ZONING
FOR COMPREHENSIVELY PLANNED DEVELOPMENTS
A Case Study
by
UWE ANDREAS ROSSEN
B.A., University of Western Ontario, 1965

A THESIS SUBMITTED IN PARTIAL FULFILMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF ARTS

in the School
of
Community and Regional Planning

We accept this thesis as conforming to the required standards

THE UNIVERSITY OF BRITISH COLUMBIA
May, 1969.
In presenting this thesis in partial fulfilment of the requirements for an advanced degree at the University of British Columbia, I agree that the Library shall make it freely available for reference and study. I further agree that permission for extensive copying of this thesis for scholarly purposes may be granted by the Head of my Department or by his representatives. It is understood that copying or publication of this thesis for financial gain shall not be allowed without my written permission.

School of Community and Regional Planning
The University of British Columbia
Vancouver 8, Canada.

Date: May, 1969.
ABSTRACT

Rigid zoning by-laws that were a logical solution to land-use control in the North American social milieu resulted in an equally logical wish for more flexibility in land-use controls. Experiments resulting from this brought about various devices to make zoning more flexible in its application. One of these devices was zoning for comprehensively planned developments. The need to improve this zoning device is important because an increasing number of large-scale developments are built in our cities as they seem more suitable to modern living conditions than the single house on a single lot.

In Vancouver, the city of the case study, such a zoning device for large-scale developments of mixed land-uses has existed since 1956 in the form of the CD-1 district schedule. Since that time various criticisms have been levelled against it.

These criticisms were collected in this paper and an attempt was made to rectify what was found at fault in the CD-1 schedule. Means to rectify these faults were taken from planning experiences in Vancouver, B.C.; Canada, the United States and Great Britain.

Several major solutions were found suitable as a result of this study. It was seen necessary to have a general development plan for the city before any rezoning to CD-1 projects should be allowed. Without such a plan it would not be possible to assess the impact of each development, and rezoning decisions
would, as a result, be very arbitrary. A general development plan does not exist in Vancouver.

A further fault was found in the absence of any guide-lines in the CD-I schedule. Developers, property owners, planners and City Council cannot properly assess what constitutes a proper CD-I project without them. Much misuse of the CD-I schedule results from this. Suggestions to rectify these misuses are to clarify the objectives of CD-I zones. Out of these objectives certain standards should be set in respect to land parcel sizes, requirement of a minimum of two land-uses, completion dates of the project, placing of performance bonds for fulfilment of imposed conditions and others. It was also suggested that a clause be inserted in the existing zoning schedules which would permit comprehensively planned developments of a similar land-use as in the respective schedules.

Because the CD-I schedule leaves much discretionary power to civic officials, certain needs to check these were also found to be important considerations. Suggestions were made to have each alderman record his reasoning for permitting a rezoning and to provide a cooling-off period after a public hearing before decisions were made. Finally, it was found that with the increasing complexity of planning a provincial review board of planning experts should be established to hear appeals of aggrieved citizens.
# TABLE OF CONTENTS

## PRELIMINARY PAGES

<table>
<thead>
<tr>
<th></th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title Page</td>
<td></td>
</tr>
<tr>
<td>Abstract</td>
<td>i</td>
</tr>
<tr>
<td>Table of Contents</td>
<td>iii</td>
</tr>
<tr>
<td>Acknowledgements</td>
<td>viii</td>
</tr>
</tbody>
</table>

## CHAPTER

### I. INTRODUCTION ............................... 1

<table>
<thead>
<tr>
<th>Section</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>The CD-1 schedule</td>
<td>3</td>
</tr>
<tr>
<td>Trends in City Building</td>
<td>4</td>
</tr>
<tr>
<td>Objectives of CD-1 zoning in Vancouver</td>
<td>9</td>
</tr>
<tr>
<td>Objective of Thesis</td>
<td>14</td>
</tr>
<tr>
<td>Hypothesis</td>
<td>15</td>
</tr>
<tr>
<td>Methodology</td>
<td>16</td>
</tr>
<tr>
<td>Scope and Assumptions</td>
<td>18</td>
</tr>
</tbody>
</table>

### II. DEVELOPMENT OF THE ZONING SYNTHESIS 20

<table>
<thead>
<tr>
<th>Section</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intention of the CD-1 schedule</td>
<td>20</td>
</tr>
<tr>
<td>Early History of Zoning</td>
<td>21</td>
</tr>
<tr>
<td>Zoning in Vancouver and Canada</td>
<td>25</td>
</tr>
<tr>
<td>Introduction of the CD-1 schedule</td>
<td>27</td>
</tr>
<tr>
<td>CHAPTER</td>
<td>PAGE</td>
</tr>
<tr>
<td>---------</td>
<td>------</td>
</tr>
<tr>
<td>III. CONSTITUTIONALITY OF THE CD-1 DISTRICT SCHEDULE</td>
<td>32</td>
</tr>
<tr>
<td>Enabling Powers</td>
<td>32</td>
</tr>
<tr>
<td>Delegation of Powers</td>
<td>33</td>
</tr>
<tr>
<td>Administrative Review</td>
<td>38</td>
</tr>
<tr>
<td>Judicial Review</td>
<td>43</td>
</tr>
<tr>
<td>IV. APPLICATION OF THE CD-1 DISTRICT SCHEDULE</td>
<td>45</td>
</tr>
<tr>
<td>Various Uses of the CD-1 schedule</td>
<td>45</td>
</tr>
<tr>
<td>Rezoning Procedure</td>
<td>49</td>
</tr>
<tr>
<td>V. THE POLITICAL PROCESS AND THE CD-1 SCHEDULE</td>
<td>57</td>
</tr>
<tr>
<td>Large Developer's Advantage in Rezoning</td>
<td>57</td>
</tr>
<tr>
<td>Council's Behaviour in Rezoning</td>
<td>58</td>
</tr>
<tr>
<td>Possible Solutions</td>
<td>61</td>
</tr>
<tr>
<td>Recommendations</td>
<td>67</td>
</tr>
<tr>
<td>VI. ADMINISTRATIVE DIFFICULTY IN CD-1 ZONING</td>
<td>68</td>
</tr>
<tr>
<td>Discretionary Powers of Officials</td>
<td>69</td>
</tr>
<tr>
<td>Lack of Reliable Information for the Assessment of Projects</td>
<td>72</td>
</tr>
<tr>
<td>Arbitrary Zoning Standards</td>
<td>74</td>
</tr>
<tr>
<td>Cost of Rezoning</td>
<td>76</td>
</tr>
<tr>
<td>Recommendations</td>
<td>79</td>
</tr>
<tr>
<td>APPENDIX</td>
<td>Description</td>
</tr>
<tr>
<td>----------</td>
<td>-------------</td>
</tr>
<tr>
<td>B.</td>
<td>Report by the Town Planning Commission</td>
</tr>
<tr>
<td>C.</td>
<td>Various Delegations of Power from the Vancouver Charter</td>
</tr>
<tr>
<td>D.</td>
<td>By-law No. 3497 of the City of Vancouver</td>
</tr>
<tr>
<td>E.</td>
<td>The Director of Planning and the Technical Planning Board - Duties and Powers</td>
</tr>
<tr>
<td>F.</td>
<td>The Zoning Enabling Act of The Vancouver Charter</td>
</tr>
<tr>
<td>G.</td>
<td>The Enabling Sections Zoning Board of Appeal</td>
</tr>
<tr>
<td>H.</td>
<td>By-law No. 3844 of the City of Vancouver</td>
</tr>
<tr>
<td>I.</td>
<td>Amendment or Repeal of Zoning By-law</td>
</tr>
<tr>
<td>J.</td>
<td>Extracts from El Paso Texas By-law &quot;Floating Zones&quot;</td>
</tr>
<tr>
<td>K.</td>
<td>Examples of Neighbourhood Standards</td>
</tr>
<tr>
<td>L.</td>
<td>Planned Unit Development</td>
</tr>
<tr>
<td>M.</td>
<td>Four Case Studies</td>
</tr>
<tr>
<td>N.</td>
<td>British Town Planning Act 1947</td>
</tr>
<tr>
<td>P.</td>
<td>Development Permit System</td>
</tr>
</tbody>
</table>
### TABLES AND MAP

<table>
<thead>
<tr>
<th>Table</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TABLE I.</strong></td>
<td>Groupings of criticism in the functional areas of discussion</td>
<td>17</td>
</tr>
<tr>
<td><strong>TABLE II.</strong></td>
<td>Possible adjustment of the zoning applications to permit these projects in other than CD-1 zones</td>
<td>85</td>
</tr>
<tr>
<td><strong>MAP</strong></td>
<td>Map of existing CD-1 zones to October 1966</td>
<td>50</td>
</tr>
</tbody>
</table>
ACKNOWLEDGEMENTS

I wish to thank Professor Brahm Wiesman for the great amount of time he has given to me in the preparation of this thesis. Without his friendly encouragement the thesis may never have been finished. The author takes complete responsibility for any failings in the paper.

In addition, I am grateful for the time various members of Vancouver Civic Staff gave to my enquiries.

Finally, the syntax of much of this paper would often have been rather unique but for the watchful eyes of my wife Judith. I thank her for this.
CHAPTER I

INTRODUCTION

Urbanization in Western society accelerated during the years of the agricultural and industrial revolutions. It soon became apparent that it was necessary to control the arrangement of buildings and streets in cities.

Dr. Clifford Allbutt's description of an English industrial city in 1865 clearly shows why:

This is no description of a plague-stricken town in the fifteenth century; it is a faint effort to describe the squalor, the deadliness, and the decay of a mass of huts which lies in the town of Leeds, between York Street on the one side and Marsh Lane on the other; a place of "darkness and cruel habitations", which is within a stone's throw of our parish church, and where the fever is bred. Those dwellings seem for the most part to belong to landlords who take no interest whatever in their well-being. One block perhaps has fallen years ago by inheritance to a gentleman in Lancashire, Devonshire, or anywhere; another to an old lady; a third, perhaps, to an obscure money-lender. Meanwhile, the rotten doors are falling from their hinges, the plaster drops from the walls, the window frames are stuffed with greasy paper or old rags, damp and dung together fester in the doorways, and a cloud of bitterness hangs over all. To one set of houses, appropriately named Golden Square, there is no admission save by alleys or tunnels, which are only fit to lead to dungeons; so that for perhaps half a century or more the winds of heaven have never blown within its courts.¹

That these conditions also existed in North America is well known and recorded by many authors such as Lewis Mumford and the muckrakers at the

turn of the century. Only after some epidemics had raged through densely populated areas and the connection between disease and unsanitary conditions was recognized, were people willing to conform to some basic standards for development.  

Several societies took different approaches to the problem of land-use control. In Britain, where there were no major political revolutions during the time when society changed from the feudal to the parliamentary system, people were not as suspicious towards officialdom as was common in the United States. Much discretionary power to decide upon land-use issues was, as a result, entrusted to the British officials. In the United States, however, an official representing any government office was suspect because the official was associated with the stigma of the feudal overlord, an oppression the United States hoped she had shed with her gain of Independence in 1776. The power of the officials, so it was thought, had to be curbed by tightly described statutes. There was a heavy reliance on statutory law in the United States as well as in many other countries who changed their forms of government from oppressive monarchies.

Out of this cultural background the zoning device developed as the major tool for the control of land-use. The purpose of zoning was to control the use of

---

2 Ibid., p. 71.
3 John Delafons, Land-Use Controls in the United States. (Cambridge, Massachusetts: Joint Center for Urban Studies of the Massachusetts Institute of Technology and Harvard University, 1962), passim.
land by statutory laws, rather than to give an official the power to assess and
approve each development on its own merit as is done in Britain. It was soon
found, however, that it was difficult to consider all the peculiar circumstances
of land-uses in the statutes and often desirable innovations were inhibited. A
desire for more flexibility in the application of the zoning device therefore
resulted in continual experimentation. Examples are the use of the Zoning Board
of Appeal for relaxation of the Zoning by-laws in cases of hardship and the
insertion of clauses in by-laws that permit officials to relax certain rules of the
by-law under specially described circumstances.

One of these experiments was the CD-1 schedule of the Vancouver Zoning
and Development By-law No. 3575 introduced in 1956. The stated purpose of
this device in the zoning by-law was to permit a developer to propose an
integrated project and then allow this proposal to be assessed by civic officials
and legislators on its own merit. Following their approval a project could be
erected. The only criteria for the assessment was to be the general intent of the
Zoning and Development By-law. Basically there were five innovations in
the purpose of this device which are not commonly found in other zoning district

---

4 The letters "CD" in the name of the schedule stand for "Comprehensive Development". Throughout this paper when reference is made to the CD-1 schedule or CD-1 zoning both the use, intent and wording of the by-law are referred to. The context will in each case identify its usage.

5 See Appendix A.
schedules: (1) Developers were able to propose projects without much consideration given to common zoning requirements; (2) It gave more discretionary powers to civic government to assess a project on its own merit; (3) It dealt with projects of special design; (4) It dealt with projects on larger tracts of land; and (5) It dealt with projects of more than one land use.

Criticisms of this new device were soon heard, some being valid while others were based on the emotional issue of public land-use control versus the individual's freedom to use his land as he wishes. Beginning in the fall of 1966 several criticisms were again advanced by the Vancouver Town Planning Commission against the application of the CD-1 zoning district schedule. It is therefore valid to ask if comprehensive development zoning with some changes is a useful addition to the concepts and methods of planning or whether it should be abandoned.

In this paper the contention is that the CD-1 zoning district schedule should be changed to rectify certain deficiencies that are apparent. The overall purpose of building flexibility into the zoning process is a worthwhile objective. This contention is based on the observation of the following trends in the evolution of city structure and social organization which demonstrate that the CD-1 schedule is a progressive planning tool and helps us to implement desirable innovations. The trends that can be observed are:

(1) The increasing number of larger project developments.

---

6 See Appendix B
(2) More consideration for the interrelationship of physical structures and human functions the structures are intended to serve, and to alleviate problems that arise from conventional, but inappropriate, city building practices today.

(3) The increasing awareness of businessmen, governments and planners that large projects are economical and needed to renew our cities.

The increasing tendency in our development techniques to build large integrated projects rather than individual buildings on individual lots that abut on a street, necessitates new development techniques. Since the purpose of the CD-1 schedule was primarily to deal with large developments it is appropriate to improve its method of application.

The trend towards large scale development has gone on for some time. This is partly a result of a growing city, and partly due to efficiency of scale in the development of larger projects. An increasing number of large projects of several integrated land-uses has been built during the last few decades, particularly in larger cities.  

Paul and Percival Goodman perceived this historic trend in North America as follows:

(1) Initially log cabins were built on cleared land.

(2) As land was cleared farm buildings sprung up.

(3) If the farm was near a growing center this farm would eventually be allotted to small parcels along "organic" developing streets.

---

7 Gallion, op. cit., p. 125.
(4) After some time the irregular streets would be straightened out to allow for more efficient traffic, but single houses would still be on a single lot.

(5) As the town grew the houses would be converted to provide for more than one family. Additions were built as well as a second floor.

(6) Houses become attached and often grew to more than two storeys.

(7) Some high-rise apartment buildings will be built on isolated lots in a built-up area. (Such as the present development of Vancouver's West End).

(8) High-rise apartment buildings will be constructed on several lots on a large scale as projects. (As presently seen in Vancouver's West End).

