the Municipal Act in 1957; and the subsequent amendments of the Municipal Act, first to include discretionary zoning in 1968 and then to limit it in 1978. This discussion provides the necessary background for evaluation of the land use contract in comparison to present planning controls.

For greater clarity the following summary table is presented outlining the chronology of land use and development control legislation from 1872 when municipalities were created, to 1987 when the most recent Municipal Act amendments were made.
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<td>City of Vancouver receives separate Charter</td>
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<td>1925</td>
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<td>1971</td>
<td>Land Use Contracts</td>
<td>Legalizes impost charges and development contracts</td>
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<tr>
<td>1978</td>
<td>Bill 42, Municipal Act</td>
<td>Land use contract repealed, refurbished development permits introduced</td>
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<tr>
<td>1980/1981</td>
<td>Bill 72 and 9, Municipal Act</td>
<td>Proposed Planning Act renamed</td>
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<td>1985</td>
<td>Bill 62, Municipal Act</td>
<td>Official Community Plan required, development permits modified</td>
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<tr>
<td>1987</td>
<td>Bill 30, Municipal Act</td>
<td>Local government indemnification</td>
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2.1. EARLY B.C. TOWN PLANNING LEGISLATION

Privately-held land in incorporated municipalities and regional districts constitutes a small proportion of the entire British Columbia land mass. However, control over the uses and development of such land is prescribed in considerable detail in two pieces of legislation: the Municipal Act and the Vancouver Charter. British Columbia has no planning act, but these two statutes grant the local governments the power to undertake land use and development controls, and to do so within a planning framework.

The Municipal Act applies to all British Columbia municipalities except the City of Vancouver. The Resort Municipality of Whistler uses this act, but also has special planning powers under the Resort Municipality of Whistler Act. The University of Endowment Lands and a portion of New Westminster also have special planning powers. Vancouver derives its land use regulatory powers from the Vancouver Charter. The adoption of separate legislation for Vancouver occurred three decades ago. Until that time, all municipalities were governed by the 1925 Town Planning Act as amended.

The creation of municipalities in British Columbia and their power to hold elections, borrow money, provide services and make by-laws dates from the 1872 Municipal Act. This statute originally covered all British Columbia municipalities in existence at that time, with the exception of the City of Vancouver.
Vancouver was incorporated under its own legislation, in 1886, The Vancouver Incorporation Act. These early enabling statutes contained no municipal power to regulate private land use, although building regulations were permitted.

The Town Planning Act was adopted on December 18th, 1925. It was applicable to all municipalities including Vancouver. The Act gave municipalities the authority to prepare and adopt an official town plan; to enact a zoning by-law; and to establish a town planning commission.

Although there was a variety of provisions permitting municipalities to plan and control land uses, the actual practice of planning diverged considerably from its potential. The zoning by-law for many years was the most significant result of planning. Weaver for example notes, "the final zoning by-law reflected the clash of reality interests rather than any certain principles..."  

Between 1930 and 1945, the land market was significantly depressed. During this period there was little construction. Planning for and controlling development became largely irrelevant. Corke notes that, "zoning variances were easily obtained where necessary from the board of appeal, and the town planning commission was increasingly bypassed in this process."

After the war, the B.C. economy improved, but zoning by-laws continued to be

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8 S.E. Corke, Land Use Controls in British Columbia (Toronto Ontario, University of Toronto, 1983), p. 53.
9 Weaver, in Corke, p. 53.
10 Corke, p. 53.
11 Ibid.
subverted in the mad rush of activity. ¹² There is some suggestion however, that by about 1950, zoning was increasingly used to implement strategies for wider community goals rather than simply protecting single-family residential areas. ¹³ Instead of using zoning simply as an exclusionary device, it was tailored to special uses -- the so-called spot zones. It was also tailored to deal with problems of the day such as compact housing, multi-family housing, conservation of natural amenities and prevention of developments on flood plains.

What soon became evident was that existing legislation, was becoming inadequate to accommodate the expanding municipal objectives of private land use development regulation. New legislation was in great demand.

2.2. 1957-1967, THE MUNICIPAL ACT AND CONTRACT ZONING

The Municipal Act

In 1957 the Town Planning Act was repealed and replaced by Part XXI (Community Planning), of the Municipal Act. Since the Municipal Act did not cover the City of Vancouver, the Vancouver Charter was amended in 1959 to reflect these powers. Vancouver's planning history diverges substantially from that of other municipalities at this point.

Part XXI of the Municipal Act consisted of a number of provisions previously

¹² Ibid.
contained in the Town Planning Act. It was permissive legislation, as the Town Planning Act had been. It gave authority for the municipalities to establish an official community plan; a zoning by-law; an advisory planning commission; a zoning board of appeal; and to regulate the subdivision of land and the construction of buildings. In addition, various provisions were incorporated for regional planning, including the power to create regional planning areas and boards, which were transferred directly from the Town Planning Act. The Municipal Act gave conservative and restricted powers of development control to British Columbia municipalities for such concerns as design and landscaping control, although the legislation was permissive in its interpretation.

But as in the 1920's, the forces of urban development dictated the need for change in the following years. Several of the urban fringe municipalities outside Vancouver faced rapid urban development and mounting fiscal pressure resulting from infrastructure requirements. However the 1957 Municipal Act provided only limited powers to require a developer to install basic services. As the cost of public services increased with rapid growth, many municipalities through necessity negotiated with developers to require them to carry some of the burden. Municipalities therefore implemented a variety of methods for solving the twin problems of inadequate servicing and fiscal constraint. Porter, refers to this era an one of "contract zoning". Using zoning for development control purposes, many municipalities instituted a bargaining process using rezonings, impost fees, off-site servicing charges and other innovative charges designed to assist the

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14 Corke, p. 55.
15 Ibid.
municipality's fiscal position. The results of the bargaining were embodied in development contracts.

Originally a number of municipalities, particularly in the Lower Mainland and some areas on Vancouver Island, used three devices which were not permitted under the Municipal Act. Although widely used in Ontario, where site plan control had been permitted for some time, the attachment of plans to rezoning bylaws was not specifically authorized in B.C., but use extensively. This device was employed on a large scale in Surrey and other municipalities where there was a desire to control the design and scope of development. Another device that was used, notably in Surrey, was the parks and amenity agreement, where the developer agreed to provide certain funds seen necessary by the scope of his development for the upgrading or provision of parks and recreational areas in the vicinity of the project. The third device used was known as the off-site servicing agreement. These were in addition to the on-site service installation obligations of the developer and included such things as sewer and road construction.

It was not long before these contracts were challenged in the courts. Developers complained that the municipal charges levied were onerous, and varied considerably from municipality to municipality.

The courts decided the issues on another basis. They found that local governments could not "sell" zoning unless this power was provided in the legislation. "Selling" zoning would have the net effect of "fettering" away future

17 Lane, p. 21.
council's power and was therefore considered to be "ultra-vires". In other words, local governments could not promise developers that they would approve their rezonings if the developers agreed to pay for municipal benefits such as parks.

The outcome of the court cases was to pressure the legislature for a legitimate accommodation of the municipal fiscal and servicing problems, satisfactory to as many interests as possible.

2.3. 1968-1971, DEVELOPMENT PERMITS

A first potential solution to these problems was seen in 1968 when the power to issue development permits was introduced. The new legislation was introduced as Section 702 of the Municipal Act and was modeled on a combination of commercial contracts and land use permits. This new power entitled local governments to declare a development area, and to require certain prescribed obligations from the developer. Under this legislation municipalities could impose conditions upon developers during rezonings. For example, they could force developers to guarantee a certain quality of landscaping. Council's could also administer discretion, allow conditional uses, as well as require security of performance.

In order to encourage a stable environment, the use of the development permit

18 Ibid.
19 Porter, p. 103.
20 See Appendix I. for greater details on provisions provided in legislation.
was confined to those municipalities which had prepared an official community plan. However, very few municipalities at this time had such plans in place and the inducement of the development permit was apparently insufficient for them to enter upon this long path. Thus, the development permit of the late 1960's was hardly used. Even when the prerequisite of the community plan was deleted in 1970, municipalities were reluctant to change their approval process and continued to do whatever they could to solve their fiscal and servicing problems without development permits.

Given a longer period of time to experiment with development permits, they might have gained greater acceptance and widespread use in the long run. This was not to be the case. In 1971 development permit legislation was rescinded.

2.4. 1971-1978, LAND USE CONTRACTS

In 1971, new legislation was introduced to the House as Bill 100 and sought to deal with these issues by institutionalizing the contract zoning process and subjecting it to official statutory constraints. The device, entitled the land use contract, was only to be used within 'development areas', designated by amendment to the zoning bylaw. The land use contract provision (S.702A) allowed the blending of two elements of the Municipal Act: the zoning bylaw under S.702 and the subdivision control bylaw under S.711. As long as a developer intended to develop only according to the existing use in these areas,

Corke, p. 57.

Ibid.
no land use contract was necessary. If however, a change of use or density was requested the land use contract provided a means for circumventing the standard rezoning procedures. A land use contract was intended to be initiated by applicants -- not local governments -- so that applicants always had the option of applying for a rezoning instead.

Probably the most significant change from the development permit dealt with the manner of securing effective development control. The contract could contain terms and conditions for the use and development of the land as mutually agreed upon by both parties. Once the land use contract was negotiated, it had to be adopted by bylaw, which necessitated a public hearing. A two-thirds affirmative vote of council was required before passing the bylaw and once adopted, it had the same legal status as a restrictive covenant which had to be registered in the Land Title Office.

Thus, for the first time, municipalities covered by the Municipal Act were explicitly permitted to contract with property owners concerning zoning changes. As opposed to the general rule, local governments could now "sell" zoning and do so with impunity. The contract could not only regulate land use and design, but also cover the fiscal impact of new developments through various imposts.

2.4.1. The Legislative Intent

Many municipal officials had some initial misunderstanding and confusion
concerning the legislative intent of the use of the land use contract. Later clarification, was provided by correspondence from the Ministry which stated that the land use contract was introduced:

- to simplify procedure for major development projects and ... to provide for large scale comprehensive development without a rash of zoning bylaws;
- to be used "whenever zoning was inadequate" particularly in instances involving large sub-division development where services and open space were required; and
- to accommodate redevelopment of downtown cores and similar complexities.  

Further clarification as to the scope of land use contracts was provided in 1972. The Ministry stated that the control could be used to reduce costs, to provide for parks and recreational lands and to ensure that public housing needs were met.  

2.4.2. Survey of Experience

In 1977 William Graham Consultants Ltd. undertook a study for the Ministry of Municipal Affairs to determine the extent to which land use contracts were used. The study found that some municipalities in the Lower Mainland used land use contracts much more often, and for a greater variety of projects, than local governments elsewhere in the province. The study determined that Surrey for example, processed over 300 applications while Qualicum Beach, Prince Rupert

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23 Porter, p. 115.
24 Ibid.
25 Ibid.
and Kamloops had completed fewer than 25 contracts each since the time Section 702A was enacted. \textsuperscript{26} Graham concluded that this difference was likely attributable to the rapid development in the Lower Mainland suburbs, and the varying size and sophistication of planning staffs throughout the province. \textsuperscript{27} The study also found that the smaller communities tended to use land use contracts for special projects or considerations (e.g. particular need for land dedication). In intermediate sized towns, such as Prince George and Kamloops, land use contracts were used most often for single family subdivision. In the Lower Mainland land use contracts were used for every type of project. \textsuperscript{28}

Porter, in his U.B.C. planning thesis on the subject of land use contracts found that overall, they were used most often for multiple family housing, chiefly apartments. \textsuperscript{29} He discovered that land use contracts were also used primarily for the following:

- large-scale comprehensive developments;
- multiple-use developments;
- major subdivisions requiring such works as road closures, public pathways or servicing provisions; and
- special development complexities not easily resolved using conventional zoning. \textsuperscript{30}

Porter also investigated the reasons municipal officials used the land use contract. The main purposes included the following:

\textsuperscript{26} William Graham Consultants, \textit{Improving Land Use Contracts} (Victoria B.C., Ministry of Municipal Affairs, 1977).
\textsuperscript{27} Ibid.
\textsuperscript{28} Ibid.
\textsuperscript{29} Porter, p.117.
\textsuperscript{30} Ibid., p. 118.
- control of architectural design and landscaping;
- flexibility in regulations;
- park and recreation dedications or funds in lieu;
- use variations;
- off-site services;
- innovative project designs;
- phasing; and
- bonding.  

Since land use contracts were not intended to be used for instances where conventional methods were adequate, Porter produced a table which consisted of those instances where no other technique would suffice. In rank order, design control was used most often followed by park land acquisition, complicated projects, staging, and special problems in subdivision.  

2.4.3. Industry Criticism

The 1971 amendments to the Municipal Act introducing the land use contract were initially supported by the development industry, but before long this support was generally withdrawn. Their greatest criticism was directed not at the scope of the legislation, but rather the way in which municipalities used land use contracts.

Impost Fees and Down Zoning

The ability to require developers to pay off-site servicing as part of the land use contract became a great inducement for its use among rapidly growing communities.

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31 Ibid., p. 119.
32 Porter, p. 122.
33 Corke, p. 58.
municipalities. Developers however, charged that some municipalities were using the new device exclusively as fiscal tool. By down zoning a development area, developers were essentially forced into land use contracts since a rezoning was generally more difficult to obtain. The developers argued that this practice was contrary to the intent of the legislation, which stated that land use contracts were to be entered into at an applicant's request. What the development industry was most concerned with was not that municipalities were collecting revenues from developers, but rather that the funds were not being used in a way that directly related to the project as intended. The land use contract was also blamed in part for the high cost of housing and long development approval delays. Such a "subversion" of the original spirit of the legislation was not to be tolerated by the development interests. What they required was flexibility in project design, use and density, but not at the cost of uncertainty in municipal demands.

These allegations of misuse were never proven, but altogether, "the inequalities, irregularities, illegalities, uncertainties, conflicts and general problems inherent in the negotiation of land use contracts" led the developers to once more pressure the legislature for change.

The following section discusses in greater detail these allegations which fueled the development industry's plea for a change in legislation.

34 Ibid.
35 Conversations with Gordon Cameron, Urban Development Institute Representative, 1988.
36 Ibid.
2.5. 1978, DEVELOPMENT PERMITS REPLACE LAND USE CONTRACTS

2.5.1. The Bawlf Report

The push and pull between developers and local governments (other than Vancouver) over land use contracts during the late 1960's and early 1970's occurred against a backdrop of intense urban development activity in which the provincial government was increasingly called upon to intervene.

Of particular concern was the state of the housing market in urban areas. As in other parts of Canada, the early 1970's experienced a spectacular rise in housing prices in British Columbia urban areas. 38

The political response in 1976 was to establish the Joint Committee on Housing, chaired by Mr. Samuel Bawlf, whose purpose was to enquire into problems affecting the delivery of housing in British Columbia. 39 The Bawlf report placed considerable emphasis on supply-side explanations of the price increases, focusing particularly on the regulatory framework within which land use and development approvals occurred. In line with its mandate to examine problems affecting the delivery of housing in British Columbia, it identified the following two major issues:

- the complexity and multiplicity of local government controls over the

39 S. Bawlf, British Columbia Joint Committee on Housing, (Report of the Chairman to the Ministry of Municipal Affairs and Housing, Victoria, 1976).
planning process; and

- the variety of provincial land use controls, and their multiple and often conflicting goals. 40

In particular, the report made the following specific conclusions.