(9) The final stage will be one where the entire city is built into one structure. (This stage has not been reached by our society).

These stages are abstracted from diagrams found in "Communitas".

If large projects then are the basic building blocks of future cities, we should have legislative devices that can effectively deal with them. Historical evidence has indicated that the high density slums created in New York during the late nineteenth century were partly due to an absence of appropriate legislation. The spread of the then common "Railroad" and "Dumbell" plans for apartment buildings was first stopped when legislation was introduced that promoted development on larger parcels of land. Our traffic problems and noise, high land cost per dwelling and other common urban problems may similarly be solved only when more imaginative use is made of such devices as the CD-1 schedule.


The second observable trend is directly associated with the previous one in that it deals with the integration of projects. It is understandable that if a larger parcel of land can be planned so that the buildings on it are related to each other in a functional pattern, many more environmental factors can be considered than under our conventional system where a single house on a single lot abutting a street is the basic unit. Under these environmental factors can be considered assignment of local traffic and through traffic, vehicular and pedestrian traffic separation, the provision within a project of services such as stores, recreational facilities, open spaces, light and privacy, as well as many other factors. The CD-1 zoning approach can take into consideration many more problems of the city and provide better solutions than is possible with the "mass aggregate" approach of conventional zoning by-laws.

Present development of garden apartments, high-rise complexes, shopping centers and other projects that integrate several types of land-uses provide evidence of this trend in Vancouver as well as in many other North American cities. It would appear that these internal layouts are planned more sophisticatedly than is possible by dividing up the city into many small lots facing public roads.

Thirdly, the growing recognition by business and government of the efficiency in larger projects should be mentioned. This has come about through the awareness by architects, planners and businessmen that large scale developments are essential for the rebuilding of our cities to suit new ways of living.
The best example here is the optimism the Canadian government has shown in supporting the Habitat project at the Expo '67 site in Montreal. It is the opinion of the project architect, Moshe Safdie, that the best method of providing housing for the future population is by integrating various land-uses on one site and mass producing the housing units. By integrating retail spaces, office spaces and living quarters it would be possible to reduce the need for travel as well as having made a much more effective use of a large site.

In *Urban Renewal and the Future of the American City* C. A. Doxiadis also saw the only hope for rebuilding of our cities lies in the reorganization of smaller lots to larger parcels. In these he designed pedestrian oriented neighborhoods connected to the city by peripheral arterial streets. Such a planned allocation of land-uses would bring back all the amenities of small city life as well as providing the advantages of a large city.

Finally, the justification for retaining the CD-1 schedule can be based on consideration of the philosophy of controlled change, sometimes also called incrementalism. As has been noted, large integrated projects seem to be the building blocks of our future cities. Therefore we need a method to control these developments. If we abandon the CD-1 zoning device we will need a new

---

10 From notes taken at a lecture given by Moshe Safdie, Fall 1966, U. B. C., Vancouver, B. C.
method. Since a new method has not been tested yet, there probably would be some faults in it that would have to be corrected. To acquire this new experience may be expensive economically as well as socially. Furthermore the new device may also have to be abandoned if it proves to be unworkable.

Instead of going through this process, that is, finding new methods and correcting them, we may be able to develop the existing tool, the CD-1 schedule. We can analyze the faults and attempt to correct them. Thus the experience invested already in the present device can be utilized and built upon.

Before any new changes can be introduced into the CD-1 schedule the obvious question to be asked is "in which direction should these changes be made?"

As has been shown there is a need for a CD-1 zoning type of development control to accommodate large complicated projects. To identify more precisely the objectives that the CD-1 zoning schedule should accomplish the place for CD-1 zoning in general land-use controls needs to be examined.

To arrive at the overriding objectives of CD-1 zoning it is convenient to divide the CD-1 zoning device into the two functions that it is required to control. These are (a) the land-use and (b) the layout of projects.

An examination of the zoning district schedules of the Vancouver Zoning and Development By-law No. 3575 shows that each district has a list of land-uses permitted in it. This list is, in most schedules, broken down into three categories: "Outright Uses" which state what uses are permitted in each zone without special reference to the Technical Planning Board or other discretionary
examination. Following is Category "A", a list that contains "conditional uses" where the applicant who proposes to use his land as indicated in this list has his proposal examined by the Technical Planning Board which has permission through the by-law to permit the land-use if it does not conflict with adjacent land-uses. In the "B" category the proposed land-use has to be approved by the Technical Planning Board and the Town Planning Commission. Finally there is, in some district schedules, a "C" category where the listed land-uses require approval by the Technical Planning Board, the Town Planning Commission and City Council. A land-use not in the present list must therefore be given special consideration. The difficulty in this procedure can easily be conceived when a project is proposed that has such a variety of land-uses that it completely negates the purpose of conventional zoning. The project may be of such size that its effect on its own inhabitants becomes as important as its effect on its surroundings. Presently such mixed land-uses, unless listed in the special section of the by-law, cannot be permitted other than under the CD-1 zoning schedule since only one principal building can be permitted on any one site.  

With these types of development in mind the objectives of CD-1 zoning in respect to land-uses could be stated as: "CD-1 zoning should provide a zoning category that can accommodate such a variety of land-uses within a project that cannot be properly accommodated under presently existing zoning schedules".

---

13 Vancouver Zoning and Development By-law No. 3575, Sec. 10 (5), op. cit.
The other function of the CD-1 zoning schedule is to control the layout of a development. It is apparent that with large scale developments the traditional measurement tools of zoning lose their meaning. A good example is the presently proposed "Project 200" on the downtown Vancouver waterfront. Here the traditional measurement of height for the purpose of bulk control of the buildings becomes meaningless. Traditionally in zoning by-laws height is measured from the average grade along the front of a building. \(^{14}\) In the case of "Project 200", however, buildings will not have a natural grade. Highways and railway lines will pass under the buildings and the greater part of the project will be built above this artificial terrace that contains the traffic facilities, some of which will not even serve the project above. \(^{15}\)

Similarly, the concept of permitted floor area in the project becomes less meaningful because the project will be largely internally self-sufficient. The effect of higher population density is therefore lessened. To enforce a by-law that rigidly uses the same measurements for such a large project as for a small one is extremely arbitrary.

\(^{14}\) The definition in the Vancouver Zoning and Development By-law No. 3575 is more complete but cannot properly accommodate the project described.

\(^{15}\) From an explanation presented by the "Project 200" Manager G. Joplin at the Professional Engineering Association's fall meeting, 1966 in the B. C. Hydro Building, Vancouver, B. C.
It is apparent that there needs to be a new form of land-use control that can provide for projects where traditional tools of calculation for zoning purposes is less meaningful. The objectives of such a zoning device, in respect to the control of site layout, would be that: "CD-1 zoning should provide for such developments where physical layout cannot be assessed by traditional zoning standards but are appropriate in their location and design".

These two overriding objectives are hereafter assumed in this paper to be valid and are set ahead of any other objectives that may be derived from the analysis of the criticisms of CD-1 zoning.

The present CD-1 district schedule of the Vancouver Zoning and Development By-law No. 3575 has all the necessary powers to deal with the two major objectives. In the application of CD-1 zoning several defects appeared to be present which gave rise to some criticism. During the winter and spring of 1967 some of these criticisms were collected. This was done by approaching those that are familiar with CD-1 zoning with the question: "Do you have any criticism to make in respect to the CD-1 schedule and its application?" The responses were written down and each different criticism was listed. An attempt was made to get a variety of viewpoints but due to limitations in time no attempt
was made to either cover all possible criticisms or even a weighted sample of
them.

The list of criticisms collected was as follows:

(1) Large developers are favoured when applying for rezoning to CD-1.

(2) Developers propose projects that significantly add to public amenities
and after approval of the rezoning seek amendments to reduce them.

(3) CD-1 rezoning is subject to political manipulation and may even invite
corruption.

(4) CD-1 zoning gives too much discretionary power to civic officials.

(5) Civic officials are not sufficiently qualified to judge complex projects.

(6) Since Vancouver has no general plan the officials cannot properly assess
the possible validity and impact of a proposed CD-1 project.

(7) The cost in time and resources is too high for developers to test the
possibility of getting a rezoning to CD-1.

(8) CD-1 zoning amounts to "spot zoning" and is used to build projects that
would otherwise not be permitted in the various districts.

16 A possible method to get a representative sample could have been to
interview a certain number of members from each interest group concerned with
CD-1 zoning. Such groups for example are planners, civic politicians, architects,
developers and the general public. A follow-up of the criticisms collected was
made later by interviewing various representatives of the mentioned interest groups.
They were asked to check off which criticisms they found "true", "false" or "don't
know". From the author's observation of how the list was checked off, the
conclusion was drawn that the follow-up did not have any validity. Significantly,
however, no one added any further criticisms in a place provided for them. The
conclusion must therefore be drawn that the most apparent criticisms are on the
list.
(9) CD-1 districts negate the purpose of zoning because a uniform law is not applied to all districts as in conventional zoning.

(10) The CD-1 schedule invites developers, planners, politicians and others to propose whatever suits their fancy in any district.

(11) The developer is not given sufficient guidelines prior to application for rezoning to CD-1.

(12) CD-1 zoning is used where an existing or new district would have been equally satisfactory.

(13) There has not yet been a good reason given for CD-1 zoning for any project built in Vancouver.

(14) CD-1 zoning as it is applied in Vancouver does not follow the original intent of the schedule.

(15) CD-1 zoning has been used on small parcels of land where it is impossible to design a comprehensive scheme as the intent of the by-law stated.

(16) Property owners are no longer certain of the future character of their neighborhoods as a CD-1 project may be built next to them at any time. The result is that zoning no longer safeguards the rights of property owners.

(17) There are not sufficient appeal provisions from arbitrary decisions made by civic officials.

Objectives of the Thesis:

With the list of criticisms as a basis for a possible examination of the CD-1 district schedule, the problem the paper turns to is this: "To what extent
are the criticisms true, and if proven true, what changes can be proposed in the application of the CD-1 schedule to remove its present defects". These analyses and proposals are made bearing in mind that: (a) the CD-1 type zoning device is a valuable tool in the context of social change and modern development practices (see the analysis of this on pp. 5-9); and that (b) there are two distinct functions of the zoning by-law that have to be satisfied by CD-1 type zoning which are stated in the two major objectives of the CD-1 schedule (pp. 10 - 12).

Hypothesis:

In order to suggest modifications in the application of CD-1 zoning which will eliminate the possible defects and in order to give the examination direction, the following hypothesis is advanced:

"The CD-1 district schedule of the Vancouver Zoning and Development By-law No. 3575 is used contrary to the intent, and its usefulness has been impaired by deficiencies related to its political, administrative, land-use planning and legal functions.

For the purpose of this paper the word "intent" in the hypothesis is defined as: (a) the general objectives of the Zoning and Development By-law No. 3575 as expressed in its preamble; and (b) by the two overriding objectives assumed for the CD-1 schedule as analyzed on pages 10 - 12, that is: "CD-1 zoning should provide a zoning category that can accommodate such a variety of land-uses within a project that cannot be properly accommodated under presently

---

17 See Appendix A.
existing zoning schedules", and "CD-1 zoning should provide for such develop­
ments where physical layout cannot be assessed by traditional zoning standards
but are appropriate in their location and design."

**Methodology:**

The methodology to prove the above hypothesis proceeds through the following
steps. Initially in Chapter II the CD-1 district schedule is described in its historical
context. Following this in Chapter III is an analysis of the CD-1 district schedule in
its legal context. In Chapter IV a description is presented of the way in which CD-1
zoning is applied in Vancouver, B.C. From an analysis of existing CD-1 zoned
projects a general examination is made if CD-1 zoning is used contrary to the intent.
This background is important in order to understand some of the later references.

An analysis of each criticism is made hereafter to examine where specifically
the impairment to the CD-1 schedule is located. First the criticisms are grouped in
functional areas of the planning process in which they are discussed. The basis for
this grouping is derived from an examination of the possible ways in which the cause
for the criticism may be removed. Some criticisms are discussed in several group­
ings because solutions to the problem they indicate are within more than one
functional area. The functional areas of discussion are: the "political process"
(Chapter V) where criticisms are discussed whose causes may be rectified by suggest­
ing changes in legislative procedure; the "administrative process" (Chapter VI) where
criticisms are discussed whose causes may be removed by various administrative
actions and changes in procedure; the "land use and zoning implications" (Chapter VII)
where criticisms are discussed whose solutions lie in producing various devices and
new procedures to overcome the cause for the criticism; and finally the "legal
aspects" of CD-1 zoning are discussed in Chapter VIII, where solutions to problems
can be found by changing some parts of the legal basis for zoning.

---

18 See Table I (p. 17) for the groupings of criticisms in functional areas discussed.
TABLE I

GROUPINGS OF CRITICISMS IN THE FUNCTIONAL AREAS
OF DISCUSSION

<table>
<thead>
<tr>
<th>No. of Criticisms as on pp. 13 &amp; 14</th>
<th>Administrative Review</th>
<th>Zoning &amp; Land-Use Implications</th>
<th>Administrative Implications</th>
<th>Political Implications</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>3</td>
<td></td>
<td>x</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>10</td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>11</td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>12</td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>13</td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>14</td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>15</td>
<td></td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>16</td>
<td>x</td>
<td></td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>17</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Each individual criticism is processed through the following steps. First, it is analyzed for its validity. The criteria used are either factual proofs or a test against the assumed intent (p. 15). If the criticism is proven to be valid, a recommendation is made as to how the cause for the criticism can be removed.

When a criticism, following analysis, proves to be invalid, a recommendation to improve the subject of the criticism is sometimes suggested as this may prevent possible future defects. In addition, when it is shown that a criticism cannot be tested for its validity due to the absence of information, a recommendation is nevertheless made to suggest improvements.

In conclusion, the valid criticisms are analyzed to see if they violate the assumed intent of the CD schedule. Following this, the set of recommendations that was derived from the analysis of the various criticisms is analyzed for its internal consistency. In the case of any conflicts, the previously assumed overriding objectives (pp. 10-12) are the criteria against which recommendations are tested.

**Scope and Assumptions:**

The scope of this paper has been limited to the CD-1 schedule of the Vancouver Zoning and Development By-law No. 3575 and to the city of Vancouver, B.C. As a result, the paper must be considered a case study with all its limitations in respect to the general implications of this study to zoning and the findings' applicability to other cities.
Also, the entire range of defects within the CD-1 district schedule has not been examined as only the easily available criticisms have been collected. As was noted, however, there are indications that the most apparent criticisms have been found. (See footnote p. 13).

In addition to the limited scope it was necessary to make an assumption, partly due to the absence of better information or due to the lack of time to make a better analysis: The objectives of CD-1 zoning had to be assumed, due to the absence of exact information, and used for the definition of "intention" in the hypothesis.
CHAPTER II

THE DEVELOPMENT OF THE ZONING SYNTHESIS

For those historians who wish to see the logic of dialectics in operation over a relatively short period of time, the study of the history of zoning may be rewarding. From a position of little or no legal control over the individual's use of his land (thesis) to nearly a complete and legally rigid control over this land (antithesis), the tendency in North American cities now is towards a more rational application of land-use controls where rigid statutory laws are being replaced by a more flexible approach, including the delegation of powers to administrative tribunals, with the power to make certain decisions based on the circumstances. In this way land-use controls seem to be approaching a synthesis.