- Land use contracts and the zoning power were being widely used, in a manner contrary to their intent, to control development and to establish what amounted to a second level of taxation in the form of impost fees and servicing charges.

- A very complex maze of approvals existed even for a normal project and that the need for public hearings at the bylaw approval stage of the land use contract was causing delays on issues (e.g. design) which were not technically open to public debate.

- Municipalities had not pre-zoned and planned to anticipate and meet housing needs, but were developing policy in reaction to individual development projects.

- The inability of municipalities to finance expanding services was leading to a subversion of the planning process either through the forcing of the use of land use contracts, or through the refusals to approve or service new areas.

Bawlf's recommendations however, were not supported by his findings. Or at least the findings were never documented in the report. Rather, Bawlf adhered to a number of basic philosophical principles, among them being the preservation of the integrity of zoning as the legitimate land use control instrument; and the need for efficiency and predictability in procedures, as illustrated through his call for streamlining. The recommendations which he made were, therefore, quite acceptable to the development industry; and indeed they formed the basis of the 1977 Bill 42 amendments.

40 Bawlf in Corke, p. 60.
41 Ibid.
Among many recommendations, the following were of particular importance.

- The Municipal Act should be amended to repeal the land use contract.

- To reduce administrative abuse of discretion, zoning bylaws should prescribe basic uses and density permitted for the development of land.

- Subject to certain provisions, councils may require a development permit to be issued for a development project and negotiate it based on criteria specified in the zoning bylaw, e.g. set-back, height, and so forth. The constraining provisions to be as follows: no permit negotiated during a rezoning; use and overall density non-negotiable; no reduction in development rights given by zoning; no reference to further public hearing.

- The precise details of development review procedures must be made available to developers.

- The zoning bylaw be amendable on an affirmative vote by a majority of council (not two-thirds).

- Subdivision servicing requirements be standardized in bylaws and that municipalities should provide a list of on and off-site requirements to the subdivider within sixty days of application.

- Special grants should be made available to encourage municipalities to plan for growth.  

2.5.2. 1978, Bill 42 Amendments

It would seem that the powerful development lobby, with their distrust of the land use contract were to be successful in their efforts. On April 1st, 1977 Bill 42 was introduced in the Legislature and eventually proclaimed June 16th, 1978. The new legislation incorporated many of Bawlf's ideas and recommendations. Its stated intention was to:

\*\* Ibid., p. 61.\*\*
"... streamline land use control procedures and encourage rational, consistent pre-planning thus eliminating much of the red-tape and extended delays brought about by the present "ad hoc" consideration of every development." *3

A municipal land use control system emerged with the following major components, explained in more detail in the following section.

- zoning and subdivision control bylaws, little changed from the earlier legislation;
- official community plans, for which the requirements for adoption and procedures for proclamation were considerably changed;
- site (voluntary) and area (compulsory) development permits, which were completely new and intended to replace the development control powers of the land use contract; and
- development cost charge (DCC) bylaws, also completely new, replacing the land use contract's power to exact charges and fees.

1978 Official Community Plans

Gone were land use contracts. The new system was predicated on the existence of official community plans, zoning and subdivision bylaws. By requiring that development cost charges (DCC) be used only if an official community plan (OCP) was adopted, the Province had hoped that more local governments would prepare these plans given the incentive of the DCC. At the time, very few municipalities had prepared OCP's and were not ready to adopt the system envisaged. *4

1978 Development Permits

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*3 Beveridge, p. 56.
*4 Corke, p. 61.
The 1978 refurbished development permit system was introduced to satisfy the need for flexible land use controls, which had been one of the functions of land use contracts. As a pre-requisite to the use of 1978 development permits, municipalities were required to have zoning and subdivision bylaws in place. Two development permits could be issued: a site (voluntary) development and an area (mandatory) development permit. Mandatory development permits could be required by local governments by way of a specific bylaw, involving a public hearing in much the same way as a zoning bylaw. The mandatory development permit area designation was to be based on special conditions prevailing in the area -- e.g. flood plain; hazards; or natural beauty. It was the intention of the legislation that a blanket development permit bylaw would preclude the need for hearings on individual developments, thereby speeding up the approval process.

Site development permits were to apply where a developer wished to vary the provision of an existing zoning or subdivision bylaw. One of the key components of this provision was that varying zoning or subdivision bylaws was to be initiated by the applicant in a similar way as the land use contract.

Through the issuance of development permits, councils were entitled to vary or supplement the provisions of zoning and subdivision bylaws in all or some of eleven areas, as specified in the development permit bylaw. For example, local governments could require that landscaping be established around different uses in accordance with the standards set out in the permit; require the provision of areas for play and recreation; and limit the size and construction of signs. Of particular importance was that local governments could regulate the exterior
finishing of most buildings. In either case, council was obliged to consider the same five objectives in passing its development permit bylaw as were specified for the land use contract bylaw.

One of the principle differences between the 1978 development permit system and the land use contract system was the way in which zoning would lie behind each development permit as a permanent framework, prescribing invariably the two fundamental determinants of development: use and density. By contrast, the land use contract, was used to waive any zoning requirements, setting up wide ranging controls for each project.

The 1978 development permits were quite different from the 1968 development permits primarily in that specific objectives and guidelines were stipulated to direct and limit the use of the 1978 permits. The 1978 development permits were to be supported by predetermined development permit areas and zoning bylaws, whereas the 1968 permits were not. Finally the 1968 development permits could be used to require developers to pay for off-site development costs. This was clearly not a feature of 1978 development permits. A limited means of achieving this objective was provided for in the 1978 legislative amendments through the provision of the development cost charge.

A Rush of Land Use Contract Applications

One of the unintended side effects of the 1978 amendments was to greatly

See Appendix I. for list of matters which could be regulated using 1978 development permits.
increase the number of land use contract bylaws enacted by municipalities in the period of grace provided for by the new legislation. Ninety-six contract bylaws were approved for municipalities in 1978, fifty-five between July and December; and even in 1979, some twenty-seven were approved before the January deadline making land use contracts illegal. Their intense popularity clearly arose from the fact that they enabled municipalities to achieve their two major objectives with regard to land development -- control over all aspects; and levying of charges -- without the regulatory baggage in the form of plans and zoning and subdivision bylaws, required after the proclamation of the 1978 amendments.

Not all of the land use contracts could have been initiated by local governments. It is apparent that some developers, quite contrary to those who sought to have it abolished, were very much in favour the land use contract. Corke suggests however, that the 1978 legislation was no more effective in satisfying development industry and local government objectives then the land use contract and once again there were emerging new pressures in the early 1980's for further legislative change.

2.6. 1980-1981, MORE STREAMLINING

Some of the pressure for change in municipal planning was characterized as resulting from the push of local governments for the flexibility and maneuvering room of the Vancouver system necessary to accommodate increasing urbanization.

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6 Corke, p. 69.
7 Ibid.
With regard to zoning and discretionary development control, the City of
Vancouver has had much greater control over land use regulation than other
municipalities. Overall the system includes: conditional uses; detailed specifications
in the zoning bylaw for building and structure regulation; design and amenity
regulation; and discretion which is granted to officials to vary regulations, offer
bonuses and pronounce on the acceptability of conditional uses.

Opposing the push from municipalities for a planning system similar to that in
Vancouver, was the pull of the development lobby aimed at tying up the
regulatory framework even more tightly, thereby fostering the "certainty" which
they apparently require for stability.

The pressure for change culminated in the revised legislation which came before
the House in 1980 under Bill 72 the Planning Act later renamed to Bill 9 the
Land Use Act. The purpose of the legislation was to provide a single legislative
framework for the regulation and planning of resources and settlements in British
Columbia. *8 Local governments were still to be responsible for land use
planning in their jurisdiction, however planning was no longer to be permissive.
*9 All of the "extraordinary" zoning powers which the City of Vancouver held
were to be systematically and deliberately excluded from Bill 9. These
"extraordinary" powers, were as follows:

- the provision for conditional approval uses;
- the provision for comprehensive development districts;

*8 Corke, p. 145.
*9 Ibid.
- the power to issue development permits subject to conditions which are not specified in advance in legislation;

- the power to prohibit the erection of any building unless due provision is made for public amenity; and

- the power to delegate to any official of the City, or board of officials, discretionary powers relating to zoning. 50

These special powers, many of which have been held by Vancouver for roughly 20 years, were still to be denied to the municipalities currently governed under the Municipal Act. The existing climate for revised legislation, in particular the role of powerful development lobby, had worked against the introduction of increased discretion for municipal planning in all other municipalities.

The reaction to Bill 9 was of total shock from all involved except those representing the development industry. 51 The industry lobby generally supported the Bills, while many professionals and most local governments were extremely unsupportive. Of the many issues that municipalities were opposed to, the "ad hoc and inadequate solutions to complex problems presented [in the Bill] in the form of numerous permits, e.g. density variance, temporary dwelling, residential variance, and industrial use", 52 were the most often cited in numerous reports and briefs.

Because of the overwhelming opposition to some of the features of the Bill, there

50 Ibid.
51 Ibid., p. 147.
52 Ibid.
was growing uncertainty during the spring of 1982 that Bill 9 would pass intact. The Bill was in fact withdrawn without even a parliamentary debate. However, the pressures which lay behind both efforts at reform remained and eventually came to a head five years later in recommended changes to B.C.'s planning legislation.

2.7. 1985 TO PRESENT, CURRENT PLANNING SYSTEM

On December 2nd, 1985 the Municipal Amendment Act, otherwise known as Bill 62, became law. This legislation introduced extensive changes to the Municipal Act. Additional amendments were made to the Municipal Act in 1987 under Bill 30. These amendments related mainly to changes to local government indemnification. The Bill 30 amendments are minor in their effect on development control in comparison to the Bill 62 changes. The Bill 62 amendments however, have brought about considerable changes to municipal planning in B.C. and are therefore worth discussing in greater detail.

The overall thrust of the amendments was to further reduce uncertainty in the development approval process; modify the system of development permits; and to require municipalities to adopt official community plans as a condition to use these permits. While community plans were to be incorporated into the legislation under Bill 42 in 1978, they did not become law until 1985.

The primary changes from the previous legislation were as follows:

53 Corke, p. 148.
- the requirement that municipalities in British Columbia (except Vancouver) prepare an official community plans as a condition to use development permits;

- the replacement of the site (voluntary) and the area (mandatory) development permit with significantly revised development permits;

- the introduction of development variance permits and temporary use permits;

- revised development cost charges;

- the provision for a development approval procedures bylaw; and

- new provisions on the municipal practice of holding of security.

1985 Official Community Plans

Until 1985 there were many difficulties preventing municipalities from adopting community plans. There was relatively little planning expertise and money to embark on such a process, and the disadvantages of the potential involvement of the province in the approval process outweighed many of the benefits. Even with the 1978 Bill 42 amendments which introduced a new official community plan concept for incorporated municipalities (excluding Vancouver), few local governments chose this route. In the period leading up to 1985, the Province became aware that if the objective of community plan adoption was to be realized, local governments would have to be required to adopt them by statute.

The 1985 official community plan is very broadly defined, and provides an umbrella of policy under which detailed zoning and subdivision control

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Ibid.
bylaws can be passed. A public hearing is required to pass and make amendments to the plan; a two-thirds majority affirmative vote by council is necessary; and the plan must be consistent with local government policy. The official community plan is intended to be the most general and flexible yardstick from which to measure development applications.

1985 Development Permits

While the development permit system has been maintained as a major vehicle for providing flexibility in land use regulation, the Municipal Amendment Act, in 1985 introduced extensive changes and refinements. An overview of the new development permit legislation follows.

- If development permits are to be used, the areas must be designated in the official community plan, rather than in the zoning bylaw as required in the previous legislation.

- In areas covered by a rural land use bylaw, development permit areas cannot be designated.

- Development permits may only be required within designated development permit areas (similar to 1978 development permits).

- Development permit areas may only be designated for purposes of: protection of the natural environment, protection from hazardous conditions; protection of provincial or municipal heritage sites; revitalization of designated commercial areas; or regulation of the form and character of commercial, industrial and multi-family residential development.

- The official community plan must describe the special conditions or objectives which justify the designations and must specify how the conditions will be alleviated and the objectives achieved.

The new legislation is more specific on what aspects of development require a development permit and these vary amongst the five categories of development permit area designations.
Development permits can vary or supplement provisions of any bylaw adopted under Division (4) and (7) which includes: parking; building set backs and heights; screening; and subdivision servicing bylaws, but not use and density as prescribed in the zoning bylaw.

Notice of issuance, amendment or cancellation of a development permit must be filed in the Land Title Office and noted on the title of the subject property.

A list of development permits issued must be maintained and made available to the public.

- Security may only be required with respect to landscaping (where this can be required in the permit) and to ensure contravention of the permit would not result in an unsafe condition.

The primary changes from the previous legislation are the requirements that development permit areas be designated in an official community plan, rather than in a zoning bylaw, and the requirement for justification and guidelines. If a local government opts to use development permits, it must amend its official community plan to designate the areas. Where an official community plan included development permit areas designated prior to December 2, 1985, these are to be redesignated, by plan amendment, under Section 945(4) of the new legislation (unless the previous designations and accompanying statements comply fully with the new legislation). In cases where no community plan exists or where the community plan has not been adopted as an "official" plan, use of development permits requires adoption of an official community plan.

The legislation differentiates between designation categories with respect to the degree to which design can be regulated by development permit. Section
permits requirements respecting "character" of development for designation categories "c" (heritage) and "d" (revitalization) and specifies that this includes the "siting and form" of buildings and structures. While category "e" (commercial, industrial, and multi-family) may also address "character", it is restricted such that "the requirements shall not relate to the particulars of exterior design and finish". As spelled out in the Guide to the Development Permit System for areas designated under category "e", the guidelines and the actual development permits must not detail specific architectural features (e.g. cornices, canopies, shutters, etc.) or the specific exterior finish (e.g. cedar siding, textural concrete, particular colours, etc.).

Development Cost Charges

One of the other significant changes to the legislation was the way in which development cost charges could be levied. Introduced in 1977, development cost charges replaced impost fees as the source of municipal revenue for financing off-site services associated with new development. The 1985 provisions are much more strict and specific, with respect to circumstances under which charges may be levied.

There are three events in which local governments may levy development cost charges: upon the approval of a subdivision under the Land Titles Act.

See definition section for description of form, character, and particulars of exterior design and finish.

or the Condominium Act for more than three lots or dwelling units; upon
the issuance of a building permit for construction of alteration of more than
three dwelling units; and upon the issuance building permit for other than
residential purposes where the value of the work is greater than $25,000.

Council may use a development cost charge to require developers to pay
for off-site costs including roads and servicing infrastructure or for park
land dedication, but not for improvements to a park or open space. Council
must pass a development cost charge bylaw prior to using the device and
must have accounted for these costs in their capital works program.
Considerable planning then, is required to anticipate new growth in a
community and to predict the additional or incremental costs to the
community imposed by this development. 57

Amending Existing Land Use Contracts

Although the future use of land use contracts were no longer enabled after
1978, there are certain provisions for amending existing land use contracts
that are worth noting. Firstly, public hearings are no longer required for
amendments to land use contracts, except where amendments to use and
density are proposed. Minor amendments can be amended by development
permit or development variance permit. Furthermore, following the 1985
amendments to the Municipal Act, agreement of only 60% of the persons
having a registered interest in the land is required for amendments.

57 See Chapter 4: survey results, for an analysis of the effectiveness of this
device in practice.
Holding of Security

As a result of Bill 62 in 1985, local government can require an applicant to provide security, but only to ensure completion of landscaping or to ensure that an unsafe condition does not arise as a result of contravention of the permit (Section 980(2)). Where landscaping has not been satisfactorily completed or where the site is left in an unsafe condition, a local government may undertake to complete the landscaping or correct the unsafe condition and deduct the costs from the security, with the excess returned to the holder of the permit (Section 980(3)). The intention of this aspect of the legislation is to reduce the security component of development costs.

Development Variance Permits

Development variance permits in part, replace the former voluntary "site development permits". Upon application by a property owner, such a permit may be issued by resolution and can vary zoning regulations (other than use and density) as well as provisions of a number of other bylaws, under Section 21 and 29, and may be issued in any area, and do not require pre-designation in an official community plan.

The relationship between the development variance permit and the development permit is noteworthy. The key difference between the development permit and the development variance permit is that the former
can be imposed by a local government, the latter may only be issued on application. Within a development permit area, a development permit is commonly used to vary bylaw provisions which would otherwise be addressed by a development variance permit. However, this only applies where the community plan guidelines for the applicable development permit area include such matters. Development variance permits, like development permits, may not vary use or density.

A development variance permits confers a broad jurisdiction on the council, largely overlapping the jurisdiction of the board of variance. In many cases, the property owner will have the option of going to the board of variance or council for the same variance. There is no apparent prohibition against requesting one body to approve a variance that has already been rejected by the other body.

2.8. SUMMARY

This chapter reveals that British Columbia's experience with discretionary development control has been cyclical and its introduction or removal from the legislation has been a direct reflection of the push and pull between the development industry on one side and the municipal governments on the other.

The protection and enhancement of the urban environment has been a long time planning goal in British Columbia. Planning Legislation in B.C. however, has conservative roots. While the Town Planning Act adopted in 1925, provided local
governments with the authority to adopt official town plans, to enact zoning by-laws, and to establish town planning commissions, the most tangible result of this effort from the 1920's to 1950's was the adoption of zoning by-laws. For many years municipal councils concerned themselves with the use and density of development in addition to building height, siting and setbacks in attempt to mitigate nuisance and minimize incompatible uses. Their rationale for regulating the private sector was to maintain and promote public safety, health and general welfare. Conventional zoning remained the mainstay of land use and development control into the mid-1950's. Zoning received public support because of its ability to maintain a stable and predictable urban form and security of investment in single family residential neighbourhoods.

Even as early as the early 1940's however, zoning came under attack in North America as a form of unnecessarily rigid regulation. It was criticised by planners, lawyers and academics in the United States and Canada, for its failure to accommodate expanding municipal objectives by complying with the principles and rules that have been laid down by the courts.

It was becoming evident that there was a growing need for local government control over more aspects of development than could be achieved by conventional zoning. Equally important as the need for expanded control over such matters as parking, landscaping and design, were problems of providing municipal services required by new development. With limited financial resources, local governments, turned to developers to share the burden of municipal servicing imposed by their development. Thus a practice grew out of requiring developers to enter into a
variety of "quasi-legal" development and servicing agreements.

In response to these problems in the 1950's, a variety of new land use and development controls such as contract zoning, development permits, and incentive zoning were invented. These mechanisms provided greater flexibility and administrative discretion to deal with projects on a case-by-case basis in order to accommodate emerging municipal development objectives. Municipal governments in Canada, soon began lobbying their provincial governments for expanded regulatory power to sanction these controls, in addition to, or in some jurisdictions, as alternative to conventional zoning.

Even when the planning powers in B.C. were transferred from the Town Planning Act, to the Municipal Act in 1957, the legislation made no provision for discretionary development control except for Vancouver which through its own Act, the Vancouver Charter, was granted wide discretionary power in 1959.

It wasn't until 1968 with the introduction of development permit legislation, replaced in 1971 by land use contracts, that the B.C. Provincial Government responded to the zoning crisis. With the introduction of land use contracts, B.C. became the one of the first provinces to legalize development agreements.

The land use contract became one of the most powerful municipal planning devices and also one of the most controversial. It ushered in an era of wide-open discretionary development control in B.C.
The land use contract was originally intended exclusively for the control of special or complex developments, but because of its advantages over traditional more rigid zoning, it gained popularity and widespread use.

While the development industry originally supported the land use contract, it was not long before they opposed it, accusing municipalities of violating the intent and spirit of the legislation. These criticisms came at a time when housing prices were rising and an attitude prevailed that lengthy delays in the development approval process in general, and the land use contract review process in particular, was contributing significantly to increased housing costs. Rather than improving the land use contract provisions of the Municipal Act, the provincial government chose instead, to repeal the legislation in 1978.

In addition to repealing the land use contract, other significant changes were made to the Municipal Act at the time. Responding to the development industry's lobby, new legislation was adopted reestablishing conventional zoning as the basis for land use controls and reintroducing development permits as a limited means of flexible control. The legislation also specified that zoning decisions should be based on community plans.

The new legislation clearly favoured the development industry's preference for a planning control framework which offered flexibility, but not at the expense of certainty and predictability. Subsequent changes to the legislation continued to reintroduce more certainty into the development approval system, through Bill 62 in 1985 and Bill 30 in 1987. In particular, municipalities were further restricted
in their use of development permits, and were required to prepare official community plans. Planning legislation today has clearly moved away from flexible discretionary control to more conventional zoning.
CHAPTER 3. NORMATIVE CRITERIA AND THEORETICAL EVALUATION

In Chapter two it is learned that B.C. local governments (except Vancouver) have had a rather cyclical, at times tortuous, experience with discretionary and flexible land use and development control. This type of planning control has been introduced and subsequently repealed from the Municipal Act in response to the often opposing interests of the development industry and local governments. Investigation into the history of B.C. planning legislation also indicates that since rescinding of land use contracts in 1978, local governments have pressured the provincial government for flexible development controls to provide them with the means to review development applications on an individual basis, regulate design aspects of development, and to enter into development agreements.

Amendments to the Municipal Act during the past 10 years however, have continued to limit flexibility, emphasizing instead, a more traditional means of land use control based on pre-planning and fixed zoning regulation. This change has come about in response to the strong development lobby for a system that offers more certain and predictable rules that govern the approval process. Current legislation does offer some flexibility through a variety of mechanisms such as development permits, development cost charges and development variance permits. For these reasons the current system of municipal planning control can be summarized as being a system of "restraint with limited flexibility".

Has the emphasis shifted too far in the direction of restraint? Do current planning controls provide enough flexibility or is there a need for a more
In attempt to answer these questions, a balanced system of planning controls is presented in the first section of this chapter. This system of "flexibility with restraint" rather than "restraint with limited flexibility" is arrived at by investigating the fundamental provisions which should comprise a planning control system in B.C. given the past and present planning environment discussed in Chapter 2. These provisions are used as normative criteria in section two as a basis to evaluate the theoretical strengths and weaknesses of present planning legislation in comparison to former land use contract legislation.

3.1. NORMATIVE CRITERIA DEFINED

The local planning control system is defined in this thesis as having the following fundamental provisions.

Table 2. Normative Criteria

Substantive Basis:
- Fixed Standards
- Design and Development Controls
- Off-Site Servicing and Amenity Agreements
- Security of Performance Mechanisms

Policy Basis:
Community Plan

Procedural Basis:
- Procedural Safeguards
- Area Control versus Site Specific Control
- Negotiated Two Step Approval Process
The mix of controls and procedures which are categorized under these headings and discussed in the following section are essential in achieving the common planning control objectives of:

- Certainty and Predictability
- Flexibility
- Comprehensiveness
- Public Input in the Approval Process
- Informed and Effective Decision Making
- Fairness
- Efficiency in the Approval Process

3.1.1. Substantive Basis

Fixed Standards

If a local government planning control system is to provide any certainty and predictability, a part of the system must consist of fixed standards which are predominately technical in nature. Codification of established principles into development regulations occurs where specific limits are desired and where discretionary judgement is to be avoided. The regulations are generally non-interpretative and rigid in their application, and are implemented by way of zoning schedules encompassing given development sites or broad areas. They commonly take the form of use and density regulations, but may also include bulk and site control, height and parking regulations. Typically, land use and density are only varied through a rezoning and thus require public hearings, council approval and bylaw adoption.

In certain circumstances though, zoning may not be the most appropriate
mechanism to use to vary use and density. For example, where the subdivision of a large scale development includes sites with a range of densities and mix of uses, other mechanisms such as land use contracts, comprehensive development districts, and development permits have been found to be more effective than zoning. These controls have provided extra scope, flexibility and ease of implementation in the approval process.

Proposing a system based on these controls as the principal means of regulation, would be impractical given that zoning is well entrenched in current planning practices in B.C. and acceptance of a radically different system is highly improbable. For this reason, zoning should remain the basis of control for use and density changes, but there should greater opportunity to use alternative mechanisms to vary use and density where zoning is awkward or inadequate, in such cases as mixed use, complicated or comprehensive developments.

**Design and Development Controls**

To ameliorate difficult development situations and to avoid the monotonous architectural expression resulting from the "check-list" approach of fixed regulations in the administration of zoning, flexible controls should be available to deal with complex development and design control issues. For example, the flexibility and administrative discretion typically afforded through the City of Vancouver development permit process has been found to be more effective than conventional zoning in achieving urban design aspects such as view protection.

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Hughes, 1982.
Ideally zoning should operate in tandem with a development permit process similar to the current Municipal Act, but based more on the Vancouver Charter model where only use and density are regulated in the zoning bylaw and building height, massing and other regulations and guidelines are included in the development permit bylaw. In this way, council is provided with the authority to decide the important, but often political issues of use and density, whereas staff is delegated the responsibility to work out the technical details of design with the applicants.

Off-Site Servicing and Amenity Agreements

The discussion in Chapter 2 reveals that B.C. local governments need some mechanism to require developers to assist in providing off-site public services. The practice however, of approving rezoning subject to unwritten municipal conditions, (selling zoning) should be prohibited since such a practice moves away from fairness in the approval process and leads to ad-hoc decision making.

Whether it is a development cost charge, impost fee or development agreement, the terms and conditions of such an agreements should be mutually agreed upon by the applicant and the local government and the instances in which the mechanism can be used should be spelled out in the legislation and not simply couched in general statements of intent. While it is recognized that some off-site

Hughes, 1982.
costs are unique to individual projects and can only be determined at the time of application, the general rule should be that local governments should be required to justify these costs in terms of their capital works budget and be required to apply an equitable cost sharing formula to each development application.

Security of Performance

The planning legislation should provide a mechanism that requires each party involved in the process to follow through on their obligations agreed upon. Section 215 covenants, bonding and irrevocable letters of credit have been used in B.C. for securing aspects of development which are not easily achieved by zoning such as landscaping, design quality, and project phasing. Regardless of the mechanism, the legislation should clearly state the instances in which the devices may be applied.

3.1.2. The Policy Basis: Community Plan

Fixed regulations, design controls, development agreements, and enforcement provisions, are merely tools to implement broader objectives, forming the second main prerequisite -- the community plan.

In general terms, a community 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. The community
plan should provide considerable guidance for the use of zoning and other land use and development controls, and thus promote predictability of rules, fairness, and informed decision making while guarding against arbitrary discrimination and irrationality.

Coordinating zoning with a community plan has been encouraged for years and can be traced as far back as the 1920's when zoning was first introduced to North America. However, the relationship between zoning and community plans has not always been good. As revealed in Chapter two, community plans in conjunction with zoning has been significantly underutilized in British Columbia until quite recently. There are several reasons for this inconsistency.

One possible explanation put forward by Haar, is the relatively late introduction and development of the planning profession relative to the institutionalization of zoning. Consequently zoning developed its own philosophy and tended to emphasize the differences between land uses rather than the relationships that tie them together.

Another explanation has been put forward by Makielski. He believes that the administrative and political structures have not offered encouragement for comprehensiveness. While the legal theory on land use and development control envisions a relatively coherent and open system, the political system demands

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80 Porter, p. 67.
81 Haar, in Porter, p. 68.
82 Cunningham, in Porter, p. 68.
almost the opposite.⁶³

As discussed in Chapter 2, some B.C. local governments did not have the incentive, or resources to prepare community plans during the 1960's and 1970's.

Irrespective of this, planners and other professionals generally agree that certain benefits accrue wherever zoning controls are used with comprehensive planning. Today Canadian critics are certain in their recommendations that conventional zoning and discretionary development control should not be exercised without the presence of a community plan. Milner has stated that, "discretionary development control without master planning is as weak as piece-meal zoning." ⁶⁴ The Royal Architecture Institute's study is more emphatic: "without this background of a plan properly prepared and implemented ... , we recommend unequivocally that no municipality should engage in any form of discretionary or traditional zoning by-laws".⁶⁵

The U.S.A. Standard Zoning Enabling Act, now requires zoning to be in accordance with a comprehensive plan. The B.C. government has taken a similar approach. With introduction of Bill 62 in 1985, local governments are now required to adopt official community plans as a condition of using development permits and development cost charges.

Weaver, acknowledges the need for long range planning for some purposes, but

⁶³ Makielski, in Porter p. 70.
⁶⁴ Milner, in Hughes, p. 54.
⁶⁵ RAIC, in Hughes p.54.
emphasizes short range programmatic planning to work with discretionary control systems, stating:

"... 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 which should achieve a significant role in the development of cities."

Therefore, to incorporate any form of flexible development control with a conventional type of zoning system, a plan should be short term policy oriented, but incorporating broad long term municipal objectives. In other words, the plan must become part of an ongoing dynamic planning process subject to change and periodic review.

Simply stated, the plan should become the basis against which decisions can be made and it should be a legislative requirement regardless of the land use and development controls used. Without a broad policy basis, the use of standards becomes questionable, and the approval process is more likely to operate in a piecemeal and ad hoc manner.

3.1.3. Procedural Basis

Procedural Safeguards

Many of the innovations dealing with flexible land use and development controls and a reliance on plans places additional pressures on the process. Some say

Weaver, in Hughes, 1982.
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. Babcock for example, makes the following relevant points.

"One must accept that zoning is essentially political in nature, and the ideal of using zoning to implement a long term comprehensive plan is a virtual impossibility. Reform should neither overly stress comprehensive planning nor eliminate discretion, but rather, 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 participation as possible." 

It becomes more critical then, to impose procedural safeguards to address objectives of fairness, public input and informed decision making. As Desmith puts it, "every authority which is under a duty to act judicially, or adjudicate, must follow the procedural requirements of natural justice".

At the local government level the rules of natural justice mean that the development approval process should include the following:

- the posting of notice of development;
- the opportunity to heard, in some form of public hearing;
- fair and impartial decision making made by disinterested parties;
- the recording of decisions; and
- some form of judicial review.