In Vancouver the introduction of the CD-1 zoning district in 1956 was a step towards this synthesis. The purpose of this zoning device, as described by the Vancouver Planning Department, is as follows:

In line with modern trends, a new district was incorporated in the by-law in 1956 to provide for comprehensively planned developments comprised of any number of residential, commercial, industrial or other types of buildings and uses or combinations thereof, which would not conform to all of the ordinary types of regulations. This was in no way intended to reduce the standards of development; on the contrary it is recognized that with well-designed comprehensive schemes efficiencies can be made and the overall standard of development can be raised.  

1 Vancouver, City Planning Department, General Explanatory Memorandum - Zoning and Development By-law No. 3575, November, 1963, p. 9.
The history and development of this zoning device had its seed in the earliest zoning by-laws. In 1913 a "Commission on Heights of Buildings" was established in New York under the Chairmanship of Edward M. Bassett. The commission found that greater public control over building development was necessary. The reasons for this commission's establishment were understandable:

The waves of immigration inundating the city's shores and the consequent constriction of tenements, subways, and skyscrapers created calamitous conditions in New York City in the early years of the century. Public clamour for extrication from the tangle of tall buildings and streets that had become dark and airless canyons, as well as real estate interests' demand for protection of property values endangered by mixed uses, resulted in a three-year study and the Building Zones Resolution of 1916.

One of the unique features of this new zoning by-law was that it divided the city into districts and applied a different set of laws to each of these. Prior to this time land-use control existed in some cases as specific statutes and by the application of common law in such cases as nuisance and liability. However, in the new zoning by-law common laws and some statutory laws were combined and applied to various districts in the city under the police power the state holds to protect its citizens.

---


4 Bassett, *op. cit.*, p. 20
Soon after the establishment of the New York Building Zones Resolution many other cities on the continent copied the by-law with very few changes made to suit their own unique conditions. However, there were only a few attempts made in most cities to change the basic formula as most effort seems to have been spent in testing the constitutionality of zoning as a land-use control device.

Why did zoning become the dominant form of land-use control? Certainly the approval of officials for proposed projects, as is requested in Great Britain with only some governmental guidelines, would have permitted a more flexible approach in its application. Again the answer to this must be found in history.

When the American Constitution was drafted, the new citizens of the United States felt a great distrust of oppressive officialdom which they hoped to have escaped by becoming independent of Britain. Checks and balances were therefore built into the new governmental structure to guard against discretionary action of government officials. This resulted in a great reliance on statutory laws. The purpose of the checks and balances was to guarantee that a new

---


6 The "hallmark" Ambler Realty Co. v. Village of Euclid, 297 Fed. 307, case demonstrated the constitutionality of zoning in the United States. This ruling has never been upset.

oligarchy would not form in the new country. The laws were supposed to be written by the legislative body but interpreted by the judiciary. United States citizens wished to see in writing what their rights and obligations were. Thus the more ad-hoc approach, as taken in the approval of development in Britain which earlier relied for its appeal provisions on common law, was not acceptable in the United States. Nor was there any trust in the decisions of officials. 8

When the Commission on Heights of Buildings in New York was inaugurated it tried to establish which method could best be used to control the use of land. It was found that only two methods were practical and enforceable under the United States legal system. These were to use either the power of eminent domain the state possesses or to use the state's police power to protect its citizens. 9

The use of eminent domain power would, it appeared, be too costly in compensation, as much of the restriction by the state would be interpreted by the courts as the taking of property. Police powers could be more easily applied since all the courts need do, to identify the legality of an action, was to decide if the scrutinized control was to the benefit of all people. 10

Invoking police powers for the control of land-uses has several disadvantages. In a country where officials are mistrusted, the law has to be

8 Delafons, op. cit., p. 9.
10 Ibid.
uniform and applicable to all citizens by denying discretionary power to administrators. Because of this the law must encompass all imaginable situations and, at the same time, be consistent. An obvious result of this is a simplified approach to a complex subject that perhaps should not be approached in any arbitrarily predetermined order. The criticism of inflexibility in zoning is therefore an inevitable result.

Within a few years of the adoption of the New York Resolution zoning spread across North America, and Canada got its first zoning by-laws. Most of these were direct copies from zoning by-laws of some United States cities, with no consideration given to the unique parliamentary system in Canada and the British North America Act. Thus the municipality of Point Grey, now a part of Vancouver, adopted a zoning by-law as early as 1922. Vancouver, when it amalgamated with Point Grey and other municipalities, also adopted a comprehensive zoning by-law on the recommendation of the United States Town Planners, Harland Bartholomew and Associates in 1930.

Until the end of the Second World War few changes were introduced into the concept of zoning by-laws. In the U.S.A. all energy appears to have been channelled into opposing the spread of zoning by-laws or into introducing and

---


12 On December 17, 1928, Vancouver passed its first zoning by-law but a more comprehensive one was adopted in 1930.
upholding them. In reviewing court cases of that time it appears that advocates on both sides became very rigid in their thinking as neither side seemed willing to use reason to modify the new device for the best use of all parties concerned.  

After the war when building activity again received more attention, changes to the existing zoning by-laws were introduced in various cities. As Delafons pointed out, whatever else there was wrong with the North American system of land-use control, the liberty to experiment given to each municipality had in it the seed for the betterment of the zoning system. A successful example from one municipality could therefore be adopted by others. These accumulated experiences have probably not been fully analyzed as yet.

In Canada two new forces soon began to be felt. The first of these was the lack of Canadian-trained planners. This resulted in a turn to Canada's traditional source of trained men, Great Britain. The planners coming to Canada from Britain, however, were trained in a more ad-hoc approach to land-use control and created a climate for change here.

As to the second force promoting change, it became slowly apparent to Canadians involved in planning that Canada's legal system had much similarity to the British system. In Canada there was until recently no Bill of Rights to

---

13 Yokely, passim. These two volumes consist of court cases relevant to special zoning matters during that time.

14 Delafons, op. cit., p. 38.

15 Britain's Town and Country Planning Act 1947, Sec. 4., ss 1 (b).

protect property, and the power of the crown was absolute. The rigid adherence to statutory law in land-use control was therefore less important. There was no 14th Amendment in the Canadian constitution whereby a private individual could appeal an official's decision who is charged with administering the by-law or on the basis that the zoning by-law was discriminatory and contrary to the Bill of Rights. The Canadian courts could only upset the decisions of officials charged with enacting the zoning by-law if they acted ultra vires, that is, outside of the delegated part of the power given to them of the absolute power of the crown. Thus, if actions of a city official were within the limitations of the enabling act there would be no constitution to refer to that could upset the zoning officials' decisions. On the other hand, in the United States an aggrieved citizen can go to court both on the basis of litigation and the 14th Amendment of the U.S. Constitution.

Typically in most Canadian Zoning enabling acts there is a clause spelling out that:

Sec. 569: Property shall not be deemed to be taken or injuriously affected by reason of the passing of a zoning by-law under this Part or by reason of the amendment or repeal of any such by-law or by reason of the exercise of any of the powers contained in this Part, either by Council or by an inspector or official of the city or by a board composed of officials of the city.

1959, c. 107, s. 20;
1964, c. 72, s. 19.

---


Discretionary powers of Canadian civic governments and planners in land-use control gradually increased both because of the influence of British planners and the general recognition of the Canadian constitutional relationship to zoning, as can be seen by the increase of comprehensive development zones and planned-unit-development by-laws, etc. For example, the Burnaby Council adopted such a district schedule in their zoning by-law. This was further augmented by the growing number of planners and their professional competence attained through university training.

In 1956 Vancouver adopted its newly updated Zoning and Development By-law No. 3575. One of its features was the new zoning district called "Comprehensive Development" or CD-1. Its description was the shortest of any in the zoning by-law, and gave City Council and the Technical Planning Board wide discretionary powers. It states that:

**Uses Permitted:**

With the approval of the Technical Planning Board development permits may be issued for the following uses. If the development permit is granted it shall be subject to such conditions and regulations as the Technical Planning Board may decide. (1) Comprehensive Unit Development subject to the provisions of Section 11(4) of this By-law.

Section 11 Subsection (4) of this By-law states:

A Comprehensive Unit Development containing any number of buildings and uses and planned as an integrated project may be approved as a conditional use by the Technical Planning Board subject to such conditions and regulations as they deem requisite; provided that the scheme conforms to the following general requirements:

---

19 See Appendix D for description of the Technical Planning Board.
(a) That the scheme is consistent with the intent and purposes of this By-law and any official Town Plan;

(b) That the necessary legal instruments are provided to ensure that all features related to each individual development are used, operated and maintained in accordance with the scheme as approved.

The purpose of this zoning district, as pointed out earlier (p. 3.), was to permit a more flexible approach to land-use control. With a restudy by the City Planning Department of zoning and planning experiences since the introduction of the first zoning by-law, the latest ideas in zoning, such as the CD-1 schedule, could be introduced. The Shaughnessy Heights Building Restriction Act was to be repealed in 1955 and land-use control for the area incorporated in the Vancouver zoning by-law. If this Act were to be repealed by the provincial legislature, it was important for the property owners in the area to be assured that Vancouver had a strong zoning by-law so that their property would not be invaded by undesirable land-uses. Also, during that period the War Emergency Act of the Federal Government that permitted additional suites in single-family houses was to be repealed. Thus many of the

---

20 City Planning Department, Vancouver, _Zoning and Development_ By-law No. 3575 (Vancouver, B. C.: Effective June 18, 1956 - Amended up to and including By-law No. 4139 Dated November 10, 1964 - Consolidated for Convenience only).

21 "Delay Asked on Shaughnessy Act" article in _The Vancouver Sun_, Feb. 22, 1955.
single-family houses that had additional suites installed during the war to
overcome the housing shortage were intended to revert to their original status
as single-family residences. The process for this reinstatement was to be
outlined in a new zoning by-law.

Although CD-1 type of zoning is a very advanced zoning tool (in the
context of trends to increased numbers of larger developments of mixed land
uses) and in North America a recent device, the concept had already been
proposed and discussed in various quarters. In 1929 Walter Gropius proposed
"to liberalize as far as possible the zoning regulations and building codes" and
proposed that projects should only be built on larger tracts of land. He saw
integrated high-rise apartment complexes as the only reasonable solution to
the lower income classes' housing problem. Similarly the Chamber of Commerce
of the United States in 1950 proposed that planners should look at:

22 Walter Gropius, *Scope of Total Architecture* (New York: Collier
Flexibility for large-scale development. Increasingly, modern construction extends beyond the limits of the single lot, or even the sizable parcel, to blocks, super-blocks, and even entire communities. At the time comprehensive zoning is done it is obviously impossible to forecast such developments in all their detail; yet it is clearly desirable to permit their execution with the greatest possible freedom, always subject to the basic principles of good land-use planning and sound zoning, including adequate standards of population density, light and air, open space, and building coverage. Modern zoning ordinances may therefore be expected increasingly to include provisions modifying the necessarily somewhat rigid regulations applicable to single lots to provide better opportunities for comprehensive, large-scale development.

Vancouver's easy acceptance of the CD-1 zoning district can perhaps be traced to a variety of factors. The new Planning Director at that time, G. Sutton Brown, had received his planning training in Great Britain and was familiar with the use of wide discretionary powers in development control by planners. Furthermore, when the revised Zoning By-law No. 3575 was introduced in 1956, it appeared from the study of newspaper reports at that time that only a few of the civic groups asked to scrutinize the new by-law before its adoption, were alarmed by the discretionary powers given to planners in the CD-1 district schedule. Most criticism was directed against the power given to the planners in general throughout the whole zoning by-law, but not specifically towards the CD-1 schedule. Probably the reason for this light


"Vancouver Must Grow Taller" article in *The Province*, Mar. 30, 1955, Vancouver, B.C.
response to such a controversial matter was due to the large volume of material that was presented in the new zoning by-law at one time. Significantly professional groups such as the Royal Architectural Institute of Canada and the Association of Professional Engineers hailed the By-law as being progressive. Strong emotional objection towards discretionary powers in the by-law came primarily from one group, the Vancouver Apartment Owners' Association. Thus the issue which one would have expected to raise the greatest controversy, the CD-1 zoning schedule, was easily passed.

In summary, it can be said that the Vancouver experience in respect to zoning has been very similar to that of cities in the United States. Only the planning officials' recent realization of the difference between the Canadian and American legal systems has resulted in minor deviation from the old American models for zoning. The CD-1 zoning schedule is similar to the "Planned Unit Development" in the United States but deviates somewhat and has also borrowed from the ad-hoc approach to development control as practised in Great Britain. 25 A mixture of ideas adapted to Canadian circumstances has in this way resulted in Vancouver's present CD-1 district zoning schedule.

25 See Appendices L and N.
CHAPTER III

CONSTITUTIONALITY OF THE CD-1 ZONING DISTRICT SCHEDULE

To understand the constitutionality of the CD-1 zoning device it is necessary to set it in the framework of the Canadian legal system governing property and civil rights. By doing this, later recommendations for amendments to the CD-1 schedule can better be seen in the correct legal context.

Municipal regulation of land-uses in Canada is based on powers conferred upon the municipalities by the senior governments. The provincial governments derive their powers from the British North America Act which divides the rights to govern in Canada between the Provincial and Federal governments.

Section 92 of this Act states:

In each Province the Legislature may exclusively make Laws in relation to matters coming within the Classes of Subjects next herein - after enumerated; that is to say, --

8. Municipal Institutions in the Province.
13. Property and Civil Rights in the Province.
14. The Administration of Justice in the Province including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedures in Civil Matters in those Courts.

1

British North America Act.
Other subsections are omitted from this list as having no direct bearing on the enabling powers the provinces usually confer on municipalities.

Using this enabling power (Sec. 92, ss. 8 of the BNA Act) the Provincial Legislature of British Columbia conferred municipal corporation status upon Vancouver in 1886. The Vancouver Charter contained the powers the Province conferred on Vancouver City.

The Vancouver Charter provides for a wide range of authority. Sections 559 to 574, headed "Planning and Development", "Zoning" and "Zoning Board of Appeal" are the relevant sections for the purpose of this paper. These sections make it possible for the city to pass a zoning by-law and to have it administered.²

Section 137 ss. 1 of the Charter states: "Except as otherwise provided, the powers of the city shall be exercisable by the Council."

Section 151 states: "Any of the powers of the Council may be exercised by by-law. They may likewise be exercised by resolution in any case where a by-law is not specifically required ........."

Applying these powers Council enacted the Zoning and Development By-law No. 3575, June 18, 1956, that replaced the earlier zoning by-law.

Since it is necessary for Council to administer the Zoning By-law, it delegated some of its powers to a number of officials. The reason for this delegation of powers is both a result of the complexity of the subject matter that required technical competence and the need to relieve council of excessive work. Since, however, a delegate (Council) cannot redelegate, the Vancouver Charter

---

also made provision for this need. Sections 560, 565(g), 565A(d), 572(1) and 574(1) give explicit permission to council for delegation of powers to some boards and individuals for specific functions in respect to planning matters. (See Appendix C).