For the most part, these procedural safeguards are well established in the rules governing local government planning in B.C. and should continue in this way.

\[67\] Babcock, in Hughes, 1982.
\[69\] Desmith, p. 195.
Area Control versus Site-specific Control

Past planning experience, suggests that there are instances where development applications should be approved based on their own merits on a site specific basis. For example, this situation may arise where a new use is proposed on a non-conforming development site or where an industrial use on a downtown waterfront site is no longer economic presenting an opportunity for redevelopment to residential or commercial use. At least in the latter example, pre-planning the site for a future use would be difficult since the intentions of the owner(s) would not be known in advance of an application. In this case, a comprehensive development agreement or special zoning district schedule could be created where the terms and conditions of development are negotiated during the approval process. This type of planning should be the exception not the norm.

The general rule should be that in areas where inhabitants/workers have chosen to maintain or encourage homogeneity in use, density and building standards, and where this unity can be easily defined, notably single family residential districts, standards of general application to areas of development should apply. Where special circumstances exist eg. heritage sites, environmentally sensitive sites or areas where the community wishes to maintain a special character, or encourage downtown redevelopment, site specific control should be available.

Negotiated Two Step Approval Process

In keeping with the objectives of creating an efficient and predictable approval
process balanced with optimizing public input, informed decision making and fairness, a two step approval process similar to the process used in the City of Vancouver, is advocated in this thesis.

Assuming a local government has preplanned its community by adopting a zoning bylaw and comprehensive plan for all or part of its municipality, an applicant wishing to develop in that community should only have to apply for a development permit as long as it can be determined that the proposal complies with the use and density of the respective zoning bylaws.

If however, a use or density change is proposed and the change is consistent with the plan but not the zoning bylaw, a rezoning should be required consisting of a two step approval process.

In stage 1, an applicant would submit a preliminary development application identifying the changes requested and the planning rationale for this change. Following review of the application, staff and other advisory bodies would submit reports on the application informing council of their professional recommendations. Council would then make the important, but often political decisions with respect to use, density and even transportation issues. A decision should be made only after a public hearing, or in the case of large projects, a series of public meetings and hearings. Bylaw adoption would provide the applicant with a reasonable certainty of knowing the rules for developing the site without the need for an expensive and time consuming complete submission.
In stage 2, the applicant would submit more detailed plans and architectural drawings to be reviewed and negotiated with staff. Posting of notice would be required for the issuance of the development permit and a public meeting required. Additional public information meetings should be held depending on the scale of the project.

In the case of special use, comprehensive or complicated projects, the process would be more extensive given that the uses, density or other aspects of the proposal would not have been accounted for in the community or area plan. Moreover, a land use contract or similar device would replace the zoning and development permit bylaw. since use, density, transportation and urban design issues are interdependent and would be more easily accommodated in one device. To provide some certainty and to encourage rational planning, broad policies and a comprehensive plan should be negotiated following the initial application, but prior to considering the details of the development proposal.

3.2. EVALUATION OF THE PLANNING CONTROLS

How does the present planning legislation and previous land use contract legislation compare to these criteria?

As a starting point, aspects of development which may be regulated by the respective legislation were identified and are outlined in the following table.
Table 3. Planning Control Checklist

<table>
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<td></td>
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<td>Relax Use or Density</td>
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<tr>
<td>Regulate Phasing</td>
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</tr>
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</tr>
<tr>
<td>Density Transfer</td>
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<td>Procedural Basis</td>
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<td>Impose Conditions</td>
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<tr>
<td>Administer Discretion</td>
<td>No Provision</td>
<td>Yes</td>
</tr>
</tbody>
</table>
3.2.1. Substantive Basis

The two legal systems are compared in relation to the eight normative criteria in the following sections.

Fixed Standards

Table 3 indicates that both legal systems provide fixed standards to regulate such things as land use and density.

Land use contracts were totally flexible in some regards and in other ways totally rigid. A "development area" was to be designated and fixed standards were to be provided in zoning schedules prior to any negotiation of a land use contract. The legislation intended that applicants would have some knowledge of the basic development rules in any particular community. However, the land use contract could vary virtually any provision in either the zoning bylaw or the designated development area, as long as the terms could be mutually agreed upon. While this afforded flexibility, the potential for certainty or predictability of rules could easily be lost, establishing a precedent for ad-hoc decision making.

On the other hand, once the land use contract was signed and registered, the agreement became completely rigid. This rigidity could provide local governments with the certainty that developers would follow future phasing commitments. Yet, if the local government and developer agreed to vary the terms of the contract after registration, technical difficulties could arise making the objective next to
impossible to achieve. For example, if the proposed amendment was to change the exterior finish of a multiple family townhouse development or to plant street trees in a strata development, consent from all strata title holders having a legal interest in the contract would be required. This could mean obtaining hundreds of signatures. A related weakness was that certain agreed upon provisions might be later impossible to perform rendering the land use contract void. If for example, an holder of a land use contract had contracted to install underground wiring, he may later find that B.C. hydro or some other authority prohibits such a practice in that area of the community.

Under current legislation, use and density are fixed in zoning schedules and may only be varied through rezoning. The intent is clearly to encourage certainty and predictability of the rules through the use of rigid zoning regulations - a step in the right direction. While the present legislation is more explicit with respect to what local governments may regulate using zoning and development permits, it lacks provisions with respect to accommodating comprehensive, mixed use, complicated or special use developments. In this regard, the zoning provision merely states that a community may be divided in whole or in part into districts either vertically or horizontally. There is also no provision relating to the transfer of development rights and and density bonuses.

**Design and Development Control**

Design and development controls are provided for in both pieces of legislation, but present legislation offers only limited flexibility through a variety of planning
devices including zoning, development permits and development variance permits. This "menu" of controls is useful to the extent that a rezoning might not be necessary when the only change requested is for example, a side yard relaxation. In this instance a development permit might suffice.

One of the weaknesses of the current system is that there is considerable overlap between the range of controls available. For example, an applicant failing to receive a development permit, may then apply for a development variance permit or failing that, to the board of variance. This may ultimately have the effect of making the controls less effective.

With respect to design control, one of the key differences between current planning control and land use contracts, is that under current legislation regulation of exterior design is prohibited. Similarly the legislation makes no provision for negotiation, administrative discretion or the imposition of conditions -- a key feature of land use contracts. Whether or not the omission of such control results in more poorly designed developments, can really only be determined through a comparison of the two systems in practice. Suffice it to say that local governments will have greater difficulty in achieving certain community character objectives without this control.

**Off-Site Servicing Agreements**

Off-site servicing and amenity agreements are provided in current legislation through two main mechanisms, the development cost charge and the works and
service bylaw. While the extent of these two mechanisms is well spelled out in the legislation, there are certain instances where development cost charge legislation may be insufficient. Since the development cost charge is to be used in conjunction with a capital works program, it is conceivable that the capital works budget misrepresents the actual costs to the community of particular incremental development, resulting in a tax burden to the community or an excessive charge to the developer.

The land use contract blended subdivision control and zoning and thus could be tailor-made to accommodate a variety of servicing requirements. The intent of the legislation was that off-site servicing and amenity costs would be based on the actual cost of providing those services without burdening the community. In principle this provision appears fair, especially since the terms of the agreement were to be mutually agreed upon. However, because local governments and applicants were not always in equal positions of strength going into the negotiation process, it is easy to see how the system could have been taken advantage of. In a way similar to the practise of requiring quasi-legal servicing agreements and impost fees, local governments could conceivably force applicants to provide virtually anything they deemed appropriate if the applicant wanted his development approved.

The lack of legislative guidance in the use of these agreements presumes local governments will act in good faith. At least land use contracts were sanctioned by the legislation. The land use contract can be a more effective and fair mechanism if there is a requirement that it be used in conjunction with capital
Security of Performance Mechanisms

Enforcement of terms and conditions was provided for in land use contract legislation, through the provision that "... such terms and conditions would be registered on title and have the force and effect of a restrictive covenant," This provision then could safeguard future owners and the general public from unknown oral agreements, and from future changes proposed by the new owner.

This feature was especially useful in controlling the phasing of development. Local governments could be given the assurance that developers would follow through with what they proposed for future development. Similarly the developer could benefit in the following way. If all conditions of a land use contract had been met, a subsequent zoning change would have no effect on the project, providing developers with security of investment and possible help in securing long term financing.

In addition, local governments could require developers to obtain a development bond or irrevocable letter of credit, guaranteeing performance of any condition of the agreement. Bonding under current legislation is only allowed to secure aspects of landscaping in the implementation of development permits, further attesting to the restrictiveness of the legislation.

While not explicit in the legislation, additional enforcement is available today,
through the section 215 covenants which may be registered on titles at the Land Title's Office. Even though the section 215 covenant is similar in effect to the registering provision of land use contracts, it is arguable that the Land Title Office is not set up to handle section 215 covenants in this way. They do not have the authority nor ability to determine whether the conditions covered on the covenant are appropriate. Under land use contracts, their role was merely administrative since once the contract was signed, it was legal.

3.2.2. Policy Basis: Community Plan

The requirement that local governments prepare and adopt official community plans as a condition of using development permits is one of the strong points of the present legislation in comparison to former land use contract legislation. While the provincial government encouraged municipalities to prepare official community plans, there was not strong enough incentive to do so when land use contracts were available. Without a plan in place, it is most certain that widespread use of land use contract would make it next to impossible for municipalities to provide any certainty and predictability of the rules that govern the planning controls nor would it be possible to offer any substantial future development guidance. Furthermore, even though council was obliged to have "due regard" for the following five considerations spelled out in the Municipal Act, they were largely in the realm of "motherhood" statements.

1. Development of areas to promote greater efficiency and quality
2. Impact of development on present and future public costs.
3. Betterment of the environment
4. Fulfillment of community goals
5. Provision of necessary public space
In this respect, if poorly administered, a land use contract could amount to complete ad-hoc planning.

3.2.3. Procedural Basis

Procedural Safeguards

Both legal systems provided for the rules of natural justice including the requirement for the posting of notice and public hearings. Under land use contract legislation a public hearing was required in all cases, whereas today a public hearing is required only for rezonings. Public meetings are typically held in conjunction with a development permit application, but are optional. It is conceivable then, that in absence of a public meeting, public input could be diminished to the point where, the only means affected citizens might be able to voice their concerns regarding a development permit application would be in writing to the planning department or council.

Another aspect of the current system that limits public input is that in public meetings delegations are limited to a five minute presentation, whereas in public hearings, there is no time restriction. There may also be a tendency for council to discount the public meeting comments given that these forums are typically intended to be information sessions only.

The loss of potential public input in the current approval process is traded off against increased efficiency and as long as public meetings are made a
requirement, this approach is desirable.

Area Control versus Site Specific Control

A positive aspect of current legislation is that it encourages area control through the requirement of community plans and preplanning. However, it is possible under both legal systems for local governments to judge development applications based on their own merits. Clearly land use contracts were intended to be used on individual site basis, but only in exceptional cases. Current zoning legislation is more vague. It only states that local governments may zone all or part of their municipality. Conceivably then one site constitutes a zone. Both spot zoning and land use contracts should be made available but the legislation should more clearly emphasize the use of area control.

Negotiated Two Step Approval Process

One of the main differences between current legislation and past land use contract legislation is that there is presently less opportunity for political and administrative discretion in the approval process. Under land use contract legislation, council had the power to impose conditions, negotiate with developers and offer incentives such density bonuses. Deal making powers are not explicit in present legislation.

Without this discretionary power it could be argued that the approval process is more upfront and certain, since it would prevent "back-room horse trading". More
likely, if a local government had been accustomed to a land use contract practice, they would look for means to continue this process but without the legal power, thereby creating an even more uncertain process.
3.2.4. Summary

The following table summarizes the advantages and disadvantages of the respective systems.

**Table 4. Summary of Comparison**

**Land Use Contracts**

**Advantages**
- All-in-one mechanism, therefore comprehensive in scope
- Can be tailor-made to accommodate mixed-use developments
- Provides greater flexibility for design control
- Provides greater opportunity for off-site servicing and amenity agreements
- Greater opportunities for public input
- Provides greater opportunity for security of performance

**Disadvantages**
- Encourages more site specific control rather than desired area control
- Weak link to policy basis because of no plan requirement
- One step approval process creates potentially inefficient approval process
- More chances for ad-hoc approval process
- Permanent nature of contract makes them difficult to amend and some provisions impossible to perform
- No restrictions on servicing amenity agreements

**Present System of Planning Controls**

**Advantages**
- More certain and predictable system using zoning as basis
- Greater opportunities for fairness since area control encouraged
- Extent of development cost charge use more explicitly explained in legislation
- Comprehensive community plans required

**Disadvantages**
- No mechanism for comprehensive, mixed use or complicated projects
- Development cost charge may not account for all relevant off-site costs associated with particular developments
- Inadequate mechanisms to ensure security of performance e.g. bonding only for landscaping and section 215 covenants awkward
- Overlap and redundancy between development permits, development variance permits and board of variance
- Not enough scope provided in development permits for design control

On balance, if the substantive, policy and procedural prerequisites are followed consistently and uniformly, in accordance with enabling legislation, and if public meetings are made a requirement in conjunction with a City of Vancouver type development permit system, it would appear that the current system is preferable at least in principle to the former system of land use contracts. However, there are certain provisions which were included in land use contract legislation, which are absent from or deficient in current legislation, namely effective mechanisms that ensure security of performance, off-site servicing agreements, design control as well as an ability to accommodate comprehensive or complicated developments, through negotiation and discretion.

The practical analysis in Chapter 4 and 5 determine the effectiveness of the two planning control systems and the possible need for additional legislative amendments.
CHAPTER 4. MUNICIPAL PLANNING CONTROL SURVEY

While it may be useful to evaluate the theoretical strengths of municipal planning controls, too often policies in the past are implemented without adequate knowledge of the system into which the policies are introduced. Research into the effectiveness of planning mechanisms should attempt to gauge how well the mechanisms work in practice, based in part, on the opinions of the main participants in the process, namely representatives of the development industry and local governments.

This chapter discusses the findings of a two-part B.C. local government and development industry survey. The purpose of the survey is to evaluate the effectiveness of present municipal planning legislation in comparison to the former system of land use contracts in order to determine the need for development agreements of this nature. Objective and technical information were gathered in a questionnaire, while subjective and attitudinal questions were covered in a series of interviews.
4.1. **SURVEY METHODS**

**Part 1: Planning Control Questionnaire**

In part 1 of the survey, planners representing five Lower Mainland municipalities and one from Vancouver Island were mailed questionnaires and asked to answer questions relating to the following subjects.

*Frequency of Development Objectives:* In the first section, the respondents were provided with a list of development objectives and were asked to identify the frequency with which they were considered in the development approval process. The questioning was conducted in attempt to draw inferences from the frequencies of planning control use, to establish patterns of municipal planning practice.

*Effectiveness of Development Controls:* In the second section, respondents were asked to identify which available development controls were most effective in satisfying the development objectives listed in section 1 and which provisions, or lack of provisions in the current legislation were subjects of greatest concern.

**Part 2: Municipal/Developer Interviews**

In part 2, the six municipal planners and six developers representing the B.C. Urban Development Institute (UDI) were interviewed and asked to compare and contrast land use contracts with the present system of planning controls.