Council has thus delegated power to the Technical Planning Board and the Director of Planning under Section 565A ss(d) of the Vancouver Charter. It states:

Council may make by-laws

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

With this enabling act as the source, Council delegated power by enacting a series of by-laws. By-law No. 3575, June 18, 1956, established the revised zoning by-law where the powers of the Director of Planning are also set out. By-law No. 3497 (November 15, 1959) established "a Board, to be known as the Technical Planning Board, to appoint the members of such Board, and to determine the power and duties of the same." (See Appendix D).

In the classical Montesquieu doctrine the three governmental functions - legislative, administrative and judicial - should be separated. Reality indicates that this is not entirely possible. Thus Council, as a legislative body, enacted

---

the Zoning By-law and gives to the administrators some quasi-judicial and minor legislative functions. Examples of these can be seen in Section 3 ss. 9(a) of the Zoning By-law. It states:

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

Similarly the Zoning Board of Appeal is by its very nature a quasi-judicial body. The Board is established to relax rigid zoning by-laws where their application is unwarranted. In the enabling act the circumstances where it can hear appeals is clearly set out (see appendix G, section 573). Section 13 ss. (1) of the By-law that established the Zoning Board of Appeal states:

The Board may grant or deny the appeal and may reverse or uphold the decision of the Director of Planning or other officials charged with the enforcement of the Zoning By-law being appealed against either in whole or in part or may modify such decision as appears warranted by the facts disclosed at the hearing.

Similarly the Zoning Board of Appeal has legislative functions as indicated by Section 16 of the By-law with the power to establish its own procedure:

Sec. 16. Subject to the provision of this By-law, the Board shall determine its own procedure.

One may well question if these examples cited are much more than administrative functions. As was resolved in the case of Russel v. Toronto some powers to make evaluations must be given to administrators and council is

---

4 See also page 39.
permitted to do so. From this it is apparent that the difference seems to be one of degree. If the issue is one of significant infringement on a citizen's liberty it should not be left to the administrators.

The delegates' administrative powers are clearly expressed in the relevant by-laws. For the Technical Planning Board, By-law No. 3497 of the City of Vancouver established this Board and its administrative functions. It also stated some of the responsibilities of the Director of Planning, as well as some of the Technical Planning Board's functions and administrative duties.

The general subsections (1) and (2) of Section 3 of the Zoning By-law under the heading "The Director of Planning and the Technical Planning Board - Duties and Powers" state the delegates' duties:

3. (1) It shall be the duty of the Director of Planning to carry out and enforce the provisions of this By-law.

(2) It shall be the duty of the Technical Planning Board to exercise on behalf of Council such powers as hereby expressly delegated to them.

Following these general sections are seven sub-sections in the By-law outlining their duties in detail.

In this described context of the enabling Act and by-laws the CD-1 district schedule also has its place. Like other parts of the Zoning By-law

---

5 Rogers, op. cit., p. 326.

6 See Appendix D.

7 See Appendix E.
this device has its roots in the enabler act Sec. 565 of the Charter under the heading "Zoning". Due to the peculiar nature of the schedule a special clause had to be inserted in the zoning enabling section of the Vancouver Charter to make the schedule permissible.

The specific subsection of the Charter states:

The Council may make by-laws

Sec. 565(f) designating districts or zones in which there shall be no uniform regulations and in which any person wishing to carry out development must submit such plans and specifications as may be required by the Director of Planning and obtain the approval of Council to the form of development;

The specific emphasis here is that the rules shall not be uniform and that approval of Council is required for each development.

To what extent delegation of power to the Technical Planning Board conforms with this enabling section may be questionable. As the CD-1 schedule indicates:

With the approval of the Technical Planning Board development permits may be issued for the following uses. If the development permit is granted it shall be subject to such conditions and regulations as the Technical Planning Board may decide.

This clearly leaves the final approval to the Technical Planning Board and not to the Council as the enabling section demands.

---

8 See Appendix F.

9 From the Zoning and Development By-law No. 3575, Comprehensive Development District Schedule, p.161.

10 See Appendix "D" for Technical Planning Board's composition.
In the CD-1 schedule the powers of the Technical Planning Board to impose conditions on developers are clearly established. Also the right to approve or refuse developments is given to this Board. Limitations on these delegated powers are only set by making the Technical Planning Board adhere to the general intent of the Zoning By-law, conformance of the project to any official town plan and the provision of legal instruments to secure the enforcement of conditions imposed on the developers.

Appeal provisions against zoning by-law administrators' decisions are provided by the establishment of the Zoning Board of Appeal. With the increase of boards and other special delegations of the elected government that have power to infringe on property and civil rights, the need to appeal the decisions of these organizations' officials became increasingly apparent. Thus De Smith writes: "Where a statute authorizing interference with property or civil rights was silent on the question of notice and hearing, the courts drawing upon the authority of the older cases invoked 'the justice of common law' to 'supply the omission of the legislature'." This he quoted from the case Cooper v. Wandsworth Board of Works (1863).

The principles of common law procedure, once established, were eventually extended to most organizations that were authorized by statutes to interfere with property and civil rights. The reasons for appeal provisions are

---

basically two: (1) Laws the officials must follow are too rigid for all situations, and (2) Some officials have the tendency to extend their activity outside of their assigned discretionary powers.

In some cases, such as the Workmen's Compensation Board, special tribunals are established to act in a quasi-judicial function to which aggrieved citizens can appeal. In the absence of these types of tribunals appeals have to go directly to the courts of law as no other appeal provisions are made.

Also in the field of zoning by-law administration the need for special appeal provisions was noted. Thus the Vancouver Charter provides for these appeal needs by a statutory requirement. A Zoning Board of Appeal has to be established by Council:

Sec. 572 (1) - The Council shall establish by by-law a Board of five members.

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

As can be seen from these functions of the Board of Appeal it is a quasi-judicial tribunal. From this it follows that it also has to comply with the rules of natural justice and common law. The procedure of the Board of Appeal and the method whereby its members are appointed, as required in the Vancouver Charter (Sec. 573) and in the By-law No. 3844, illustrate that this is done.

__________________________________________________________

12 From lecture notes of W. T. Lane Fall 1966

13 See Appendix G for grounds of appeal.

14 See Appendix H.
Natural justice, as it is known in common law, recognizes two general principles, although several sub-clauses exist:

1. That an adjudicator be disinterested and unbiased.
2. That parties be given adequate notice and opportunity to be heard.

Other sub-clauses are derived from common law, such as, permission to cross-examine witnesses, demand of the witnesses to make statements under oath, the right to be represented by counsel, the right of the defendant to call his own witnesses, the right to have sufficient notice before a hearing, and others. Some of these rules are, however, not adhered to by the Zoning Board of Appeal since it can establish its own procedure with the exception of those rules clearly set out by the enabling act. This violation of common law rules is not done to infringe upon the citizen's rights but to bring about a less formal and rigid procedure since most members of the Board are not specialists in law.

Attempts have been made to provide disinterested and unbiased adjudicators for the Board of Appeal. Section 572 (1) of the Vancouver Charter demands that the Board of Appeal shall consist of five members, "two appointed by the Lieutenant-Governor in Council, two by City Council and a Chairman who shall be appointed by a majority of the other appointees. The Board shall appoint a secretary and such officials as may be required by the Board."

It can be construed that the purpose of this method of appointment is to bring about a wide range of different interests on the Board. If an issue arises.

---

that may appeal to the selfish interest of one set of appointees, a second set
may negate its decisions. To further discourage any interest in the decisions
of city officials appealed against, ss. (4) of the same section states: "No
person who is a member of the Advisory Planning Commission or who holds any
municipal office, whether appointed or elected is eligible to be appointed or sit
as a member of the Board."

The second principle of natural justice, the right to a hearing, is also
well adhered to in the established procedure of the Board of Appeal. All persons
affected by a decision of an official charged with the enforcement of the Zoning
By-law have a right to a hearing under Sec. 573 ss. (1)(a) of the Vancouver
Charter. It states:

The Board shall hear and determine appeals

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

Having the right to a hearing guaranteed, the same section of the
Charter also provides for other common law rights.

Subsections (3) and (4) state:

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

(4) The Board shall conduct its hearing of appeals under this section
in public.
By-law No. 3844 of the City of Vancouver, that established the Board of Appeal, further adheres to the common law rights in Sections (9) and (10):

(9) (1) Notice of the time and place of the hearing of the appeal shall be mailed to the applicant by the Secretary at least five days prior to the hearing by the Board.

(2) The Secretary shall also give notice of the hearing to the Director of Planning and to such other officials of the City as the Chairman deems proper.

(3) Public notice of a hearing shall be given if the appeal is deemed by the Board of sufficient importance and such public notice shall be given by publications in a newspaper circulating in the City in not less than two consecutive issues and at a time not more than ten days nor less than three days before the hearing.

(10) (1) The Board on being convened at the appointed time and place shall hear applicants and any witnesses or other persons whose evidence may assist the Board in reaching a decision provided however, that where the appeal is from the decision of any official charged with the enforcement of the Zoning By-law the official concerned or his representative shall be afforded an opportunity to be heard and where the appeal is from the decision of the Technical Planning Board to grant or refuse an application for a development permit the Chairman of that Board or his representative shall be afforded an opportunity to be heard.

(2) Proceedings at the hearing shall be informal and evidence need not be given under oath unless the Chairman so requires.

Considering that approval of CD-1 projects depends upon the judgment of civic politicians and officials, without these officials following closely dictated rules, the need to consider the common law rights of the individual developer is especially important. Vancouver Charter Sec. 573(6) states in respect to the Zoning Board of Appeal that: "No appeal shall lie from a decision of the Board."

Thus the only appeal possible is on a point of law. The appellant has to prove
that the Board of Appeal acted outside of its jurisdiction. He then could apply for a writ of certiorari and the case could be moved into a court of law to have the Board of Appeal decision quashed.

It is questionable which cases can be taken from the Board of Appeal to courts of law. A general line can be drawn, according to De Smith, by considering that points of fact argued in special tribunals do not go to higher courts; where, however, need for knowledge of law is demanded, the courts have to take the cases. Since even courts have not definitely decided on when points of fact become points of law, due to misinterpretation of facts, De Smith suggests a tentative position. "Certiorari will issue to quash the decision of a statutory tribunal if an error in law is apparent of the face of the record, but not if the error is one of fact unless the error goes to the tribunal's jurisdiction."

Considering these remarks it appears that the only grounds for appeal from the decision of the Board of Appeal is on a point of law. This would mean that either the facts have been grossly misinterpreted or the Board of Appeal has acted outside of its jurisdiction.

Under what circumstances a CD-1 project can be reviewed is not known. To date no CD-1 rezoning case has been heard by the Zoning Board of Appeal.

---

16 De Smith, *op. cit.* p. 88.

17 From interviews with D. Fleming, legal advisor to the City of Vancouver and with the Secretary of the Zoning Board of Appeal, April, 1967.
In review it must be said that the legal context within which the CD-I schedule has to be applied, becomes especially important as more discretionary powers are left to civic officials. Thus the law that binds together the administrative, judicial and legislative functions must be understood fully before any amendments to the CD-I schedule can be proposed. The next chapter's description of the use of the CD-I schedule has, therefore, to be viewed in the context of the described legal framework.
CHAPTER IV
APPLICATION OF THE CD-1 DISTRICT SCHEDULE

An examination of the CD-1 zoned areas in the City of Vancouver reveals that the CD-1 schedule has been used in a number of ways. Some follow the apparent intent of the CD-1 schedule as stated by the Vancouver Planning Department while others seem only to be zoned as such to provide a category that avoids strict regulations. Because CD-1 zoning has frequently been used as a "catchall zone" where projects were proposed that did not fit into the normal zoning schedules, it is difficult to clearly categorize the existing projects zoned CD-1. This in itself proves that, with the exception of category 5, which follows the "intent" of CD-1 zoning as foreseen by the Planning Department of Vancouver, present CD-1 zones violate the intent of the schedule. If, however, the intent (page 20) is taken as the measure, there is more of a justification for the "catchall" approach to the CD-1 zoning schedule, since it states that a district was incorporated in the zoning by-law where developments "would not conform to all the ordinary types of regulations." However, no projects that are zoned CD-1 have really required this particular zoning

---

1 See page 20 for intent of this schedule as given by the Vancouver Planning Department.

2 Ibid.
designation according to the intent as assumed in this paper.\textsuperscript{3} It appears then that CD-I zoning has been used contrary to the intent and has not been needed as shown by the following examples.\textsuperscript{4} Five major groups of CD-I zoning are recognized here by examining their land-uses:\textsuperscript{5}

(1) Vacant land owned either by the city or private individuals where no definite decisions have been reached as to the future form of development. In order to control any future developments without having to do any rezoning, it is zoned CD-I. Usually these are large parcels of land. (See Map I).

Development may occur here in a variety of ways. An application for a development permit may be made for a project that does not properly fit into the built-up areas of the city where it is proposed because of its impact on the surroundings.\textsuperscript{6} As much of the land zoned CD-I is in areas that have been

\textsuperscript{3}For the purpose of this paper the word "intent" in the hypothesis is defined as: "(a) the general objectives of the Zoning and Development By-law No. 3575 as expressed in its preamble (17); and (b) by the two overriding objectives assumed for the CD-I schedule as analyzed on pages 10-12, that is: "CD-I zoning should provide a zoning category that can accommodate such a variety of land-uses within a project that cannot be properly accommodated under presently existing zoning schedules," and "CD-I zoning should provide for such developments where physical layout cannot be assessed by traditional zoning standards but are appropriate in their location and design."

\textsuperscript{4}See also p. 84 for discussion on this subject.

\textsuperscript{5}Most of the material in this chapter was obtained from observations made by the author while working in the Vancouver Planning Department and from interviews with various civic officials.

\textsuperscript{6}From the author's observations when sitting in on a Technical Planning Board meeting (summer 1966) where a proposal for an asphalt plant in the False Creek area was discussed.
vaguely designated as heavy industrial, the developer may be advised to re-
consider the proposal and locate in such a CD-1 zoned area. Also, some land
owned by the city is zoned CD-1 and may be openly advertised for sale subject
to a suitable proposal. This category of CD-1 zoning violates the intent in that
no clear scheme of development was proposed before any rezoning to a CD-1
zone, contrary to the requirement in the CD-1 schedule.

(2) The city or a public corporation, such as the Pacific National
Exhibition, may have existing projects on large parcels of land that are so
complex in respect to land-use or layout that strict adherence to the zoning by-
law may be difficult. (See Map I). In these cases it is assumed that the
developers, in reality the public itself, will favour the best development as
wardens of the public interest. Examples have since occurred that make this
assumption questionable. 7 In the case of the P. N. E. the zoning could have been
C-2, with any changes being subject to Council approval.

(3) Frequently senior citizens' housing and public housing projects are
permitted under the CD-1 schedule. (See Map I). This is to permit a special
design for these projects which is appropriate for non-profit organizations but
inappropriate otherwise. This would have been partly due to their low demand on
public services, such as schools etc., and partly on the grounds that a private

---

7 In 1966 a stadium was approved on the P. N. E. grounds that did not have
sufficient parking facilities as requested by the Technical Planning Board.
developer should not be given rights to produce dwellings that are sub-
standard for conventional use. Semi-public organizations who provide a non-
profit service for a special demand are therefore in a different category of
developers. The "intent" violated here is that neither are these projects so
complex in layout or land-use that they cannot be assessed by conventional
zoning devices and thus do not require CD-1 zoning. They could be conditional
uses in other zoning schedules.