The results of the questionnaire are summarized in the tables 5 and 6. The findings of the interviews are discussed under the normative criteria discussed in Chapter 3. The names of respondents and interview dates are outlined in Appendix II, and the survey questions in Appendix III.
### 4.2. SURVEY OF RESULTS

#### Table 5. Frequency Of Use

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<th>RCH</th>
<th>SRY</th>
<th>BUR</th>
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<th>CQM</th>
<th>VCA</th>
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(RCH) Richmond  
(SRY) Surrey  
(BUR) Burnaby  
(NVC) North Vancouver  
(CQM) Coquitlam  
(VCA) Victoria  

O = Often  
S = Somewhat  
N = Never
Table 6. Effectiveness of Controls

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(RC) Restrictive Convenants (SZ) Spot Zoning
(DVP) Development Permit (Z) Zoning
(DCC) Development Cost Charge (LUC) Land Use Contract
(DA) Development Agreements (LAP) Local Area Plans
(CD) Comprehensive Districts
(DVP) Development Variance Permits
4.2.1. Substantive Basis

Fixed Standards

Density Bonus: Most municipal respondents indicated that while use and density are generally fixed in zoning bylaws, they have used some form of density bonusing. The Municipality of Richmond has never bonused density, while the Municipality of Coquitlam bonuses density through rezonings or development permits to encourage covered parking or more open space. Both municipal and development industry respondents were concerned that while this practice was common in some municipalities, there was no provision for it in the Municipal Act.

Development Agreements (DA): DA's or comprehensive development districts (CD) are being used in several municipalities most often to accommodate difficult site conditions, mixed use projects, or comprehensive subdivisions where cost recovery of off-site servicing is required. They are also used to control timing and staging of development, design and landscaping control for multiple family residential, industrial and in environmentally sensitive areas. Richmond and Coquitlam do not use the CD device, noting that there is no provision in the legislation to do so. Burnaby, and the City of North Vancouver, on the other hand, are of the opinion that the permissiveness of the legislation allows them to make quite widespread use of them.

Development industry respondents noted that in some municipalities, CD zones
work rather well, but require a planning staff that has had considerable experience in their administration. Several developers indicated that local governments are requiring additional servicing agreements after a rezoning has been approved, creating even less certainty in the approval process than when land use contracts were used.

**Land Use Contracts Compared:** There was general consensus that the land use contract was more effective in accommodating many of the requirements of development that are now being achieved under development agreements or comprehensive development zoning. One of the most common reasons cited for this is because under LUC legislation, all municipal departments were required to put forward their requests and requirements, before the land use contract was approved in principle. For the developers this meant that they would have the certainty of knowing that there would not be any servicing cost surprises.

**Design and Development Controls**

**Exterior Design Control:** Some form of design control is being used in all municipalities. All but one of the municipalities regulate design, including exterior finishes, in spite of the lack of legislation. Richmond only regulates form and character of proposed development, but was in agreement with the other local governments that exterior design control should be provided.

The development industry representatives, all indicated that local governments should not be legislating "good taste" through exterior design control. They
believed that the lack of such provision was a equitable trade-off for the additional control local governments had over the development industry through the development cost charges. They did not want local governments to have additional design control power.

**Development Permits and Development Variance Permits:** Four of the six municipalities often use development permits to satisfy a variety of development objectives, but primarily to provide flexibility in siting, to control landscaping and form and character of multi-family residential developments. A common pattern was determined in the use of development variance permits. In municipalities where development permits were used extensively, notably in Victoria and Richmond, development variance permits were used often as well. A common criticism of the DVP was that there was considerable unnecessary overlap with the board of variance. All municipal respondents agreed that Bill 62 development permits are too restrictive and are therefore not as useful as the 1978 permits which allowed control over exterior design. They would like to see development permit legislation changed to include exterior design control or have land use contracts reintroduced. The City of North Vancouver and Burnaby achieve the same control using development agreements which effectively amount to a land use contract.

Development industry representatives were generally supportive of development permits and development variance permits noting that their greatest benefit was in their flexibility to accommodate irregular site conditions. However they, were concerned that some municipalities were combining development permits with spot
rezonings on a wide scale to achieve the same control as a land use contract. The survey results substantiate this claim. For example, almost all of the municipalities indicated that they use spot rezoning and development permits, or some comparable mechanism, to accommodate multiple family residential projects.

**Land Use Contract Compared:** While most development industry respondents agreed that land use contracts provided greater flexibility, one representative indicated that a seasoned developer should be able to achieve an equal amount of flexibility with the current system of development controls.

Just over half of the development industry and municipal respondents indicated that land use contracts encouraged more innovative project designs than development permits or development agreements because of the benefits of being able to relax use and density with other development controls. For example, land use contracts were sited as being successful in accommodating such projects as lot-line to lot-line developments as well as small-lot subdivisions. Four of the six municipal respondents and four of the seven development industry respondents believed that it was more advantageous to have a land use contract that combined many controls into one document rather than having a variety of specific controls for certain circumstances. Municipal respondents were divided in their belief that land use contracts were more effective in providing for the phasing of development. Development industry respondents were more inclined to favour the land use contract in this regard primarily because the land use contract was not subject to future zoning changes.
Off-Site Servicing and Amenity Agreements

Development Cost Charges (DCC): It was expected that in municipalities where development pressures were high and where a considerable portion of the community was still undeveloped, the development cost charge (DCC) would have been used often to require developers to help share the cost of additional municipal services and amenities. However, no pattern was established. Both Victoria and the City of North Vancouver are redeveloping communities with aging infrastructure, but neither have made use of the DCC. Burnaby, a similar established urban community (except for unserviced areas along the Fraser River), uses DCC’s extensively. Surrey and Coquitlam, two growing suburban communities make quite different use of the DCC. Coquitlam was among one of the first municipalities to use the development cost charge, but generally charges a nominal fee. Surrey respondents noted that their DCC is higher than in most communities primarily because of the need for additional park assistance.

An interesting point to note is that the use of development cost charges in several instances, resulted in higher costs being charged to developers than when land use contracts were used. It is ironic then that the rationalizing process, so favoured by the development industry, should lead to an increase in financial burden imposed upon them in some instances. On this point, municipal representatives noted that the increase in cost were attributable to two factors. Firstly, land use contract servicing formulas more closely accounted for the actual incremental cost of development. Secondly, public expectations of services and amenities have increased over the years.
Municipal opinions on the effectiveness of the DCC device ranged considerably. Some claim it is useful because it provides a legal mechanism to require developers to assist in new municipal servicing costs related to the proposed development. Other municipal respondents were less enthusiastic, noting that while they would like to use the DCC’s in their community, it is virtually impossible to calculate an appropriate DCC formula because of the difficulties in interpreting legislative provisions to meet community needs when most of their infrastructure is already in place.

The greatest criticism of the effectiveness of the DCC came from the development industry. Several representatives noted that there is no consistency among municipalities in the use of development cost charges, making it impossible to predict high or low development costs. Of considerable concern among developers was that in some instances the use of the DCC amounted to double taxation.

The development cost charges are levied to capture the cost of prioritized capital works program which usually include major roads and servicing infrastructure in a community. However, development cost charges do not necessarily include all capital works projects in a municipality and includes an a provision that can create a burden on the taxpayer. The capital works program does not identify local off-site deficiencies in the infrastructure that come to light in the final engineering assessment carried out for the development. In order to ensure that taxpayers are not burdened by these additional servicing costs, and in consideration of established municipal budgets, it is common practice for
developers to enter development agreements offering their share of off-site works and services directly attributable to their development to speed up the process. It is the municipalities responsibility to ensure that the developer does not pay twice for servicing by way of development cost charges and off-site contributions (eg. double counting) Herein lies the problem. No mechanism exists to prevent this practice of double counting.

Land Use Contract Compared: Both municipal governments and development industry representatives agreed that by comparison, the present practise of trying to include various municipal requirements into development agreements which have nebulous basis in law, was not as desirable as land use contracts.

Security of Performance Mechanisms

Section 215 Covenants: Many municipalities in the study use section 215 covenants to secure conditions of development control including landscaping and design control. Development industry and municipal representatives agreed that in some instances they are necessary and desirable. While the development permit provides municipalities with the authority to require developers to secure landscaping performance via bonding most municipalities are using them to ensure fulfillment of all of the terms and conditions, which is clearly not sanctioned by current legislation.

Land Use Contracts Compared: Most municipal representatives and half of the development industry representatives believed that the land use contract was a
more desirable method of securing development promises because enforcement provisions were written into the contract.

4.2.2. Policy Basis: Community Plan

All municipalities surveyed had adopted official community plans (OCP). This was in stark contrast to the one municipality (Surrey), which had a community plan in place during the land use contract years. All municipal respondents were of the opinion that their OCP adequately reflects their community goals, policies and objectives for future development.

All municipalities use design guidelines to some extent. Surrey, Coquitlam and Richmond for example, use design guidelines extensively in conjunction with designated development permit areas. Burnaby and the City of North Vancouver rely more on local area plans to guide development.

The development industry representatives commented that the community plans and design guidelines have been helpful in determining future community development patterns. One industry representative went so far as to say an OCP can be a good marketing tool for proposed development sanctioned by the plan. One of the most common criticism of OCP's by industry representatives was that they were typically too vague to be of any specific value to their particular project. Another major criticism of the use of OCP's was that some municipalities were not supporting OCP land use designations with the adequate pre-zoning.
Land Use Contracts Compared: Most respondents indicated that, in general, the OCP requirement in today's planning legislation creates a more rational and certain planning process than under land use contract legislation. This was seen as an improvement to the local planning process.

4.2.3. Procedural Basis

Procedural Safeguards

Most industry and municipal respondents indicated that there are greater opportunities for public input as a result of current planning legislation, but that greater input results more from a greater public interest in being involved and council's willingness to facilitate this process.
Area Control versus Site Specific Control

Pre-zoning: Only one municipality claims to maintain an inventory of pre-zoned land for all purposes. The one respondent that answered "yes" qualified his answer with the comment that only industrial uses and/or mandatory development permit areas are predesignated. One municipality is considering prezoning land and another refuses to do so because of previous bad experiences.

Spot Zoning: All communities have had some experience with spot rezoning and four of the six municipalities indicated that this device is used often. It was also determined that in spite of the Bill 62, spot rezonings in all municipalities is on the increase.

About half of the municipalities noted that the main problem with spot rezonings is that their zoning bylaw becomes too long and difficult to administer. Most developers supported spot rezonings in special instances and noted that without "tailor-made" zoning districts, desireable proposals which benefit the applicant and the community might not otherwise be possible. They cautioned however, that the wholesale use of spot rezoning in order to provide greater public input and municipal control, is beyond the spirit and intent of the present legislation.

Negotiated Two Step Approval Process

Negotiation and Discretion: Municipal respondents indicated that they negotiate with developers to some extent during the approval process. Municipal and
industry representatives agreed that negotiations, the exercise of discretion and conditional approval are all realities of the development approval process and that this practice has not decreased to a large extent with the introduction of either Bill 42 or Bill 62.

Discretion is applied most frequently to landscaping, exterior design, and overall urban design considerations. Other matters include off-site engineering works, site grading plans, transition areas between urban and rural uses, and the form and nature of subdivision.

Municipal respondents were split on the contention that "discretion" reduces certainty. One group felt that the flexibility gained would outweigh any loss of certainty. Another respondent felt that the disadvantages would predominate. Yet another, claimed there never was any certainty in the development approval anyway and that discretion should be carried out in a public forum. He claimed that Bill 62 has prevented flexibility in development decisions and therefore some discretion is required.

Industry comments in this regard include the following:

- "Negotiation, is the opposite of policy but can be constructive depending upon the people that apply the discretion".

- "Negotiation is a two way street where both municipal and industry goals can be met".

- "Negotiation goes on in practise, so put it in legislation".

- "Negotiation is time consuming and can lead to one party with more power dominating the process and the outcome".
- "The 'small-time developer' or 'little guy' doesn't get a 'fair shake'".

- "The larger developer is not treated fairly by municipal staff, because there is more expected of them".

- "An applicant should have the choice in a municipality between the certainty of zoning or in special cases a negotiation process using a flexible development control".

**Land Use Contract Compared:** Among developers and municipal respondents, there was general agreement that, negotiations under land use contracts encouraged both parties to enter into the process from opposite positions, at least under the existing system of zoning and development permits, both parties start from a middle position based on standards and policy.

Municipal and development industry respondents were split in their view as to whether the the present development approval process takes more or less time than the former process using land use contracts. Three of the six municipal respondent believed that the land use contract was less expensive, cumbersome and inefficient, but stated that the land use contract could be costly because of the degree of discretion involved and the time it took to negotiate. One developer noted that because there is greater public expectation of development today there are more regulations than in the 1970's, so even if the land use contract was to be reintroduced, it probably would be no less or no more cumbersome, costly or inefficient.

Municipal respondents indicated that one of the main reasons why there are delays in the development approval process is not because of bureaucratic
"red-tape" but because of incomplete information in application submissions. Furthermore it was pointed out that most developers may not realize that the municipalities may be overloaded with applications; that their application may be a special project and require extra attention; or that their project is a political one.

4.3. SUMMARY

Although representatives noted that in general, there has been a marked improvement in recent years in relations between the development industry and local government, both sides raised a number of concerns. For the development industry, these ranged from the broad issue of attitudes of planning officials in failing to understand the impact of regulations on investment decisions to municipal actions they considered to be inconsistent with the amendments. Municipalities on the other hand, were quick to point the restrictiveness of the Bill 62 and Bill 30 amendments to the Municipal Act in implementing planning policies and regulating development.

The findings of the survey suggest the following significant factors. Because of the legislation's permissiveness, the desired outcome of Bill 62 for a more certain and stream-lined development approval process is by no means guaranteed. Where municipalities are not particularly under development pressure, they may adopt the Bill 62 provisions as a convenience. Where they are under pressure, they will continue to seek further ways of coping with the problems of development. Some municipalities, primarily those with a high proportion of developable land,
have welcomed the new procedures. Coquitlam, and Richmond in particular are good examples of this positive approach. The jurisdictions with the highest proportion of already-developed lands tended to be the ones with the greatest need for discretion, flexibility and control in the development process. They resisted strenuously any efforts to constrain municipal intervention in the development process. These were typically municipalities who had used the land use contract in the past. To achieve the same level of development control as experienced with land use contracts, several municipalities were doing the following without the explicit provision in the Municipal Act. They were:

- combining spot rezonings with development permits;
- bonusing density;
- regulating the design of exterior finishes;
- requiring the attachment of development plans to rezonings;
- using section 215 covenants and bonding to control all aspects of development;
- creating off-site servicing agreements in addition to a DCC;
- imposing conditions in the development approval process; and
- negotiating with developers and using administrative and political discretion.

There was general consensus that the land use contract was a more suitable mechanism than development agreements (or comprehensive development zones) in accommodating certain issues such as:

- off-site servicing and amenity agreements;
- mixed uses;
- comprehensive or complicated projects; and
- securing development promises.

Design control was perceived to be more fair under the land use contract system, because of municipal concessions made in exchange for greater control over such things as exterior finishes. There was no consensus among the
respondents on whether land use contracts were more effective and desirable in accommodating phasing of development and whether they encouraged more innovative project designs. Similarly industry and municipal representative were split on whether the approval process today is more efficient then during the land use contract years. Respondents indicated that approval time is usually more dependent on such things as the completeness of submissions, the number of staff allocated to projects, the size of the project and the volume of applications and political sensitivity.