(4) Often projects are proposed that do not properly fit into any special
zoning category, or it is not desirable to permit the appropriate zone because
control over the specific land-use may be lost. These developments may be
buffer developments between residential and industrial land-uses or such projects
have peculiar design characteristics. (See Map I). In these cases CD-1 zoning
is used to allow the otherwise acceptable developments without losing control
over the design or land-use by simply permitting them under a traditional zoning
district. Again, as in the previous category, unless these projects are not in fact
very complex in respect to layout or land-use there is not need for CD-1 zoning.

---

Apartment sizes in senior citizen housing projects are often less than
the minimum 400 sq. ft. per suite required and permitted to be 320 sq. ft. per
suite in accordance with Sec. 11(8) of the Vancouver Zoning and Development
By-law No. 3575, which gives discretionary powers to the Technical Planning
Board to permit the smaller suite size under special circumstances.
(5) Finally there is the type of project that seems to have been foreseen (see page 20) when the CD-1 schedule was introduced. (See Map 1). These are projects on large parcels with sometimes more than one land-use and of a higher quality than is common on most projects outrightly permitted under other district schedules. Here a developer applies for CD-1 zoning and proposes a large integrated project. In all projects proposed until October 1966, however, no project warranted the CD-1 zoning designation because none was very complex in respect to land-uses or layout. It was possible with judicious zoning to permit these projects under existing schedules with some relaxations, and it was possible to assess the developments with traditional zoning standards of floor areas permitted, parking requirements, etc. For this paper, therefore, this category is also used contrary to the assumed intent. For an understanding of this category it must be noted that there is a difference between the "intent" as stated by the Vancouver Planning Department (see p. 20) and the "assumed intent" of this paper (see p. 45).

Although the city has no standard procedure for evaluation of CD-1 zoning applications there are certain recognizable patterns, and in order to re-zone a parcel of land to CD-1 all the five major application groups differentiated in this thesis have to follow the same procedure. Only minor differences according to who makes the proposal and, as a result, the detail of the development plans that accompany the re-zoning applications are made. As can be noted under Sec. 565 ss.(f) of the Vancouver Charter, the developers have to provide City
LEGEND TO MAP I.

EXISTING CD-1 ZONES

Until October 1966

1. Point Grey Townhouses.  
2. Office (Real Estate).  
3. Arbutus Club.  
4. Senior Citizen Housing.  
5. Senior Citizen Housing.  
7. Garden Apartments.  
8. Musqueam Apartments.  
12. Carwash.  
13. Senior Citizen Housing.  
14. Medical Center.  
15. Oakridge Shopping Center.  
17. Oakridge Garden Aptmts.  
18. Police Station.  
20. Crippled Children Hospital.  
22. Hotel.  
23. Veteran Housing.  
24. Industrial Areas.  
25. Gas Station.  
26. Senior Citizen Housing.  
27. Apartment Area.  
29. Senior Citizen Housing.  
30. Senior Citizen Housing.  
31. Senior Citizen and Public Housing.  
32. Skeena Terrace.  
33. Senior Citizen Housing.  
34. PNE Grounds.  
35. Callister Park.  
36. Public Housing.  
37. Park.  
38. Public Housing.  
39. Denman Place.  
40. Bayshore Hotel.  
41. Harbour Park Apartments.  
42. Car Sales Lot.

LEGEND FOR THE GROUPINGS OF PROJECTS (See page 46 for definition of these groupings)

GROUP (1) LAND HOLDINGS ZONED CD-1 .............................. A
GROUP (2) PROJECTS OF PUBLIC AND SEMI-PUBLIC CORPORATIONS B
GROUP (3) PUBLIC AND SENIOR CITIZEN HOUSING PROJECTS OF NON-PROFIT ORGANIZATIONS ............................... C
GROUP (4) SPECIAL CIRCUMSTANCES FOR CD-1 ZONING ............... D
GROUP (5) THE TYPES OF PROJECTS "APPARENTLY" INTENDED ....... E
Council or its delegates with the information requested. When large tracts of land are rezoned by the city itself as an applicant for CD-1 zoning, it is apparent that no project plans can be provided. Some rezoning procedures, however, have to follow a clearly established pattern that is imposed by the Vancouver Charter. Certain additional demands are made by Council and the Civic Staff for CD-1 proposals, such as outline development plans of proposed projects. A description of how a private developer's application for a CD-1 project is processed may best explain the procedure. 9

Developers often read into the CD-1 schedule the liberty to propose any project which they find suitable. An enquiry at the Planning Department will, however, often inform them that they have been too optimistic. This is partly due to the type of scheme proposed and partly due to its location where it does not conform with existing development plans. In some cases no formal application follows after the initial enquiry but at times a formal application is made for rezoning to CD-1. Since a fee is charged for any rezoning, these formal applications as a rule have already been weighed carefully by the developer as to their possibility of passing the rezoning hurdle.

A formal application for rezoning to CD-1 has to be accompanied by the information and plans requested by the Director of Planning. Initially these plans are examined and discussed by the various civic departments such as Building and

9 See case studies for examples in Appendix M.
Engineering who normally have to give their consent to any later development permit application. The Planning Department also analyzes the impact of the proposal on its environment and recommends to the Technical Planning Board acceptance, refusal or conditions to be imposed on the developer that appear to be warranted because of the special nature of the project. The recommendations are discussed at a Technical Planning Board meeting, and a decision is reached here as to what recommendation to forward to City Council.\footnote{See Appendix D for the membership of the Technical Planning Board.}

Parallel to the above analysis is the Town Planning Commission study. This Commission consists of private citizens appointed by City Council who act in advisory capacity on planning matters. Although the Commission has only power to make recommendations it has influence on Council's decisions due to its recognized status by the public as an impartial body. When an important issue arises, such as a CD-1 project, the Commission may form a committee from its members to study the project. The committee recommends its findings at a later meeting to the full Commission which approves or rejects them. A final recommendation of the Town Planning Commission is then made to City Council.

In accordance with the Vancouver Charter City Council refers the application to a public hearing prior to the amendment of the zoning by-law: \footnote{See Appendix I.}
Sec. 566, ss. (3) and (4):

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

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

Following the hearing and in receipt of the various recommendations City Council then makes its final decision.

After a rezoning when the developer applies for a development permit he must amend his plans to comply with the conditions imposed by City Council and the Technical Planning Board.

With the approval of the Technical Planning Board development permits may be issued for the following uses. If the development permit is granted it shall be subject to such conditions and regulations as the Technical Planning Board may decide.

Depending on the developer this application may follow immediately or be delayed for several years.

After a development permit is issued the developer often finds that some changes in the design are desirable. In that event he can apply for a "minor amendment" to his development permit. Unless the changes are, in fact, very

12 Vancouver Zoning and Development By-law 3575, The CD-1 Schedule, op. cit.
minor in nature and can be approved by the Director of Planning or the Technical Planning Board, the changes have to be approved by City Council and become formal amendments. This, in particular, holds true when the developer wants to amend the project so that the previous conditions imposed on him before he was granted an amendment of the zoning by-law to CD-1 zoning, are affected.

The application procedure described so far has been over-simplified. There are, in addition, various administrative complications which ought to be mentioned here.

Initially a developer who intends to make a serious proposal is, after his enquiry to the City Planning Department, given some guidelines as to what criteria he should adhere to in respect to density, bulk distribution and other matters. These guidelines usually have their origin in the Technical Planning Board where the Director of Planning, following an inquiry, recommends and discusses with the Board members what conditions may be appropriate. Subject to the modifications of this recommendation by other members of the Technical Planning Board, the developer is notified of the general guidelines.

When the rezoning has been approved by Council and the development plans are received by the Planning Department with the application for a development permit, much negotiation occurs between the developer and the Department about various minor technical matters. In this way the professional staff and developer gradually arrive at some agreement and finalize the plans. Some of
these negotiations are a result of the Design Panel's study of the proposed project as well as further negotiations with various civic departments. These matters are resolved before the development permit is granted. As a result of this process the length of time from the first enquiry to the final approval will be several months.

Many of the next chapter's criticisms of CD-1 zoning arise from this procedure. The reasons for the criticisms frequently result from the absence of an officially stated procedure to follow. For example, the conflicting statements in the CD-1 zoning schedule that makes rezoning applications also subject to the Technical Planning Board's approval, and the stated requirement of Council's approval in the enabling act, lead to misunderstanding. This occurs in spite of the common procedure for Council to ratify CD-1 projects after the Technical Planning Board recommends approval for a development permit. Thus, when an elected official is asked to make planning decisions, such as special conditions imposed on the developer, following the rezoning hearing and he does not know his place in the procedure, there is no guarantee that he understands all the planning implications of his decisions. Also such an informal administrative procedure as a CD-1 rezoning application follows cannot be understood completely by the politician or applicant. The uninitiated will, as is apparent

---

13 See Appendix E sec. 10(b) for members of the Design Panel.

14 See p. 68 for discussion on this subject.
from some of the criticisms, feel themselves to be at the mercy of the civic staff. Further details of these problems and suggested solutions will follow in the next chapters.
CHAPTER V

THE POLITICAL PROCESS AND THE CD-1 SCHEDULE

On March 30, 1955, an editorial in the *Vancouver Province* recognized the dangers that were implicit in the new zoning by-law and particularly in the CD-1 schedule. The journalist wrote as part of an analysis of the new zoning by-law that:

> The responsibility of City Council would be equally heavy ... as the Technical Planning Board. It would have the responsibility of supporting the Technical Board's decisions. From time to time there might be temptations, for political or other reasons to set aside the Board's ruling.

Council's protests, based on any but sound zoning and town planning principles, would soon shake public confidence and turn the whole thing into a haphazard procedure. ¹

From some of the criticisms - in particular Nos. 1, 2 and 3 that are analyzed in this chapter - it is now apparent that the author of this editorial made a correct prediction. Many of the interviewed persons questioned the competence of City Council in making administrative planning decisions which they do in the capacity of officials assessing rezoning applications. That is, when Council only assesses individual projects and amendments to them, it does not produce policy in a form of legislation but administrates the zoning

¹"Vancouver must Grow Taller", editorial from the *Vancouver Province*, March 30, 1955.
by-law. Policy, as a broad statement of intent then, is not produced by Council but implemented by it. In the example of case study 2, the only reason why the development was zoned CD-1 was to approve a smaller sideyard and a slightly higher density. Council, instead of having its intended policy implemented, was thus forced to amend the zoning by-law to relax these minor factors and, by doing so, acted as glorified zoning by-law administrators.

(See also discussion regarding this on page 65). Council's appropriate role here, it was felt by some of those interviewed, is one of establishing policy and then expressing this policy in by-laws for the zoning officials to follow. The individual assessment of projects should be left to specialists with Council ratifying the recommendations of these specialists if the policy of Council is followed.

That there is at times a disparity between Council's viewpoint and the civic officials' recommendations becomes particularly evident in the analysis of one of the most commonly cited criticisms, that council will not refuse a rezoning application for a large project. Thus the large developer is favoured. (Criticism No. 1).

Perhaps the most outstanding recent example (January 18, 1966) is the rezoning of the property for Denman Place to be built between Comox, Nelson and Denman Streets. Here the Technical Planning Board opposed the proposed

---

2See Appendix M, case study (1). Four case studies have been used for the analysis in this paper. They are in a shortened form reviewed in Appendix M. Selection of these cases was made to analyse specifically private not public or semi-public projects.
request as the floor-space ratio, light angle requirements and setback from adjacent streets did not comply with normal zoning requirements. The Town Planning Commission, however, approved the project by a 6-2 vote. 3 Subsequently City Council approved the project even though their own professional staff recommended against it.

Other comments pointing to the inequality in assessing zoning applications have been heard. One of these was expressed by an alderman who charged "that City Council regularly contravenes local building and zoning regulations to grant gravy concessions to developers." 4

In spite of this somewhat subjective evidence supporting the truth of the criticism, actual proof of the allegation is not difficult to find. The objective of the CD-1 zoning schedule was to rezone only large parcels of land. 5 This objective by itself will favour larger projects and thus the purpose of the CD-1 schedule proves the criticisms to be true. Also, of 39 projects that were approved until October 1966, sixteen were of more than five acres while fourteen were less than two acres. The implication here is that if the areal size of a

---

3 "48-Storey Skyscraper Pops Up from West End" from The Vancouver Sun, Jan. 8, 1966, p. 46.

4 "Gravy Concessions Granted Developers' says Alderman", The Vancouver Sun, Feb. 11, 1966. (Alderman was Robert Williams).

5 General Explanatory Memorandum, op. cit., p. 9.
project can be somewhat indicative of the scale of the development, large
developers are, in fact, favoured. However, in view of the stated objectives of
CD-1 zoning that only large parcels should be zoned CD-1, the criticism of
Council's partiality is perhaps unjustified unless the criticisms refer to the
objectives of the CD-1 schedule, which should reflect Council's attitude.

There is also evidence of City Council's willingness to satisfy
developers over the recommendations of the city's professionals in respect to
the issue of amendments to zoning conditions. The criticism (No. 2) shows that
the developers are not made to adhere to the zoning conditions imposed on them
by earlier agreements. Since amendments have to be approved by the Technical
Planning Board but ratified by City Council who had already approved the project
in principle when giving consent to rezoning, few minor amendments have been
directly rejected, as is also evident from the case studies. Developers usually
seem to be aware of this and claim economic hardship that does not permit them
to fulfil the previously imposed conditions. Thus, following the mentioned
Denman Place's original approval, the developer applied for an amendment to
reduce the height of the tower structure from forty-five to thirty-five storeys
and make the tower bulkier in the process. Also, much of the retail floor space
and the originally proposed public amenity areas were to be reduced. A result
of this amendment, was to impair the view of adjacent apartment buildings more
than before as well as to reduce many other parts of the public amenities which
were part of the rezoning conditions. Of the four case studies done for this paper, three projects were amended after Council's approval. One of these was a reduction in amenities for which Council had explicitly asked as subject to the approval of the rezoning. Generally the criticism appears to be valid although the frequency of occurrence may be a disputable point without more evidence.

The problem, therefore, is to guarantee that City Council is more responsive to the consideration of public amenities expressed in technical terms rather than political favouritism or expediency. This is not to imply that City Council is corrupt - a possible implication of criticism No. 3 - but it does mean that the motivation of City Council may, at times, be based on other than sound zoning and town planning criteria, the violated objective implicit in criticism No. 3. For example, it may be assumed that City Council, largely consisting of businessmen, is inclined to favour its compatriots rather than planning-oriented advisors. This holds true, in particular, when Council consists primarily of Real Estate oriented businessmen who, in the course of their private business, have to deal with developers. The validity of criticism No. 3 is,

6"Apartment Builder Now Aims Lower", from The Vancouver Sun, Dec. 9, 1966. Council refused to accept the entire amendment in that they insisted on the amenity areas but the tower structure is still the shorter and bulkier one. Also see Development Permit File #40053, City Hall.

7"Until the recent election in 1966, five of the twelve aldermen were directly connected with real estate business", from an unpublished term paper, U.B.C., by W.S. Parker, The Role of a Public Hearing, 1963, p.10.
however, neither proven valid nor invalid by the examples. It is the case with any rezoning that it may invite corruption or assessment on other than sound town planning criteria. To single out CD-1 zoning for this accusation is not valid, but the problem of Council's position in the assessment of zoning applications still remains.