It is clearer that there is insufficient legislation to accommodate municipal and development objectives in certain circumstances where development agreements are required. It is also evident that the land use contract is a more desirable means of dealing with development agreements than the practise of piecing together various present land use and development controls.
CHAPTER 5. CASE STUDIES OF THE TWO PLANNING SYSTEMS

In this chapter several housing projects developed under the former system of land use contracts are compared with a number projects that were constructed under the present system of development controls.

The main objective of the project evaluation is to attempt determine how well land use contracts compare to the present system of controls (notably development permits) in meeting municipal and development industry objectives. It was hoped that the case studies would provide a more empirical basis of analysis to substantiate the opinions and comments made by the respondents during the survey. In particular this analysis attempts to determine effectiveness of the two systems in accommodating the development agreement concerns of multiple family developments -- a type of project that was regulated most often by land use contracts and is being regulated today via development permits and rezonings.

Each case study is analysed in the following way.

- How did the municipal goals, objectives, and policies relate to the project being developed, as specified in the respective community plans and local area studies?

- What issues were of greatest concern to the developer and the municipality?

- What development standards were varied, and how were they achieved (negotiation, discretion, conditions etc.)?

- What were the benefits to the community and the developer that can be attributed to the development control used?
- Could an alternative mechanism achieved the same benefits?

Municipal project files, interviews and site visits were the main sources of information for the various comparisons.

5.1. MUNICIPALITY SELECTION

The results of the survey suggest that land use and development control issues are most pronounced in metropolitan communities centred around the Lower Mainland and Southern Vancouver Island where pressures for new development and redevelopment are high. For the purposes of establishing a suitable basis for case study comparison and for ease of data collection, the study was limited to four municipalities.

Richmond and Surrey, were selected because they are both suburban communities which have experienced considerable recent urban expansion. Victoria and the City of North Vancouver were selected because they are both well established communities that have been experiencing considerable redevelopment in the last fifteen years. All of the communities have had considerable experience with the land use contract. One of the additional reasons for selecting the City of North Vancouver is that it currently makes extensive use of development agreements. In this respect, an analysis of development agreements helps provide insight into how well a development control similar to the land use contract can work in the context of present-day planning and development.
5.2. PROJECT SELECTION

One land use contract project and one development permit/rezoning project are analysed in each of the four municipalities for a total of eight case studies.

While a random selection of projects of this nature would have helped make the study more objective, project selection depended more on the available files and data municipal planners could provide.

Since there are hundreds of development applications made each year in British Columbia, it would have been desirable to have a larger sample, in order to draw more representative conclusions. Reasonable inferences however, were drawn from this small sample size given that a detailed analysis of eight projects may well reveal more useful findings than a study that considers a larger number of projects but in less depth.

5.3. PROJECT TYPE

The type of case projects analyzed in this study is limited to multiple family residential development. While land use contracts were used for many types of development, it was identified in Chapter two that the land use contract as well as the development permit/rezoning have been used most often in the municipal control of multiple family development. Projects of this nature, make a suitable basis for comparison.
5.4. **PROJECT CASE STUDIES**

**Figure 1.** Richmond LUC Project

**Figure 2.** Richmond LUC Site Plan
In 1976, a local developer applied to the Municipality of Richmond for a land use contract for the purpose of developing a 104 unit townhouse development situated in a well established single family neighbourhood.

Rural residential housing in the area had been developed on the periphery of the quarter section in which the site was located. The end result of this pattern of development was that a large area of derelict farmland had been left in the centre of the quarter section without suitable access. The vacant site consisted of several parcels, in which the titles were held by various owners including the Municipality of Richmond. It was unlikely that the lots could be farmed nor individually developed.

The developer proposed a high quality, adult oriented multiple family residential development. In order for the project to be feasible, he requested a use and
density variance from the existing zoning. In this case, a spot rezoning would not have achieved desired objectives of both the municipality and developer since the proposal consisted of the following considerations.

- The consolidation of parcels into one contiguous comprehensive development.

- The requirement for a range of densities at different locations on the site.

- The development of several housing configurations and sitings into clusters, which would precluded conventional siting and massing requirements.

- The transfer of a portion of the site to the municipality for municipal park development (in addition to the required 5% park dedication) in exchange for a road access easement in another location of the site.

In spite of the exceptionally high quality design, the proposal met with considerable opposition with the local residents at the public hearing. The greatest issue raised was that the public had been led to believe that the land would be developed for single family development as indicated in the zoning bylaw. Another major concern was that the development would create additional traffic on local streets. They also objected to the private and exclusive nature of the development, given the fact that a considerable portion of the site had been municipal land for a long time meaning that there was a certain public attachment to the property.

In the final analysis council decided to grant the land use contract at the proposed densities for the following reasons.

- The quarter section of land that the site was a part of had been well planned.
- The cluster development that the applicant proposed would result in more public open space.

- The applicant was donating a parcel of land that the municipality needed for a local park in the area.

- The applicant proposed to provide all on-site services and entered into a development agreement with security guaranteed by a irrevocable letter of credit. Since the off-site servicing requirements had not yet been determined, the applicant volunteered to donate a sum of money to the municipality in lieu of providing those services.

- The applicant was prepared to build a recreation centre and tennis courts for the residents of the development and thereby reduce the incremental cost of public recreational facilities to the municipality.

The land use contract was very effective in facilitating the objectives of the municipality and the developer. The developer was granted the proposed densities and the vehicular access right-of-way. In addition, under the terms of the land use contract, he was guaranteed that future municipal rezoning bylaws in the area would not apply to the development and consequently would make long-term financing for the phased development less difficult to obtain. The municipality benefited from: the park land donation which was greater than the required 5%; additional sources of tax revenue from land that would have likely remained unproductive; and recreational facilities which were provided by the developer which reduced costs of public recreation facilities. The residents of the project benefited from a high quality development with an innovative site plan which translated into lower land costs per dwelling. These benefits however were at the expense of certain and predictable rules which meant that many local residents were misled as to what could be developed and as a consequence many objected to the project.
Conclusions

This award winning residential development is a good example of how a land use contract can be used to facilitate an innovative townhouse development and provide municipal benefits. Without the land use contract, these benefits might not have otherwise been possible. This project also illustrates, however that a land use contract can mislead the general public because of its broad scope and lack of relation to established community goals and development policies.
Figure 3. Richmond DP Project

Figure 4. Richmond DP Site Plan
RICHMOND DEVELOPMENT PERMIT: CO-OP APARTMENTS, 1986

Type of Project: Apartment and Townhouse Housing Co-op

Location: Town Centre of Richmond, in the vicinity of Moffat St. and Blundell Rd.

Site Area: 1.73 acres

Site Coverage Allowed: 40%
Site Coverage Approved: 34%

Floor Space Ratio Allowed: 1.0
Floor Space Ratio Approved: 0.79

Existing Zoning: Multiple Family Residential
Zoning Approved: No change

Approved Dwelling Units Per Acre: 36.4

Date Applied: Nov. 1986;
Date Approved: July 1987

In 1986, a local developer applied to the Municipality of Richmond for a development permit to develop a mixed three storey apartment and townhouse co-op. The area in which the project was to be developed was a designated development permit area in Richmond's Official Community Plan. Development policies and design guidelines were spelled out for this area. Surrounding land uses in the area were predominantly multiple family residential. Few constraints were associated with the site. Soils were suitable for development; the site was flat and accessible; and utility connections posed no difficulty. Negotiations in the development approval process were extensive but were generally limited to allowable provisions of the Municipal Act. While no recreational building or room was provided, outdoor passive recreational areas included an entry forecourt, sitting areas and semi-private gardens. These were included in the project without
municipal exchange of density bonuses. Detailed architectural design control was not an issue in this project and yet a well designed buildings were constructed. The design panel suggested that a landscape architect review the site plan with respect to the vehicle turnaround and the location of the playground but the developer took no action on this suggestion, nor was he obliged to comply with the request. The project satisfied the building height regulations, although an 11 foot variation to the rear yard was negotiated with the applicant in order to accommodate siting peculiarities. The Engineering Department had no difficulty with this project since the site could be serviced by potable water, covered storm sewer and sanitary sewer system. Two variations to provisions allowed in the legislation were negotiated: a drainage levy was required; and a letter of irrevocable credit was required as a condition of development approval to secure all aspects of the project not just landscaping.
Conclusions

This multiple family residential project in Richmond’s Town Centre is a good example of how the present system of development permits and pre-zoning work well together to satisfy both the developer’s and local government’s development objectives. In this type of straightforward development there is no need for land use contracts as there is sufficient flexibility to the limited number of development peculiarities.
Figure 5. Surrey LUC Project

Figure 6. Surrey LUC Site Plan
Type of Project: Three Storey Rental Apartments

Location: Guilford Town Centre, in the vicinity of 101 Street and 137 Avenue

Site Area: 180,735 sq. ft.

Site Coverage Allowed: 48%
Site Coverage Approved: 67%

Existing Zoning: Multiple Family Residential
Zoning Approved: n/a (Land Use Contract)

Number of Dwelling Units per Acre Allowed: 30
Number of Dwelling Units per Acre Approved: 35

Date Applied: August 1976
Date Approved: 1978

In 1976 the owner of the property applied to the Municipality of Surrey for a land use contract to permit the conversion of the storage and recreation space of an existing apartment building into 12 one-bedroom suites. The apartment was constructed in 1971 as rental units on land that had been rezoned from duplex to multiple family. Even though 1976 zoning schedules for the area did not allow any more density to be developed on the site, the developer believed that the municipality should approve his application because the storage area and recreation area were not being used by the residents. Clearly, the developer was trying to use a land use contract to get around zoning regulations. Council rejected the application three times on the following grounds.

- New units would require an additional 12,000 square feet of recreation space in excess of the provisions of the existing RM-2 zone.

- New parking policy initiated in 1971 would require that additional parking be located underground which would mean raising the building.

- If parking was not located underground, additional parking
requirements would reduce the amount of landscaped and amenity area for existing tenants by 532 square feet.

In spite of these previous rejections, a newly elected council approved the proposal in 1978 subject to the following conditions.

- The developer provide adequate facilities in the recreation room, improved landscaping and play area including swings, a see-saw, sand box and rest area.
- All on and off-site servicing requirements be paid for by the developer.
- The developer secure these conditions by a irrevocable letter of credit.

The project was approved but the promised landscaping improvements were never adequately provided, nor was the money the municipality received as credit for these improvements ever used to ameliorate these problems.

Conclusions

Analysis of the land use contract approval process of this three storey rental apartment development illustrates how land use contracts can be misused. Development approval in this case was totally ad-hoc as it would appear that council gave in to the continuous pressure of the developer. There was nothing unusual about the multiple family development to suggest that a land use contract should have been warrented. The municipality did not receive any direct benefits as a result of the approval. In fact, the development should not have been approved since the developer had not complied to any of the modifications to the proposal which had been recommended on three previous attempts to gain
approval for the application. A poor quality development resulted and municipal regulations were subverted.

It is difficult in this case to separate out the weaknesses of the land use contract with the poor intentions of the developer and the local government. A spot rezoning may have resulted in precisely the same situation, but without the landscaping guarantees. Nevertheless, this example underscores the assertion that land use contract decisions without a policy basis can be misused.
Figure 7. Surrey DP Project

Figure 8. Surrey DP Site Plan
SURREY DEVELOPMENT PERMIT AND REZONING: APARTMENTS, 1983

Type of Project: Three storey apartment complex consisting of three buildings

Location: Guildford Town Centre, in the Vicinity of 100 St. and 147th Avenue.

Site Area: 4.75 acres

Site Coverage allowed and approved: 60%

Total number of units: 114

Dwelling units per acre allowed: 15
Dwelling units per acre approved: 30

Date Applied: November 1981
Date Approved: March 28th 1983

In 1981 a developer applied to the Municipality of Surrey for a rezoning and subsequent development permit to develop three rental apartment buildings. The original proposal consisted of 146 units to be constructed on 4.5 acres of land. The site sloped to the south-west; was bisected by a hydro right-of-way; and had minor drainage constraints. At the time of application the surrounding area was in transition from a predominantly single family neighbourhood to a multiple family apartment district. This density upgrading was consistent with Official Community Plan policies for the area.

Council rejected the first application based on an Engineering Department and design panel concerns, as stated below.

- The vehicular access and egress to the site from the adjoining busy arterial road was inadequate.
- The provision of guest parking was insufficient.
- The high site coverage on the sloping site would likely affect storm-water run off on the site and negatively affect down-stream
- The repetitive nature of the building facades and the incompatible form and character of the buildings with surrounding development was unsatisfactory.

- The provision of landscaping and recreational amenities for the tenants was inadequate.

The developer then worked closely with municipal staff in negotiations and essentially redesigned the whole project including a modified roofline and facade and completely redesigned vehicular circulation system. As a condition of the second rezoning application, the developer agreed to enter into a development agreement with the municipality which included the following.

- Payment for and construction of a detention pond at the lower end of the site.

- Provision that an approved landscaping plan be attached to the development permit, which included a fitness trail and playground facilities.

- Provision to ensure the protection of the hydro right-of-way.

- An agreement to register the provision of this agreement on the title of the property using a section 215 covenant.

With a significantly improved proposal, the applicant was notified that the project was deficient with respect to several urban design issues including the choice of colour for the exterior of the buildings and a lack of dead-bolt locks on all doors. At this point in the approval process there was an impasse. The developer argued that the municipal requirements were now excessive and that he had been forced to make costly modifications to his project design without any concession. The developer made the recommended changes and the project
was ultimately approved. However, he was allowed to develop the project with 32 additional units in excess of the zoning by-law and parking requirements would be reduced from 288 to 233 on the basis that the development was in close walking distance of parks and a nearby shopping mall.

Conclusions

There is little difference in complexity or scale in this project as compared to the Richmond development permit project. A development permit, easement, development cost charge and an irrevocable letter of credit to secure landscaping requirements should have been adequate. Since the area was already predominantly multiple family, there probably was not a need for a spot rezoning. Clearly this municipality is prepared to contravene its own bylaws in order to have complete project control regardless of the size and complexity of the project.

This multiple family project illustrates that some municipalities are intent on regulating all aspects of a proposed project's architectural design and that they are prepared to delay or reject approval on this basis. In fact, analysis of this project identifies that irrespective of the current legislative provisions, some municipalities will continue with their own system of planning controls and approval process which approximates land use contracts.
Figure 9. North Vancouver LUC Project

Figure 10. North Vancouver LUC Site Plan
CITY OF NORTH VANCOUVER LAND USE CONTRACT: TOWNHOUSES, 1978

Type of Project: Garden Court Townhouses

Location: Central Waterfront Area of North Vancouver, west of Lonsdale on 14th Avenue.

Site Area: Approximately one city block

Total Number of Units: 23

Zoning Allowed: Single family Residential
Zoning Approved: N/A, Land use contract

Date Applied: July 1977
Date Approved: July 1978

In 1977 a developer applied to the City of North Vancouver for a land use contract to accommodate a 23 townhouse development. While local area plans of the time, designated the area as multiple family, the zoning and predominant land use was single family residential. There was no real justification for a land use contract in this case since there was nothing about the project or the site that was especially complicated. The developer was simply requesting to use the land use contract mechanism as a way of getting around the zoning bylaw, in order to obtain approval not only for an incompatible use in the area but also a density that not even the rezoning to multiple family medium density would allow. He was prepared to give concessions to achieve this end.

Opponents of the project were concerned with the following issues:

- the incompatible land use and density of the project in comparison to the surrounding single family development;
- the fact that overcrowding conditions would be created as a result of the higher density; and
- that the project would disrupt the fabric of the neighbourhood by creating a precedent for similar development.

Planning staff, in their review of the project were most concerned with the following development issues:

- the definition of semi-private space surrounding the project in order to buffer the surrounding single family development;
- the uninteresting and repetitive building layout;
- the poor siting and orientation which was not oriented to maximize view potential nor sunlight exposure; and
- the lack of recreational amenities.

As a result, the application was rejected and the property subsequently sold. A year passed before the new owner submitted a similar application, this time laying out the townhouses in quadrangle and providing several recreational amenities in the courtyard. Individual units were oriented towards a southern exposure where possible. As part of the land use contract application, the developer proposed to provide all on-site services and entered into a development agreement with security guaranteed by a irrevocable letter of credit.

Conclusions

There were no tangible benefits to the community as a result of the land use contract negotiations with the exception of the decreased cost to the community for the private recreational facilities provided on-site. A development permit could
have achieved a similar level of control with a letter of credit to secure landscaping. It is questionable however, whether a letter of credit today would be allowed to secure the recreational amenities.
Figure 11. North Vancouver DA Project

Figure 12. North Vancouver DA Site Plan
CITY OF NORTH VANCOUVER DEVELOPMENT AGREEMENT: SENIOR'S
PROJECT, 1986

Type of Project: Three and Two Storey Seniors Condominium Apartments

Location: Lonsdale Area, in the vicinity of Chesterfield Avenue and 29th Ave.

Site Area: Approximately one city block

Existing Zoning: Attached Residential: Low Density
Zoning Change: Equivalent to Medium Density Multiple Family Residential

Total Number of units: 144

Floor Space Ratio Allowed: 0.6
Floor Space Ratio Proposed: 1.7
Floor Space Ratio Approved: 1.1

Zoned dwelling units per acre allowed: 8 - 10
Dwelling units per acre approved: 40

Date Applied: Jan. 1986
Date Approved: July 1986

In 1986 a local development company applied to the City of North Vancouver for a rezoning of a site from low density attached residential to medium density multiple family residential to accommodate a seniors apartment complex. Market analysis in the area indicated a considerable demand for this type of project. The developers rationalized higher density on the site based on the belief that there would not be the same degree of car ownership, thereby resulting in fewer traffic impacts as might be expected at the proposed density. While there may have been a demand for this type of development, the site was situated at the eastern edge of a single family and duplex residential area and the original proposal had not been adequately designed to accommodate concerns of neighbouring single family residents.
The developer negotiated with the municipality to transfer part of the density from the west side of the development to the east side of the site and in doing created a more sympathetic fit with the scale of the western single family houses. To facilitate the density transfer, the developer agreed to enter into a development agreement with the municipality -- an objective that would not have been achievable using zoning.

Several negotiations were held with respect to open space. Ultimately the developer was required to increase open space by 3%. Also included in the development agreement were the following provisions:

- an enforceable provision that only seniors would be allowed to live in the project;
- that all tenant parking be provided for in an underground parking structure below the building;
- that the developer widen a nearby arterial road, construct and pay for a signal light and a protected left turning lane at the nearest intersection; and
- that the developer provide additional guest parking on-site.

The development agreement was effective in meeting both community and development industry objectives -- especially in being able to facilitate the density transfer by fixing a well defined building volume. The municipality benefited from an attractively designed building, sidewalk, crosswalk and signal light improvements. The developer on the other hand, benefited from being able to develop at a density close to what he had originally proposed. One of the negative aspects of this development agreement is that it is likely that the sidewalk improvements should not have been part of the deal as they were not
Conclusions

Analysis of this project illustrates how the objectives associated with a more complicated and special use project can be achieved more easily via a development agreement (land use contract type mechanism) rather than using a combination of present planning controls. Without the flexibility of the development agreement to tie down a specific building volume, including different density at various locations of the site, this project may not have been possible.
CITY OF VICTORIA LAND USE CONTRACT: APARTMENTS, 1972

Type of Project: Two six storey condominium apartments and one four storey condominium apartments

Location: In the North Eastern portion of the City in the vicinity of Topaz Avenue and Cook Street

Site Area: 5.45 acres of which 3.5 acres were City owned

Coverage allowed and contracted: 18%

Dwelling units per acre allowed: 112
Dwelling units per acre contracted: 120

Number of units allowed: 146
Number of units contracted: 158

Date Applied: Nov. 1970
Date Approved Sept. 1972

In 1972 a developer applied to the City of Victoria for a land use contract to accommodate a multi-building condominium apartment complex on a site that was situated in the middle of a single family residential area. The site was vacant, more than half City owned, and located at the crest of a large hill. Single family development was not feasible as a result of the many rocky outcroppings and therefore the City was prepared to consider multi-family development schemes for the site. The developer and municipality agreed to a land use contract because of the following points.

- There was to be a land transfer from the City to the developer.
- Several parcels were to be consolidated.
- The developer wanted to locate different densities at various locations on the site, which otherwise would have been difficult using zoning.
- The City wanted to preserve several large oak trees and a surrounding stone fence.
- The City wanted to preserve the on-site heritage building (Spencer Castle).

- There was a requirement that the developer upgrade the gardens in the grounds and provide public access to them.

- There was a requirement that the developer pay for and construct a road widening to one of the adjacent roads.

Flexibility of this land use contract also provided the City to negotiate large site-specific building set-backs in order to screen the apartment buildings from the single family housing while allowing density to be increased in more central areas of the site. The building heights were also negotiated and contracted to be no higher than the large oak trees.

**Conclusions**

This large scale project is another example of how land use contracts can be a more effective mechanism in achieving municipal and development objectives for complicated projects than using development permits or rezonings etc.
Figure 15. Victoria DP Project

Figure 16. Victoria DP Site Plan
In 1987 a local developer applied to the City of Victoria for a development permit to accommodate a 36 unit apartment development. The City's main objective was to ensure that the development would be complementary to the nature and special character of the surrounding streets which served as the approaches to the City of Victoria from Oak Bay. The flexibility of the development permit allowed them to require that the building height be in scale with the large old surrounding oak trees and that any trees on the site would be preserved. Cooperation during negotiations between municipal staff and the developer contributed to the success of the project. For example, a willingness on the part of developer to work with staff averted a potential impasse. The engineering department had originally recommended that the project proposal be rejected because there was no fire access in the back of the project. The developer and the municipality were able to overcome this problem by negotiating
an easement to allow fire truck access. In exchange, the developer was allowed side yard relaxation from 4.3 feet to 3.6 feet. The engineering department was also concerned with the steep slope of the vehicle access ramp and the fact that the developer was not proposing to provide all parking underground. Both of these issues were eventually addressed. All parking was provided underground, however the building height restriction was relaxed from a maximum of 36 feet to 40 feet.

Clearly the developer benefited from the relatively short three month approval process which would have potentially reduced project financing costs. He also benefited from the side yard and building height relaxation which had the net effect of allowing a greater site coverage increasing to 39% from 33%, but without overall density change. The City on the other hand, benefited from a well designed project which was compatible with surrounding development and consistent with predetermined urban design policies for the development permit area.

Conclusions

A land use contract may have achieved the same benefits to both the developer and the municipality and the approval process may have taken the same amount of time, however quite simply, such a comprehensive mechanism would not have been required in this case. The developer was not requesting relaxation to use and density, nor was there a need for any other special development control variations or agreements. In this respect a land use contract would not have
been necessary and the development permit combined with an easement for fire access were quite sufficient in satisfying both municipal and developer objectives. It is unlikely that the board of variance would have had the capacity to deal with the engineering and planning considerations of this project.

This project illustrates how the current system of planning controls is more effective in meeting developer and municipal objectives when proposed development is quite straightforward. The following factors contributed to the success of this development.

- Prezoning was in place on the site.
- The developer and municipality cooperated well throughout negotiations.
- Exterior design control was not regulated yet the city was able to meet form and character objectives.
- Well defined City goals and objectives for the area were in place, which would have helped the applicant in preparing a complete and acceptable development proposal.

5.5. SUMMARY OF CONCLUSIONS

The analysis in this chapters confirms the findings of Chapter 4, that in certain circumstances, namely in complicated or comprehensive development applications, a development agreement which approximates a land use contract is necessary and more effective than combining a variety of existing planning controls. However, the analysis demonstrates that if land use contracts are to be reintroduced, they should be limited in use. In particular, the case studies suggest that in a great many straightforward multiple family residential projects pre-zoning and
development permits are adequate.
CHAPTER 6. CONCLUSIONS AND RECOMMENDATIONS

6.1. CONCLUSIONS

This research has revealed valuable insights into the effectiveness of the present planning legislation incorporating Bill 62 amendments to the Municipal Act. Further insight is gained of the practical strengths and weaknesses of the present system of planning controls through a comparison with the former system of land use contracts used in the 1970's.

A discussion of the evolution of conventional zoning and evaluation of its strengths and weaknesses in Chapter 2 confirms the widely held belief that zoning by itself is insufficient in providing the necessary regulatory scope to satisfy both development industry and municipal government land use and development objectives. While it has gained considerable public support for its most notable ability in stabilizing property values and segregating incompatible land uses, its has been most criticized for its inability to accommodate other development objectives such as architectural and urban design control, off-site servicing, landscaping control, mixed use and comprehensive developments. Its theoretical and practical weaknesses have led academics, municipal lawyers and planning practitioners to devise alternative legal mechanisms to improve or even replace zoning.

Flexible and discretionary land use and development controls have been advanced over the last thirty years throughout North America which have in common: the
ability to deal with projects on a site-specific basis; provide discretionary power to council or planning officials; allow for the attachment of landscaping and architectural concept plans; offer greater opportunities for negotiation and conditional development approval; and provide some kind of mechanism which can register the provisions of the negotiations on the title of the property. Site plan control, conditional zoning, contract zoning or development contracts are a few of the types of the discretionary development controls which have been developed differing in only a few respects.

Planning in British Columbia has conservative roots. The most tangible effect of this practice for perhaps the first fifty years of this century is the zoning bylaw. It wasn’t until the 1950’s, with the associated problems of rapid urban expansion, that alternative planning controls were introduced. While the City of Vancouver adopted discretionary development control under the power the Vancouver Charter, other municipalities in the province -- notably suburban Lower Mainland communities -- had to resort to "quasi-legal" discretionary development controls since no similar provisions were included in the Municipal Act. With the introduction of the land use contract in the early 1970’s, British Columbia became the first province to sanction development contracts.

Land use contracts blended subdivision control and zoning control into one document and allowed for development approval to be based on the terms and conditions negotiated between developers and municipalities. What made the land use contract different from other discretionary development controls was that the legislation incorporated many of the legal principles that govern zoning. For
example, land use contract approval could only be granted after the posting of notice and a public hearing. In this respect land use contracts protected the rules of natural justice in the same way that zoning does, but offered greater flexibility.

The development industry initially supported the land use contract, because they believed that it would provide a flexible mechanism which could more easily accommodate comprehensive and innovative development. They soon came to the conclusion that the benefits offered by the land use contract, notably its flexibility were not worth the expense of uncertainty and unpredictability. The land use contract, became subject to heavy criticism. The development industry lobbied the provincial government to repeal land use contracts. The development industry believed that some municipalities were exceeding their legislative authority, and the intent of land use contract legislation, by down-zoning large parts of their community and effectively forcing developers to apply for land use contracts. In this respect, they contended that municipalities had too much discretionary control in the development approval process. It was also argued that the device was allegedly being misused by municipalities. Developers accused municipalities of levying excessive impost fees on their projects thereby placing an unfair burden on them which translated into an increase in price to the eventual owner. The real criticism of land use contracts was not so much that municipalities were requiring developers to pay for off-site servicing charges, but rather that some municipalities were spending the funds collected in ways totally unrelated to the particular development. These criticisms of land use contracts then, relate more to the way in which they were used and less to any inherent weaknesses in the
mechanism. These allegations which were summarized in the Bawlf report were never substantiated in his research.

In spite of this, the recommendations spelled out in the Bawlf report were instrumental in bringing about legislative change under Bill 42 in 1978. This legislation repealing land use contracts represented a major turning point for flexible planning control in B.C. Since that time the major thrust of legislative amendments has been to reintroduce predictability and certainty of the rules that determine land use control by reestablishing zoning as the principal means of planning control. In each subsequent amendment there has been an attempt to provide some flexibility to zoning by incrementally adding to the Municipal Act, single purpose mechanisms, including development permits, development variance permits, and development cost charges. Today, planning control provisions in the Municipal Act consist of a "menu" or "shopping list" of regulatory mechanisms. It would seem that the intent is that rather than using one all-encompassing mechanism the land use contract, regulation selectively combines only specific and relevent controls. The intent is that this should lead to a more streamlined approval process.

Chapter 3 presents a discussion of a normative framework which is used to evaluate the theoretical strengths and weaknesses of the present system of land use and development controls. It is argued that the ideal system of planning controls is not represented by the extremes of total comprehensive long-term planning or complete ad-hoc piecemeal land use control, but rather it consists of a balanced mix of flexible controls and rigid regulations used in conjunction with
and related to short-term programmatic community plans. The final ingredient is that the development approval process should be effective, efficient and respect the rules of natural justice.

Using these criteria to evaluate the present system of planning controls and the former system of controls, it is learned that both legislative approaches respect the rules of natural justice. In both instances, development approval decisions are made by unbiased adjudicators (that is council not staff), posting of notice is required as is a public hearing. The Bill 62 requirement in 1985, that all municipalities prepare official community plans as a condition for using development permits brings the present system that much closer to the ideal. The preparation of official community plans was not a requirement during the land use contract years which was a deficiency in the legislation that led to ad-hoc decision making in some communities.

The evaluation of procedural basis of the two systems, indicates that both approaches directly (through the land use contract) or indirectly (via provisions in zoning legislation) provide for the regulation of land on a site-specific basis. However, while spot-rezonings are legal today, the intent of present zoning is still to regulate groups of parcels. Where present legislation is weak in comparison to land use contract legislation is that it lacks provisions for negotiation within established discretionary limits, off-site servicing agreements and security of performance. Another weakness of the present system lies in the insufficient scope of development permits and zoning provisions to accommodate the peculiarities of mixed use, comprehensive and innovative developments. In this respect, land
use contract legislation provides a better mix of flexible controls. Generally though, it is concluded in Chapter 3 that the present system of controls compares somewhat more favourably in terms of meeting the requirements of the normative framework. What gives the present system the advantage is the legislative requirement that local governments adopt official community plans to guide the use of development permits.

The survey results discussed in Chapter 4, provide insight into the practical strengths and weaknesses of the present system of planning control in comparison to the former system of land use contracts. In particular, the results from both local government and development industry representatives reaffirm the conclusions reached in evaluating the theoretical strengths and weaknesses of the present system of planning controls compared to land use contracts. Consensus was reached by both sectors that the present system of planning controls is generally acceptable but has some serious limitations. Development permits and development variance permits were seen as being a useful mechanism especially for design sensitive areas of a community and to encourage area development control rather than site-specific regulation. Development industry and municipal respondents however, were in agreement that the desired intent of a more stream-lined approval process with its menu of specific development controls is not always effective enough to accommodate certain development applications. In fact, this fast tracking objective has produced questionable results. For larger/complex developments municipalities continue to address development issues in a cautious manner and implement solutions by negotiating and drafting quasi-legal development agreements. These development agreements take the form of a
combination of any of the following mechanisms:

- spot rezonings;
- development permits;
- section 215 covenants;
- a development cost charge; and
- an off-site servicing and amenity agreement.