There are several partial solutions to this dilemma of "rational decision-making", the main topic of the three criticisms analyzed here. Policy should be prepared by planners in conjunction with the politicians, adopted by the politicians, and then acted upon. It is important that the alderman has a reasonably clear understanding of the implications of each development decision. This can be arrived at by clearly stated policies for development of the city and the place of CD-1 zoning within this policy. Given this information it would be more difficult to act partially with sound technical advice. Also, if the alderman is in a position where he can make statements without any doubt as to why the proposed project is detrimental to the city or why it benefits the city, none of the statements can be held against him.

In order to provide the alderman with this information it is extremely important that a very competent planning staff be at his disposal. Not only must the planning staff be available but so must the necessary information for these professionals upon which to make recommendations. At the present time this information is not available. Discussion of the subject, however, will be deferred to a later chapter. (See Chapters VI and VII).
While significant information is essential it is still necessary to leave certain decisions to personal judgment. Our planning knowledge has not reached the state of an exact science and many decisions are rooted in public value systems. Therefore a committee of the Royal Architectural Institute of Canada recommended:

... Whether the judgment is that of a council or a board, and whether it is based on advice by an adequate staff, when a decision is defensible only as a personal judgment, it is important to know how the decision is reached, and who reaches it, as it is to know why it was reached. 8

Following this rule closely it would therefore seem a reasonable solution to let each alderman make a public statement on his reasons for either approving or refusing a rezoning, prior to the final decision. Thereafter this reasoning should be recorded and open to perusal of the public. If this method were followed it would be more likely that the individual aldermen would think carefully about their decision and base it on sound judgment. A further advantage of such a record would be that the public would be educated through the publishing of such news. 9


9 After a recent public hearing for a rezoning to CD-1 (Arbutus Shopping Centre) five of the aldermen that voted against approval of the project made a public statement (Council meeting of March 19, 1968) why they opposed it.
Public education, however, also results from the already established procedure of a public hearing that by law is required prior to any rezoning. (See Appendix I). More questionable is the result of the public hearing. It appears that too often the politicians favour the group with the largest number rather than those with valid reasoning. Thus the committee of the R.A.I.C. after an investigation wrote of the role of the hearing:

... No one objected to fair hearing procedures based on rational argument, but it was apparent that many hearings were a mockery of fairness because the presiding members mistakenly supposed it to be their duty to retain some sort of political popularity with their fellow citizens. This charge was made not only of hearing procedures before councils, which as directly elected bodies might be expected to be sensitive to numbers, but also before planning boards, committees of adjustment, and, in one or two instances, the Ontario Municipal Board, all of which are appointed bodies. 10

To rectify the situation two steps can be taken which will avert some of the dangers of faulty decision-making. There should be a few days "cooling-off" period between the hearings and Council's final decision on the rezoning. This will enable the individual alderman to contemplate the justice of the development proposal, as well as to inquire into a broader consensus on the issue than only those views expressed at the hearing. He would not be as easily swayed by a very vocal group that happens to fill the place of the hearing if this were the case. As a further solution it would appear reasonable to hear only representatives of groups rather than wasting excessive time with individual representations. The individual's comments could be written and published in

10 Ibid., p. 23
a form where they could be accessible to both council and the public. The reasoning of the latter recommendation is the public cost of such a hearing and the impossibility of remembering all representations when the hearing takes nearly a day, as it did on June 24, 1963, prior to the Coal Harbour project’s approval. Such a move may not prove popular or in the best interest of natural justice but a necessary compromise to excessively long public hearings.

Finally, the often heard solution to a politician’s susceptibility to persuasion rather than reason in granting rezonings, is to take the decision out of his hands. The R.A.I.C. Committee found that zoning decisions could not be expected to be either adjudicated or solved by two opposing parties in friendly negotiations. Thus a managerial decision has to be made about the problem.

The committee found that there are three ways the citizen can guarantee his rights in a democratic society. The manager who has to make decisions on such rezoning issues can be elected, as is presently done in Vancouver by using City Council to manage. As an alternative, the manager can be appointed either as an individual or as a board. Thirdly, the decision can be made by City Council, subject to review of an appointed provincial board such as the Ontario Municipal

\[1\] W. Parker, op. cit., p. 6.

\[2\] Reflections on Zoning, op. cit., p. 23
Board. The committee found that there were objections voiced to each of these methods.

Since in the past the managerial decisions made by City Council in rezoning matters lacked rationality in some respects in Vancouver, as the criticisms indicate, changes may be appropriate. Thus a provincial review board of specialists in planning is one method that may force Council to make more rational decisions. Further implications of such a Board will be discussed in a later chapter. (See Chapters VIII and IX). This chapter deals primarily with the managerial decision itself that in Vancouver is made by Council.

As it stands at the present time, and even with a provincial review board, the major rezoning decisions have to be made by City Council. It is unlikely that this situation is going to, or should, be changed until planners are able to evaluate development projects with more objective and sophisticated techniques while acting in the spirit of the policy Councils have to provide.

Within this chapter primarily three criticisms have been dealt with in respect to their political implications. (Criticisms 1, 2 and 3). Criticisms 1 and 2 proved to be true in that Council favoured large projects and also was willing to approve amendments to conditions earlier imposed on developers as a part of the rezoning conditions. Criticism No. 3, that Council's rezoning decisions were subject to political manipulation rather than sound reasoning could not be proven to be true. The large number of briefs presented to council at major public hearings indicates, however, that some people are trying to
persuade Council. It may therefore be reasonable to build in some additional safeguards to insure that rezonings are approved more on sound reasoning than on persuasion. A summary of the above discussed solutions that may rectify some of the problems whereof criticisms arise, follows:

1. Provide the aldermen with objective planning information so that they can make rational decisions based on these facts.

2. Let each alderman publicly state his reasons for his decision on rezoning.

3. Publish the aldermen's reasons on the rezoning issues.

4. Provide a "cooling-off" period of several days after a public hearing before a decision is made.

5. Provide for a provincial review board on certain planning decisions; in this case a review of zoning matters.
CHAPTER VI  
ADMINISTRATIVE DIFFICULTIES IN CD-1 ZONING

Whereas the last chapter brought out the problems associated with an elected body's legislative and administrative functions, the stress here will primarily be on the administrative difficulties of the appointed civic staff. The relationship between these two bodies is apparent. Neither administrative nor legislative actions can be clearly separated in a functional sense, and therefore many of the faults found in the administrative structures are due to the failure of the legislative body's performance. In particular this holds true when the legislative body has to act in an administrative capacity on matters which require technical competence such as the assessment of the relevancy of why or why not in respect to technical factors a rezoning application should be approved.

To make certain that the aldermen are given sufficient technical advice, a technical staff is at their disposal. The difficulty, however, arises out of communication with the professionals. A complex matter which requires a technical background to understand can be expressed to a layman in a summarized form, but there is no guarantee that he will understand the full impact of the issue.

Many aldermen are aware of this problem and, as a result, generally follow the advice of their professional staff closely in spite of some cases to the contrary as cited earlier. Of the four cases studied, only twice has Council
acted contrary to the recommendations of the Technical Planning Board; of these only once on a major point. The inevitable conclusion of a developer who observes this, is that the appointed officials are given too much power by their influence on Council's decision, as is apparent from criticism No. 4. As the CD-1 schedule, in particular, relies heavily on judgment by appointed professional officials, the discretionary powers of these officials as set out in the CD-1 schedule is under particular attack. (See p. 27 for CD-1 schedule and powers given to officials.) The objective violated here is that the powers of civic officials should not be arbitrary but be curbed by by-laws and policies.

Further interpretation of the criticism can be made, in that there is an open invitation because of the CD-1 schedule, that a developer propose a project and let it be judged on its own merits. Since contrary to other zoning districts the CD-1 districts have no uniform regulations, a by-law has to be made to permit the rezoning of each project as it is proposed. The law that directs the permitted use of property is therefore not applied uniformly in each case and is, as a result, discretionary in nature. Civic officials are given much discretionary power to propose laws as it suits them, which are frequently adopted by Council. This last interpretation will be dealt with in a later chapter.

An examination of the discretionary powers of the civic staff proves that these are, in fact, wide in scope. This is given formally by law as well as informally by City Council's frequent consent as is evident from the above
analysis that shows Council's willingness to listen to the advice of officials. As to the powers given to appointed officials by law, Appendices C to H, are examples of the wide range of discretion they possess. Thus once a CD-1 project is approved in respect to zoning the developer still has to satisfy the demands of the Technical Planning Board as is set out in the CD-1 schedule. Informal discretionary powers are not as easy to discover. When City Council adheres to its planners' recommendations on rezoning this may only be a proof of the planners' ability to judge the impact of a project correctly to Council's satisfaction, and not that the planning staff has particularly strong influence on Council's decisions. Other administrative decisions, where planners seem to act arbitrarily, can be justified by them in pointing to the relevant section in the by-laws that give them the power to decide.

Since the above cited evidence does indicate that appointed civic officials have much discretionary power, the next question to be asked is: "Is there some reason why they should not have this power?" Certainly, due to their technical training, civic officials should be the best qualified to decide what is, in zoning terms, a proper CD-1 project and what is not. Also, having to work with planning problems of the city every day they must have gained much experience and should know best the impact a large development will have on its

---

1 See page 27 for the CD-1 schedule. There is, however, some lack of clarity about this issue. Each of the four case studies shows a different pattern here and in one case (car sales lot) Council simply ordered by resolution that the Director of Planning prepare a by-law to zone the parcel CD-1, instead of the requested C-2 zone.
environment. The answer to this question is clearly one of values, that is, what constitutes a proper democracy and how does an official fit into it? The question may also be one of compromise between administrative efficiency and control by the public of the official decisions. There is little that can be added to this controversy in a paper of this type, as most of these issues are already adequately debated in the press and by writers every day. No consensus has been reached on this and it is still doubtful if the planners should be on top or on tap.\(^2\) The validity of the question must then be left to the individual to decide as it is not a subject for factual analysis.

A justification for wide discretionary powers for the public representatives in CD-1 zoning can, however, be found. Thus a developer when he asks for rezoning is asking the public for a special favour. By rezoning of his property he gets special rights over adjacent property owners, and it would therefore appear appropriate that he also may accept special obligations. One of these obligations must justifiably be that he must adhere to the conditions demanded by the public. If the developer feels that the demands are too great he still has the privilege of developing his land as it was permitted prior to the rezoning application.

---

\(^2\)This trend over North America seems to be to give planners increasing discretionary powers. Delafons, *op. cit.*, p. 47. - James Chalmers McRuer, former chief justice of the High Court of Ontario completed an inquiry into the influence of bureaucracy on civil rights. He recommended a set of guidelines to control boards of governments. (Article by Harold Greer, The Vancouver Sun, Mar. 9, 1968).
A question arises as to how detailed should City Council describe the discretionary powers conferred on the Technical Planning Board in respect to the CD-1 schedule. Are the planners sufficiently qualified to judge the impact of a development and have they the appropriate means to do so? Both questions are apparent in criticisms 5 and 6. Criticism No. 5 clearly accused planners of not knowing what they were doing. Criticism No. 6 indicated that a planner cannot assess a development's impact properly unless he has a general plan and clearly stated policies to follow.

It is difficult if not impossible to answer the question of the relative expertise of planners. Since they are all professionals, many holding postgraduate degrees from recognized universities, a certain qualification standard must be assumed. An assessment of this interpretation of qualification must, therefore, be omitted as impossible to make with the available data. From this it follows that the best qualified planners should be available to assess the projects.

A further interpretation of the question is, "do the planners have the necessary information available to make a valid assessment of the projects?" When this interpretation is applied as "qualified" then it may be more appropriate to state that the planners are not qualified to assess a project.

The most apparent lack of information is the absence of a general development plan for the City of Vancouver. Criticism No. 6 brings this out in particular. It is undeniable that Vancouver has no such plan, even in a
rudimentary form. How serious this lack may be when development control is used, is indicated by the strong views the already quoted committee of the R. A. I. C. has on this issue:

... The project may involve five houses or five hundred. In either case we think procedures can be worked out to permit this type of control based on a well drafted development plan that contains adequate advance guides to private developers in terms of density, land use, varieties of housing types, spacing of buildings, major street layout, heavy traffic patterns and timing. Without this background of a plan properly prepared and published so as to be readily available, we recommend unequivocally that no municipality should engage in any form of development control, whether by traditional zoning or otherwise.

In Vancouver this need for a development plan has proven to be imperative in assessing any development project. Perhaps the most outstanding example was a recent application for rezoning to CD-1 on Point Grey Road in 1965. Here a developer wanted to build an integrated town-house project. Since the plan did not conform to conventional zoning standards, he applied for a rezoning to CD-1. The rezoning application was granted as the project was of a very high quality and suited the already existing residential character of the area.

One year later another project was proposed only a few houses away from the first town-house project. The character of the development was not very different and it was the same architect who designed both projects.

---

3 Reflections on Zoning, op. cit., p. 22.
4 See Case Study #2, Appendix M.
5 Development Permit File No. 33744, City Hall, Vancouver, B.C.
6 Development Permit File No. 35306, City Hall, Vancouver, B.C.
the time, however, the Town Planning Commission became alarmed because it saw that within a few years the whole north side of the street could be built up with new expensive buildings, as the property was bordering on the waterfront. Some years earlier, however, there was a plan tentatively proposed that suggested a scenic drive here and would have demanded removal of all houses on the north side of Point Grey Road. The cost to remove new houses would make this proposed scenic road project unfeasible. After much discussion the second proposed project was disallowed.

It is now questionable if the first CD-1 project was assessed properly. Clearly if a general development plan for the city had called for a waterfront road, this project would never have been approved. Since an official plan did not exist, the first CD-1 project or the second project was assessed wrongly. The conclusion drawn from this example is that no CD-1 project or perhaps no type of rezoning should be granted before a general development plan exists.

This example shows the inability of planners to assess CD-1 projects due to the absence of reliable information. Zoning administration, it appears from such examples, is more arbitrary than would result from adherence to an arbitrary development plan. It must, therefore, be admitted that both criticisms about the inability of planners to assess CD-1 projects are correct.

Criticisms about the qualification of planners to assess CD-1 projects also arises out of zoning standards which are arbitrarily imposed on the
developer. A good example is the strict adherence to certain floor space ratios. Case Study #1, the Denman Centre, is a case in point where floor space ratio is an inappropriate measure for controlling size of the development. There is no obvious reason why the retail floor space area should be deducted from the total floor space area as the building serves a double purpose and makes more efficient use of the land than normally would be done under traditional land-use practices, where retail and residential land-use are on separated parcels beside each other. Other examples of the arbitrary setting of uniform standards in zoning by-laws are in respect to set-back requirements, fence height limitations, building height, bulk distribution, etc. in the various district schedules where the special circumstances of a site are not considered. The arbitrary nature of these standards undermines the credibility of planners to make valid assessments. To overcome these handicaps John Delafons, after a study of American zoning practices, suggested:

What is needed is less emphasis on standards (which relate to methods) and more emphasis on principles (which relate to objectives). A clear statement of the principles on which the exercise of control is based and the objective which it is intended to serve, can be just as effective in eliminating discriminatory practices (and provides a sounder basis for judicial review) but at the same time can afford much greater scope for initiative, and allow control to adapt more readily to the needs of changing circumstances and the unpredictable. In this view the system of control ceases to be a static set of standards related to a fixed pattern of land-use, and becomes a process progressively developing as the unknown facts which shape a community's growth reveal themselves. Standards remain an important part of such a system but they are governed by stated principles, and are used as guides rather than as absolutes. The justification for specific standards is seldom self-evident. If challenged in court they have to be justified on a rational basis, and even sound arguments may smack of expediency if there has been no earlier attempt to define the objectives involved.7

7 Delafons, op. cit., p. 97
It would be difficult to argue against Delafons' recommendations. The need for such a revaluation of zoning is apparent. That the Vancouver Planning Department recognizes this as well, is seen by their recent series of analyses and suggested changes for the standards of the RM-4 high density residential zoning schedule. Attempts were made here to find a way to control the siting of buildings in relationship to already existing structures. In addition, the objectives of the schedule appear to have been re-examined.8

This attitude is also expressed in the CD-1 schedule where a project is considered on its own merits rather than on arbitrary standards. There is, however, no explanation of this schedule's objectives nor clear guidelines as to how to achieve these objectives, at the present time. Unless guidelines and objectives are clearly expressed, planners will not be able to assess a project properly.

Finally, criticism No. 7 should be dwelt upon. Some developers have accused the Planning Department of exacting a high price in order to get an answer as to whether a project will be allowed under CD-1 zoning or not. This cost can be broken down into three major items. There is a fee attached to the rezoning application as well as an additional one for a development permit. There is the cost of hiring an architect to draw up an outline of the proposed project.

---

8 Report No. 4. - Proposed Review of Apartment Zoning Regulations (RM-4) Multiple Dwelling District - City of Vancouver Planning Department, May, 1965, passim.
development, and there is the loss of time before a development is either approved or refused which will often mean an additional cost to the developer.

The cost to get a parcel of land rezoned is equally high for any type of rezoning. There is a fee of $50 for the first 50,000 square feet and one additional dollar for each of the following 1,000 square feet. A rezoning proposal of ten acres will cost $435 according to the fee by-law. Although opinions may vary on this subject one may wonder if the fees are high. Considering the efforts of the various departmental officials, including City Council, it is doubtful if the actual cost of the public by such a rezoning application is covered. Considering the cost for a development permit that has to follow the rezoning application, it has to be remembered that this cost would occur to any developer and not only because the project is zoned to CD-1. One of the purposes of the development permit was to reduce the cost for the developer so that he does not have to prepare detailed building plans and then have them refused. Therefore the development permit fee is really a true saving to him.

Such an argument, however, does not reduce the costs to the developer. The additional costs of an architect must also be considered by him along with the time he has to wait before decisions are made on rezoning. These factors are difficult to evaluate in terms of dollars because the situations will vary

---

9 By-law No. 4188, A By-law to impose fees with respect to zoning By-law amendment applications and development permit applications. Schedule II, City Hall, Vancouver.
according to the proposed development. It must be pointed out, however, that the initial sketches for a rezoning application need only be very rudimentary and do not require much initial work. In practice the architect may spend time in drawing perspectives and other plans in order to persuade City Council on the rezoning issue. This cost should certainly not be charged to the administrative organizations' failure.

In respect to the time involved in rezoning applications it may be appropriate to point to the seriousness of rezoning. Adjacent property owners are suddenly exposed to the reality that their neighbourhood is going to be drastically changed. Since they have an interest to protect, the time it takes for rezoning makes it possible for them to evaluate their situation and send representation to City Council. The time lapse on these grounds is well justified.

There is one more advantage granted to the potential developer that may reduce some of the rezoning application costs. To avoid high costs in initial investment in land ownership before a rezoning application can be made, the applicant does not have to own any interest in the land.

Considering these factors, the costs for rezoning may be high and the criticism valid, but the reasons for this (as shown above) are strong enough to preclude the introduction of any wide-ranging changes. The property owners should be protected from the intrusion of unwanted land-uses, and time is needed to provide this protection. The fees are high in absolute terms but not in
relationship to demand on civic staff to process CD-1 rezoning applications. It therefore does not warrant a change here of any part of the CD-1 schedule due to criticism of the high costs involved when applying for a rezoning.

Four criticisms have been analyzed in this chapter. Planners are given too much discretionary power in the CD-1 schedule. Planners do not have sufficient qualifications to assess projects since a general plan is needed for proper assessment. Finally, the cost to a developer to test the possibility of rezoning is too high. Each of these criticisms has proven to have some validity. The discretionary power of planners is a direct result of the by-laws, and also the planners' influence on Council's decisions is great. In respect to the planners' qualifications in assessing projects it is found that they do not have all the information available to make valid assessments. Finally, the cost of rezoning proved to be high but is in accordance with the expenses to the public for examination of the application. From this analysis of administrative issues several general recommendations can be made to improve application of the CD-1 schedule.

(1) Rezoning should not be permitted without a general development plan for the city.

(2) A general development plan should be prepared by planners and approved by City Council.

(3) Planners in conjunction with City Council should set clear objectives for the CD-1 schedule.

(4) From these objectives, standards should be set that are frequently reviewed and suited to special circumstances of development.
CHAPTER VII

LAND-USE PLANNING, ZONING AND THE CD-1 SCHEDULE

The relationship between land-use planning and zoning is apparent from the previous chapter where the need for a general development plan was seen. Here the various criticisms of the CD-1 schedule will be analyzed as they relate to both zoning and land-use practices. Most of the criticisms can be grouped under this category, and many criticisms already analyzed in the previous two chapters are reviewed again in this different context.

Criticisms discussed in this group are Nos. 6, 8, 9, 10, 11, 12, 13, 14 and 15. Not all are of equal importance because some refer to specific parts of a larger criticism. For discussion purposes the criticisms can be regrouped again. The most important group (8, 9 and 10) is best introduced by the criticism that CD-1 zoning introduces "spot zoning". (Criticism No.8). A definition of spot zoning is ". . . where a zoning ordinance is amended, reclassifying one or more tracts or lots for a use prohibited by the original zoning ordinance and out of harmony therewith."^1

The danger of CD-1 zoning resulting in spot zoning is understandable. When the tract of land to be rezoned is in single ownership and if it is also small in area it could be considered a spot zone.

One more fault of spot zoning can be added to the list. This is explained as permitting "... a less restrictive use than is enjoyed by all the surrounding or adjacent land."\(^2\) That this later interpretation is also heard as a criticism against the CD-1 schedule is apparent from criticism No. 9. This accuses CD-1 zoning of negating the purpose of zoning and permitting any use as well as any layout without applying uniform laws for all.

Examples of the last indicated fault of spot zones in Vancouver are not difficult to establish and for the evidence one has only to read the stated intent of the CD-1 schedule. (See page 20). It is true that CD-1 zoning may, in some respects, be less restrictive than the surrounding zones, but this was the purpose of the schedule. In addition, the giving up of strict adherence to conventional standards is often compensated by additional restrictive conditions imposed on the developer. These conditions, instead of standards, are of a different kind. They may permit certain relaxations in respect to floor space ratio or setback requirements but may demand elaborate landscaping or other forms of public amenity that make the project fit into the surroundings. Such controls would, however, not be imposed on a developer who proposes an inferior project but otherwise in conformance with the existing zoning district schedule. In this way the agreement may be beneficial for the public as well as the developer. Also, the case studies bear this out by permitting mixed land uses or somewhat different layouts than would normally be permitted under the other zoning districts in the

\(^2\) Hershman, op. cit., p. 21.
zoning by-law. From this the inference is that CD-1 zoning is not less restrictive, and according to the last quoted aspect of a spot zone, not spot zoning.

The first quoted definition of spot zoning permitting development "cut of harmony" with the original zoning ordinance, is a questionable fault in the case of CD-1 projects. Here again no proper assessment can be made as any rezoning should reflect the general development plan, and such a plan does not exist for Vancouver. It is, therefore, never certain if a development is out of harmony with the surroundings. The only justification for the two criticisms of "spot zoning" and "negating of the purpose of zoning" can be that the CD-1 projects do not conform to a general development plan. Both the latter aspect of the criticisms must therefore be considered as impossible to prove either way without a general development plan.

Closely associated with the criticism of spot zoning is the criticism that CD-1 zoning invites any possible use by politician, planners and developers. (Criticism No. 10). From a reading of the CD-1 schedule, indicating that any use is permissible, it appears that this statement is self-evident. It can also be noted that this is true in the application of the CD-1 schedule.³ For example, the city has large tracts of land with no designated scheme but zoned CD-1 contrary to the stated

³ See page 46 for the various ways in which CD-1 zones are used.
intent of the schedule which states "that the proposed scheme is consistent with the intent and purpose of this By-law and any official Town Plan." As no Town Plan exists these non-committed zones invite any type of possible development. Similarly, complex public projects such as the Pacific National Exhibition grounds are zoned CD-1 because by doing this, adherence to the zoning standards is avoided. From these examples it follows that the criticism is valid.

Some criticisms suggest that more exact terms of reference should be given in the CD-1 schedule as to what is, or is not, permitted so that the cases cited in the previous paragraph do not occur. Since the schedule attempts to encompass all types of development, it does not succeed in giving any guidelines to developers. Criticism No. 11 specifically accuses the CD-1 zoning schedule of not giving the developers any guidelines. As shown earlier (p. 51) guidelines are not indicated in the schedule but are frequently a result of preliminary discussions with zoning officials. The criticism is, therefore, true as far as the description of the CD-1 schedule in the by-law indicates. The preliminary guidelines given by civic officials have to be given some value in this respect and taken into consideration. Since, however, the officials' actions cannot be predicted by the developer, the validity of the criticisms cannot be questioned.

As complementary criticism to the above criticism, Nos. 12 and 13 suggest that the present CD-1 zoned projects could have been built as conditional

---

4. Vancouver Zoning and Development By-law No. 3575, op. cit., Sec. 11(a).
uses under existing zoning schedules. Criticism No. 13 clearly states that no project had been approved yet that required a CD-1 zoning.

Evidence for the last two criticisms could perhaps be found by examining all existing CD-1 zones to see if they, with some minor relaxation, could be permitted with present by-laws. Lack of time precluded such an extensive examination for this paper. However, an examination of the case studies indicates that all of these could have been accommodated under the present schedules as far as land-use is concerned. Some special relaxation may have been required in respect to the lay-out of the projects. The following table shows where the case study projects violate the zoning schedule in respect to the zoning that existed before the amendments to the zoning by-law and what existing permitted relaxation devices could have been used other than CD-1 zoning to accommodate the proposed projects.  

Table II proves the validity of criticism No. 12 as well as the excessive use of CD-1 zones. As to criticism No. 13, a reference has to be made back to assumed objectives of CD-1 zoning and show that there is still a need for the schedule in Vancouver, although perhaps most of development situations to date have not really proven the need to apply CD-1 zoning. As noted, all the four

---

5 See Table II on the following page.

6 See p. 12 for reference to objectives.
### TABLE II

Possible Adjustments of the Zoning Applications to Permit
These Projects in Other than CD-1 Zones

<table>
<thead>
<tr>
<th>Name of Project</th>
<th>Previous Zone</th>
<th>How the Proposal Conflicts with the Previous Zone</th>
<th>What Adjustment Could be Made to Use Alternative Zones?</th>
<th>Could Another Zone Be Used?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denman Place Case Study #1</td>
<td>C-3 and RM-4</td>
<td>Straddled zones - Exceeded height permitted and light angles, etc.</td>
<td>Zone the entire project to C-3. Relax other factors as is done in adjacent RM-4 projects, and request amenities as a condition for a development permit.</td>
<td>Yes</td>
</tr>
<tr>
<td>Point Grey Townhouses Case Study #2</td>
<td>RS-2</td>
<td>Several lots - one building only - relaxation in floor space ratio to 0.50</td>
<td>Zone project RM-2 or relax floor space ratio to 0.50 under conditional use with Council approval; rezone only after a satisfactory site plan is produced.</td>
<td>Yes</td>
</tr>
<tr>
<td>Oakridge Shopping Centre Case Study #3</td>
<td>RS-1</td>
<td>Several land-uses on one site and not permitted land-uses</td>
<td>Part of the project could be zoned C-3 and another part RM-3. To control the site lay-out rezoning could have been refused until a satisfactory site plan were produced.</td>
<td>Yes</td>
</tr>
<tr>
<td>Car Sales Lot Case Study #4</td>
<td>C-1</td>
<td>Car sales not permitted in C-1 zone.</td>
<td>Zone project C-2 where car sales lots are a conditional use. Requested site lay-out can then be a condition of the development permit.</td>
<td>Yes</td>
</tr>
</tbody>
</table>
projects of the case studies could have, with some thought, been accommodated under other than CD-1 zoning districts.

The lack of guidelines results in the CD-1 schedule being unpredictable in defining the development rights of private property and in showing when CD-1 zoning should be applied by Council. In other cities that use a similar zoning schedule, guidelines for comprehensive development projects have been given in a variety of ways. Some of these may be appropriately incorporated into the CD-1 schedule.

The most common way of giving guidelines in other cities' comprehensive development schedules is by making a distinction between (a) land-use, and (b) layout, of comprehensively designed projects. The intensity of use depends primarily on existing and proposed services and is expressed by a general development plan. Here the comprehensive development is usually a conditional use within an existing land-use zoning district. To ensure that the project is designed so that the buildings will relate to each other, certain minimum requirements are established. Usually these include a minimum lot size ranging from two and a half to five acres. The developer often has to prove that the land is under one ownership, and a completion time is set for the whole project. Since the type of land-use is established by making comprehensive development a conditional use in an existing zoning district and minimum requirements are set by by-law, only the siting of buildings and intensity of use have to be especially
assessed. The major guidelines in respect to land-use are therefore given to the developer.  

A further method of providing guidelines for comprehensive development is found in the unique zoning method called "Floating Zones". Here the minimum standard of development is predetermined by the planning authority, but the special location of the development is not set. A developer can therefore make a proposal according to established guidelines in a floating zone area. These floating zones often contain mixed land-uses. The difference between floating zones and the comprehensive development as conditional use, lies in the mixture of land-uses that may be permitted in the floating zones. Most of the other guidelines in the floating zones are similar in structure to the comprehensive developments as conditional uses.

To give very exact guidelines built on specific objectives a method called "Neighbourhood Standards" can be found. Here the need of an area is thoroughly analyzed often with the encouragement of the people living in it.

---

7. These zoning schedules can be found in the New York, San Francisco and Chicago by-laws.

8 Delafons, op. cit., p.47.

9 See Appendix J for such a floating zone schedule. (This example does however, not show mixed land uses but has the same principle).

10 Delafons, op. cit., p.48.
Following this analysis a series of recommendations is made to which developers are required to adhere. The advantage of this system is that it considers the unique circumstances of an area without applying any stock answer that may be unsuitable to its problems.

As an example for guidelines, the "Planned Unit Development" of the San Francisco By-law can be mentioned. This schedule is similar in purpose to the CD-1 schedule; however, the guidelines are clearly expressed. As in most similar types of schedule the minimum requirements demanded of developers are certain area size stipulations and the single ownership of the development rights; in some cases there is also a stipulated date of completion.

From these examples certain guidelines could be abstracted which seem best suited to the Vancouver CD-1 schedule. It must, however, be assumed before these examples can be introduced, that a general development plan for the city exists. Without such a plan any recommendations would be made in a vacuum.