The results of the survey indicate that this mix of controls is less effective in bringing about municipal and development industry objectives than land use contracts for the following reasons.

- Development permits are in some cases being used for complete design control (including regulation of exterior finishes) while developers are receiving no concession in exchange for this control.

- Development permits are being used to ensure that all aspects of a development are secured by an irrevocable letter of credit not just landscaping as provided in the legislation.

- Comprehensive development districts (Special use zoning districts) have little legislative basis and are difficult to administer since they create a lengthy and cumbersome zoning by-law.

- Development cost charges either can not be used in some redeveloping municipalities because the DCC formula is next to impossible to calculate, or it results in higher charges compared to impost fees or DCC can create an additional tax burden to the public because DCC charges are not consistent with Capital Improvement Budgets.

- Section 215 covenants are being used to register all aspects of development when in fact, they are best suited to accommodate only land use considerations.

- Current development agreements do not provide developers with the same level of security in phasing development that land use contracts offered because municipalities may still make zoning changes which may affect the feasibility of future phases of particular project.

Through a more empirically based evaluation presented in Chapter 5, the case
studies confirm the opinions of both municipal and development industry respondents in Chapter 4, that land use contracts or similar development agreement are more effective in accommodating complex, mixed use, or comprehensive developments. The chapter also reveals that the present system of development permits is generally adequate in accommodating straightforward multiple family developments.

There is a need for some form of legalized development agreement mechanism similar to land use contracts. This conclusion is based on the fact that current legislation does not provide sufficient scope to meet municipal and development industry objectives in certain circumstances. A land use contract mechanism can be more effective than attempting to modifying the menu of existing controls. A land use contract allows the public and private sector to negotiate and conclude a business agreement where the rules and financial obligations are mutually agreed on, clearly defined and understood. A land use contract is also important to permit municipalities to negotiate and enter into complex agreements with the private sector without the fear of subsequent legal challenge. These potential benefits are in addition to the comprehensiveness and flexibility of such a mechanism.

6.2. RECOMMENDATIONS

Having determined that there is a need for land use contracts, how could they be reintroduced and what should they cover?
For land use contracts to be successful it is imperative that the purpose and circumstances for their use be clearly defined in the legislation. While other provisions in the Municipal Act are permissive, land use contract legislation leaves little room for interpretation if it is to be effective, equitable and fair. As concluded from the examination of the case studies, it is evident that land use contracts:

- should regulate straightforward multiple family developments, (typically three to four storey building or a small townhouse development with little few site or project peculiarities);

- should be reserved for mixed-use projects, comprehensive developments and projects that have some special or unique features and only then, when municipal and development industry objectives are not more easily achieved using some other legal mechanism; and

- should include provisions for financial contributions to cover the cost of off-site servicing directly related to the development (including road improvements and utilities) as well as park dedication (without the requirement for improvements to the park) all of which are less easily achievable via a development cost charge;

6.3. SUBJECTS FOR FUTURE RESEARCH

Further possible recommendations which might help make land use contracts more effective and fair in their implementation are listed below as subjects of further research.

- Land use contracts should only be entered into only after all terms and conditions are mutually agreed upon by the applicant and municipality, as required in the previous land use contract legislation.

- Land use contracts should only be entered into only after a public hearing is held when use and density are to be varied from the existing zoning.
- Land use contracts should relate to OCP policies and municipal guidelines as much as possible.

- Land use contracts should be amendable after agreement has been entered into without a public hearing except where substantial amendments (e.g. use and density) are proposed. Minor should be made by development permit or development variance permit with agreement of 60% of the persons having a registered interest in the land.

- Land use contracts could be used to register all negotiated terms and conditions of the agreement on the title of the property having the effect of a restrictive covenant.

- Land use contracts should have a "sunset clause" so that after an agreed upon period of time the contract reverts to a particular zone. This would solve some of the amending problems related to the fixed nature of the contract.

- Land use contracts should be used to allow municipalities to require applicants to provide security for all aspects of development not just landscaping.

- Land use contracts should be used to relax zoning and subdivision requirements including building height, setbacks and in well justified cases use and density (including density bonuses).

- Land use contracts could be allowed to regulate the form and character of development and direct control of landscaping as well as exterior design finishes (detailed architectural control).

- Land use contracts should be incorporated into a two stage development approval process. Stage one should require applicants to submit complete applications including conceptual drawings of the project which would be presented at the required public hearing. Stage two should follow upon approval in principle and should include a second round of more detailed negotiations culminating in the submission of complete construction drawings.
BIBLIOGRAPHY


Corke, S.E. Land Use Controls in British Columbia. Research Paper 138 #3, Centre for Urban and Community Studies, University of Toronto, Toronto Ontario. 1983


APPENDIX I: DEVELOPMENT PERMIT PROVISIONS

1968 Development Permit Provisions

Where a Council has adopted an official community plan, the Council may, in by-law under section 702, designate areas of land within a zone or zones as development areas.

Upon the application of an owner of land within the development area or his agent, the Council may, by issuance of a development permit, waive the provisions of the by-law as they apply to that land and substitute therefore other terms and conditions which shall have the effect of a by-law adopted under section 702.

If the holder of a development permit does not commence the development described therein within two years of the date of issuance of the permit, the permit shall lapse unless extended by Council.

The Council may require that the owner or developer shall provide a performance bond or other security in the amount and form prescribed in the development permit.

The Council may prescribe the procedure for the issuance of a development permit and the form thereof.

The Council shall not issue a development permit until it has held a public hearing thereon, notice of which has been published in the manner prescribed in subsection (1) of the section 703. The notice shall identify the lands with respect to which the proposed development permit is to be issued, state in general terms the intent of the provisions of the proposed development permit, and state where and the days and hours which a copy of the proposed development permit may be inspected.

Nothing in this section shall restrict the right of an owner to develop his land in accordance with the regulations of the municipality which apply to the zone in which the land is situated. 1968, c. 33, s. 166.
1978 Development Permit Provisions

In the 1978 revised statutes (section 717) the variations permitted through the use of site development permits appear as follows:

- regulate the dimensions and siting of buildings and structures on land;

- regulate the siting and design of off-street parking and loading facilities in accordance with the permit;

- require that landscaping or screening be established around different uses in accordance with the standards set out in the permit;

- require the pavement of roads and parking areas in accordance with the standards set out in the permit;

- require that the land be developed, including the provision of sewerage, waste and drainage facilities, and the construction of highways, street lighting, underground wiring, sidewalks and transit service facilities;

- subject to S. 740, require the construction of buildings and structures in accordance with the terms and conditions in the permit;

- require that an area of land specified in the permit above the natural boundary of streams, rivers, lakes or the ocean remain free of development, except that specified in the permit;

- require the provision of areas for play and recreation;

- limit the number, size and type specify the form, appearance and construction of signs; and

- regulate the exterior finishing of buildings, other than residential buildings containing three or less self contained dwelling units, having due regard for requirements made under paragraph (c).
APPENDIX II: QUESTIONNAIRE AND INTERVIEW RESPONDENTS

MUNICIPAL INTERVIEW RESPONDENTS

Municipal Planners                                           Interview Date
1. Richmond                                                  June 13th
   (Brian Jackson)                                            
2. Surrey                                                    June 7th
   (Howe Leung)                                                
3. Coquitlam                                                  July 6th
   (Don Buchanan)                                              
4. Burnaby                                                   June 14th
   (Ken Ito)                                                   
5. Victoria                                                   May 9th
   (Doug Koch)                                                 
6. North Vancouver                                            June 24th
   (Richard White)                                             

IV. DEVELOPMENT INDUSTRY INTERVIEW RESPONDENTS

Industry Representatives                                    Interview Dates
1. Genestar Developments                                    June 22nd
   (Lyle Armstrong)                                          
2. Progressive Construction                                 June 27th
   (Steve Kurrien)                                            
3. Canland Investments                                      June 28th
   (Gordon Cameron)                                           
4. Parklane Ventures,                                        July 5th
   (Chris Nieman)                                              
5. Polygon Properties,                                       July 7th
   (John Northey)                                              
6. Intrawest Properties,                                     July 15th
   (Gary Raymond)                                              

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APPENDIX III: INTERVIEW QUESTIONS AND TABULATED RESULTS

The following is a list of the questions asked of the respondents in the individual interviews. The tabulation of the yes/no responses of the municipal and development industry representative follows each question, whereas the comments and detailed explanations of the answers have been incorporated into the body of the text in chapter four.

1. **Official Community Plans**
   a) Does your community have an Official Community Plan; if yes for how long?
      Municipal: yes = 6 no = 0
   b) Do your community plans adequately reflect, and express, related public interest concerns? (municipal response only)
      Municipal: yes = 6 no = 0
   c) To what extent are municipal plans, including Official Community Plans, Local Area Plans and Design Guidelines helping applicants better determine the municipal goals and objectives of a particular community? (industry responses)
      Industry: Are they too vague = 4; or to stringent = 2; about right = 1

2. **Development Cost Charges**:

   How has (your municipality/the development industry) responded to removal of Impost Fees, and the introduction of the Development Cost Charge and Late Comers Fee?

3. **Comprehensive Development Zoning and Development Agreements**
   a) Does your municipality use comprehensive development districts? (municipal response only)
   b) Does (your municipality/ the industry) believe that comprehensive development districts are an effective development control? If yes what are the relative strengths and weaknesses in comparison to the land use contract?

4. **Zoning**:
   a) Does your municipality attempt to maintain an inventory of pre-zoned land consistent with Community Plan designations? (Municipal Response only)
b) How many zoning districts does your municipality have?
Municipal: Average = 55

c) Are there too many Zoning districts in your Municipality?
Municipal: yes = 3 no = 3

5. **Density Relaxations or Bonuses:** Does your municipality use density bonuses and if so for what purposes?
Municipal: yes = 5 no = 1

6. **Development Variance Permits:**
Does (your municipality/ your development company) believe that the Development Variance Permits are a useful development control mechanism? What are their strengths and weaknesses?
Municipal: yes = 4 no = 0 n/a = 2
Industry: yes = 6 no = 1

7. **Development Permits:**
Are current Development Permits a useful tool in achieving the planning goals and objectives of your community?
Municipal: yes = 4 No = 0 N/A = 2
Industry: yes = 6 No = 1

What are your (company's/municipality's) greatest concerns with respect to this device?

8. **Administrative Discretion:**

a) Does your municipality agree that under the Municipal Act there is no provision for "discretionary zoning" and should there be?
Municipal: yes = 4; no = 1; n/a = 1 q = 1

b) Does your planning department exercise any "discretion" in considering various
permits and rezonings?

Municipal: yes = 4; no = 1; q = 2

c) If "yes" - what form does this discretion take?

Public: i) persuasion = 0
ii) negotiation = 4
iii) discussion = 2
iv) other (specify all) = 0

d) To what areas of concern would such discretion usually be applied? (e.g. landscaping, exterior design, etc.)

e) Use of "discretion" is a frequent complaint from applicants because it reduces certainty. How would your municipality respond to this?

9. Design Control:

a) Design Control is a controversial subject. Is design control as provided for in the Act, necessary to attain the municipal planning goals and objectives?

Municipal: yes = 6 no = 0
Industry: yes = 0 no = 7

b) Are the the provisions of the Act, relating to design control:

<table>
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<th></th>
<th>adequate</th>
<th>inadequate</th>
<th>too extensive</th>
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<tbody>
<tr>
<td>Municipal:</td>
<td>1</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Industry:</td>
<td>7</td>
<td>0</td>
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</table>

c) How would your municipality respond to the claim made by the development industry that municipalities exercise too much design control?

10. Procedural By-Laws:

Has the introduction of the requirement for municipalities to prepare a "procedures" by-law helped development applicants better determine with certainty, what to expect in the development approval or review process? Explain. (municipal and industry responses)

11. Design Panels:

Does your community have a design panel and if yes what is there purpose?

12. Conditions:
a) Does your municipality believe that municipalities) require that an applicant satisfy certain conditions pertaining to a particular project (that are not specified in any plan or guideline) before any recommendations to council is put forward?

Municipal: yes = 5  no = 1
Industry: yes = 6  no = 1

b) Relative to negotiations using Land Use Contracts, has the present practice of negotiating conditions on a site specific basis:

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<tbody>
<tr>
<td>Municipal:</td>
<td>2</td>
<td>2</td>
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<tr>
<td>Industry:</td>
<td>3</td>
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c) What problems has (your municipality/ the industry) experienced in relation to the response given in b)?

13. Innovative Design:

a) Do the present land use controls including: zoning, development permits and development variance permits, etc., encourage innovative project design? (municipal and industry responses)

Municipal: yes = 2  no = 3  n/a = 1
Industry: yes = 3  no = 4

b) Did Land Use Contracts encourage more then the previous system?

Public: yes = 4  no = 2
Private: yes = 4  no = 2  n/a = 1

14. Unified Proposals:

Land Use Contracts were in a sense a "one stop shopping" development control since they combined subdivision, zoning and development control into one land use device. Current legislation has taken somewhat of an opposite approach by replacing many of the aspects of development that the land use contract could regulate, with a menu of various controls including, development variance permits, sign by-laws, screening by-laws, parking by-laws etc. With respect to this point, which system according to (your municipality/ the industry) works better and why?

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<tr>
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<th>Land use contract</th>
<th>Present System</th>
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</thead>
<tbody>
<tr>
<td>Municipal:</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Industry:</td>
<td>4</td>
<td>3</td>
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15. **Development Delays in the Approval Process:**

a) Relative the Land Use Contract System, is the present system of combined rezoning and development permits more costly cumbersome and inefficient:

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<tr>
<td>Municipal</td>
<td>3</td>
<td>2</td>
<td>1</td>
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<tr>
<td>Industry</td>
<td>3</td>
<td>3</td>
<td>0</td>
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b) What is the biggest problem in establishing and maintaining deadlines for processing development applications?

16. **Security of Performance:**

a) How often are Section 215 Covenants used in your municipality to ensure the fulfillment of the terms of zoning bylaws, development permits etc.?

Municipal: often = 4    somewhat = 1    never = 0

Industry acceptance of Section 215 Covenants:

<table>
<thead>
<tr>
<th></th>
<th>positive</th>
<th>negative</th>
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18. **Flexibility:**

One of the main advantages of the land use contract was its flexibility in the siting, size and dimension of buildings and structures. Relative to the system Land Use Contracts what is the extent of the current system's ability to provide flexibility:

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<tbody>
<tr>
<td>Municipal</td>
<td>1</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Industry</td>
<td>2</td>
<td>1</td>
<td>4</td>
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19. **Timing and Phasing of Development:**

It has been suggested that one of the advantages of the land use contract is that, the timing and phasing a project could be agreed upon and then written into the contract. This presumably was extremely useful for large staged developments. Present development permits are also able to control timing and phasing of projects. Is there any difference? Explain.