Many CD-1 projects in Vancouver could be permitted as conditional uses under the existing zoning schedules. The reason for this is that the land-use of such projects may be very similar to their surroundings, and the only difference is the intensity of use and layout. Also rezoning could frequently be to the

---

11 See Appendix K for an example of such a by-law.
12 See Appendix L for the schedule.
13 Examples of this are: Most public and old-age housing projects, Arbutus Gardens townhouses, the CD-1 townhouse project at 3293 Point Grey Road and many others. See page 48 for discussion of intensity of use.
specific land-use intended without having to use the CD-1 schedule. Only one clause needs to be introduced in the existing schedules to permit these types of comprehensive development as conditional uses. Guidelines would then exist as to the land-use and assessment would only be of the project's layout. Developers would be encouraged to use this type of development more frequently and rezoning would not be needed.

From the floating zone example it can be learned that comprehensive developments of mixed land-uses can be given guidelines. Although the example given (See Appendix J) specifies only certain types of housing anywhere in the city, a similar method can be applied in Vancouver for CD-1 projects of mixed land-uses. One such minimum condition should be that more than one "compatible land-use" has to be proposed, as is demanded in Chicago for such developments. If this were not done the project may equally well have been designated as a conditional use within another land-use zoning district schedule, subject to inclusion of a comprehensive site development clause in all existing zoning schedules. That is, if the proposed land use is the same as the previous zoning of the area, the relaxation can be in respect to intensity and to layout of the site, provided that the comprehensive treatment does not overtax the services of the area. Also, minimum lot size and shape should be stipulated.

The San Francisco Comprehensive Unit Development By-law attempted to assure a single rezoning condition contract for the development. The reason is to assure that all owners of the land are bound by the conditions set for rezoning. 15 This idea seems also appropriate to be adopted in Vancouver. In particular this would somewhat rectify the cause of criticism No. 2. Although no complications have apparently arisen out of this problem in Vancouver as in San Francisco, it may be useful to foresee such a case in any by-law revision. If no performance guarantee were required of the developers the situation may well arise where a developer finishes only part of the project, leaving the completion of amenities to a later date, and therefore does not adhere to conditions that were imposed on him. He could simply state that prior to completion of the total project he will adhere to the conditions. Logically a time limit should be set for the completion of any CD-1 project. This practice has been followed at times in Vancouver, as shown by the performance bond that was demanded from the Marwest Hotel Company Limited when they were granted permission for a CD-1 project on Coal Harbour. The performance bond was to guarantee the start of the project prior to 1970.

That provisions have been made in Vancouver for these conditions in general terms can be seen. Sec. 11 ss. (4) of the By-law states:

15 See Appendix L.
16 Minutes of special Council hearing, Dec. 19, 1966, City of Vancouver, B.C.
A Comprehensive Unit Development ... may be approved ... provided that the scheme conforms with the following requirements: ... (b) That the necessary instruments are provided to assure that all features related to each individual development are used, operated and maintained in accordance with the scheme as approved.  

Like most of the features in the Schedule this clause permits wide flexibility but does not provide guidelines that stipulate needed minimum conditions for the approval of CD-1 projects. 

Finally, an important lesson to be learned is from the "Neighbourhood Standard" zoning. Here the guidelines are given clearly and are specific for each area. In Vancouver such an analysis of needs for distinct areas is of particular importance. Conditions throughout the city vary as a result of special topography and the resulting city pattern. If these needs and recommendations were incorporated in a general development plan, the guidelines for projects could be directive and explicit. It could even encourage the right type of development to be located at the proper place. 

A further argument that should be mentioned in this context against the absence of guidelines in the CD-1 schedule is the schedule's application where a general development plan would be more appropriate. An example here is the vacant land zoned CD-1 along Marine Drive, where no scheme is proposed as is demanded by the CD-1 schedule. Instead of waiting for a suitable proposal by

17 The Vancouver Zoning and Development By-law No. 3575, op. cit.
private developers as to how this land may be used, a positive statement could be made as to how this land should be used in the future. This can be done by a general development plan and expressed by zoning the land accordingly. Therefore, no strong argument for the use of CD-1 zoning in this form can be made.

A final set of criticisms to be analyzed in this chapter is the one best expressed by the wide criticism No. 14, that the application of CD-1 zoning does not follow the original intent of the schedule. This original intent can perhaps best be abstracted from a description of the CD-1 schedule by the Vancouver Planning Department.

Essentially the two criticisms, Nos. 6 and 10, which identify misuses that do not follow the intent of the CD-1 schedule refer to two aspects of development proposals:

(a) To the size of the parcels permitted to be rezoned to CD-1, and

(b) To comprehensive planning of the development, and the quality of it.

"... It was the intention that such developments (CD-1) be confined to fairly large tracts of land ..." stated the Vancouver Planning Department in a

---

18 General Explanatory Memorandum, op. cit., p. 9. (See also part of this description on p. 11 of this paper). Since this criticism is a major part of the hypothesis of the thesis, this criticism is only discussed here in reference to the specific criticism that refers to the intent of the CD-1 schedule as indicated by the Vancouver Planning Dept. in its Explanatory Memorandum.
It also stated that "... in no way (was it) intended to reduce the standards of the development; on the contrary it recognized that with well-designed comprehensive schemes efficiencies can be made and the overall standard of the development can be raised." The two intentions mentioned above have often been violated by not adhering to the intended policy and permitting small parcels to be rezoned (see discussion on next page). It is clearly not possible to build in overall better standards of land-use planning (as contrasted with architecture) if the rezoned parcel of land is only one or a few small lots. The comprehensive planning of a development, with only one common building lot in depth and abutting a street like any other lot, has in it an implicit contradiction. Any house builder under these conditions would have equal rights to claim that the house on his lot is "comprehensively planned", as perhaps it is. Like any other house a "comprehensive development" built on a parcel of land one lot deep has, because of the absence of lot depth, to front the street like any other house does. That such a development, as earlier discussed at 3293 Point Grey Road, is of very high quality cannot be ascribed to the CD-I zoning status, but more likely to the developer's wish to build a high quality townhouse here. This could have been done equally well if there were enough provision for layout relaxation in the RS-2 schedule, which was the previous zoning

---


20 Development Permit File No. 33744. See page 73 for cited case, Vancouver City Hall.
status of the land (see Table II, p. 85 for required relaxation). Evidence for this point was received when the second application made for similar townhouses was applied for under the existing RT-2 zoning status. Refusal of the latter project was due to other considerations than zoning. From this example one can see that small parcels should not be zoned CD-1 as they cannot be developed "comprehensively".

Rezoning of small parcels to CD-1 zoning is admitted by the Planning Department. The earlier mentioned quotation continued, after stating the intent that rezoning to CD-1 was only to be made of large parcels, that "... this has not been totally adhered to." Much existing evidence indicates the truth of this statement. Also, the earlier mentioned tabulation shows that 14 out of 42 projects zoned CD-1 are under two acres.

From these examples the conclusion must be drawn that "comprehensive" development can only be accomplished on several lots that are deeper than one

---

21 Development Permit File No. 35506. See page 73 for cited case, Vancouver City Hall.

22 Explanatory Memorandum, op. cit., p. 9.

23 As an example, a triangular lot of the measurements 176' x 105' x 204' was zoned CD-1 on April 7, 1964, for a truck and car sales lot. Development permit file No. 28843, Vancouver City Hall. Another example is a corner lot of the measurements 139' x 196' zoned CD-1 on August 25, 1964, for the use of a car wash station. Development permit file No. 39751, Vancouver City Hall.

24 See page 64.
common city lot (including the lane) and that development of smaller lots has to be accommodated under other forms of zoning. The true intent of the CD-1 schedule would be eroded by permitting rezoning for small projects.

Of the criticisms examined here only two proved to be invalid (somewhat depending on the interpretation of the criticism): the accusation that CD-1 zoning is a form of spot zoning and that the CD-1 schedule negates the purpose of the zoning by-law. It was shown that all the other criticisms were valid in that the CD-1 schedule invites any land use, that there are no guidelines in the CD-1 schedule, that existing projects could have been accommodated under other district schedules with the relaxation of some aspects, that existing projects violate the intent of the CD-1 schedule, in that small parcels were permitted to be rezoned CD-1 and comprehensive planning thus was not possible on these parcels.

From an analysis of this chapter's criticisms several recommendations can be drawn that should alleviate problems in CD-1 zoning associated with zoning practices and land-use planning.

(1) A general development plan should be prepared to avoid "spot zoning" and "no zoning".

(2) A clause should be inserted in most existing zoning schedules to permit comprehensive developments in respect to siting and density of buildings as conditional use conforming to the existing land-uses in that schedule.
(3) Developers should be given guidelines in the form of by-laws as to requirements in respect to minimum lot size and shape and time of completion of the project.

(4) Following an analysis by the Planning Department of specific problem areas, the developers should be given guidelines in the form of by-laws as to how CD-1 developments in such areas should conform.

(5) More than one compatible land-use should exist in a CD-1 project to make this rezoning necessary.

(6) All owners of land in a CD-1 project should sign the rezoning conditions and supply a part of the performance bond guaranteeing time of completion of the project and adherence to special conditions imposed on them.
CHAPTER VIII

CD-1 ZONING AND NEED FOR ADMINISTRATIVE REVIEW

Whereas the purpose of zoning is not clearly explained in the

Vancouver Charter, the Municipal Act of British Columbia states the intent
clearly. Two of its objectives are found in -

Sec. 702, ss. (2): In making regulations under this section the
Council shall have due regard to the following considerations:-
(e) The character of each zone, the character of the buildings
already erected, and the peculiar suitability of the zone for
particular uses.
(f) The conservation of property values.

That the Vancouver zoning by-law has a similar intent, although not as
clearly stated, can be seen in the Zoning and Development By-law's preamble.

Criticism No. 16 states that in the application of the CD-I schedule the above
mentioned purpose of the zoning by-law is not taken into consideration. In
addition, criticism No. 8 which accuses the CD-I schedule of "spot zoning",
makes a similar statement.

It was pointed out under the discussion of spot zoning the suitability of
a CD-I project and its effect on an area could not be properly assessed without a
general development plan. This becomes evident when it is noted that the

2 See Appendix A.
3 See page 75 for definition and discussion on "spot zoning".
4 See page 70 for this discussion.
Vancouver Zoning By-law is also named a "Development" by-law, e.g. to show in which direction future development should go. If, therefore, a rezoning is done, the direction of the intended development has also to be changed. Without a deliberate policy in which direction the future development should change, there is no certain way of proving that CD-1 zoning is used contrary to, or in line with the above mentioned intent of the by-law.

Although the validity of criticism No. 16 cannot be proven it is still possible that the misuse of the CD-1 schedule exists. If such cases of misuse do occur, they should be rectified.

Here it may be pointed out that the security a property owner thinks he has is illusory even without the existence of the CD-1 schedule. A rezoning proposal could be made any day on the adjoining land of any property owner. Knowing this condition the property owners very often form homeowner organizations to protect themselves against any intrusion of unwanted land-uses. The power of these organizations is in their political strength to influence City Council. 5

An example here is the recently formed (May 5, 1965) West Point Grey Civic Association that stated for its purpose in its constitution:

(a) To promote and safeguard the zoning status as single-family dwellings of the properties of its members in the area in the City of Vancouver bounded by Sixteenth Avenue on the south, Discovery Street to Eighth Avenue and Trimble Street to Fifth Avenue on the east, Fifth Avenue on the north (including both sides of Fifth Avenue), the westerly boundary of the City of Vancouver on the west, including the properties on the north side of Chancellor Boulevard between Blanca and Drummond Drive, but excluding the properties on both sides of Tenth Avenue:
(b) To preserve and improve the community and individual rights of the property owners in the above-described area.

from The British Columbia Gazette, October 21, 1965, Victoria, B.C., p. 2277.
Applications under the CD-1 zoning schedule do not have any special status. They have to be processed according to the enabling act like any other rezoning proposal. Any existing administrative and judicial review that is available to other zoning schedules is therefore available to the objecting property owner.

In spite of this apparent equality of application under the CD-1 schedule and other types of applications under other zoning schedules before the law, certain distinct features that may invite the misuse of CD-1 projects as spot zoning, do exist. Whereas City Council recognizes that it may invite criticism and perhaps a judicial review if it rezones an isolated parcel of land to another type of land-use than its adjacent land-use, the CD-1 schedule invites such a move. This invitation is due to the statement in the by-law that says: "A Comprehensive Unit Development containing any number of buildings and uses ... may be approved. ..." Thus only one developer and one scheme may be considered due to such a stated by-law intention. The discriminatory nature that results from such individual consideration, has in it the danger for spot zoning. This, in particular, holds true when no clear guidelines are given on the size and location of the parcel allowed to be rezoned to CD-1.

---

6 See Appendix I.

7 Sec. (11) in the Vancouver Zoning and Development By-law 3575, op. cit.
For experiences in the control of such individual projects, rather than many projects in districts with application of uniform law, it may be useful to look to Britain's experience in land-use control. Since zoning as we know it does not exist in Britain, the property owner and developers know their development rights through the development plan. In this way the development plan serves as zoning by-laws in North America to allocate land-uses. Specific regulations, as to height of buildings, setback requirements and others, are partly left to the decision of local planning administrators. Some of the planner's powers, however, are curbed and guided by the Ministerial Circulars that suggest how special detailed planning problems should be solved.

To secure the general adherence to the development plans and to the guidelines in the Ministerial Circulars a Ministerial review procedure is established. Here an aggrieved citizen can apply for examination of the administrators' decisions. Since the reviewing official is a specialist in planning matters, a certain expertise in evaluating planning issues can be guaranteed. This is contrary to the Canadian judicial review where a legally trained judge may have to decide on difficult planning issues. Through such provision of a combination of general development plans, guiding planning circulars by a central planning agency and a central review agency of planning experts, the property rights of British citizens are clarified and protected.  

---

The need to reconsider our Canadian methods along similar lines is an important issue. Increasingly, more discretionary powers are given to planners without any adjustment in the review procedure of planning issues. The CD-1 schedule permits much discretionary power to planners and City Council without providing any special review method. That this problem is recognized by some of the interviewed persons is apparent from criticism No. 17 that complains about the lack of appeal provisions on planners' decisions.

From an examination of the zoning enabling section in the Vancouver Charter it is apparent that City Council is legally in the right when it zones land even if this results in "spot zoning". As was pointed out earlier, the only possible judicial review of this decision occurs when City Council acts ultra vires or it has grossly misinterpreted submitted facts. This review, however, is done by legally trained men or laymen as are on the Zoning Board of Appeal but who probably do not clearly understand the land-use implications of their judgment. Even for experts review of a project's impact on its environment is difficult, if not impossible to assess without a general development plan.

9 A comparison of the Vancouver zoning by-laws between the years 1950 and 1956 shows this trend clearly. See also Appendix P.

10 See Appendix I.

11 See page 43 for this discussion.
There are several suggestions that can solve some of the problems discussed. Similar to the practice in Britain and also in Ontario a central review agency of experts can be established. Although such a suggestion and a thorough discussion of this board’s functions are out of the scope of this paper, a few advantages can be pointed out about such a board.

With increasing complexity of cities and special competence needed to deal with the problems of planning for these cities, the traditional review agencies, such as the Zoning Board of Appeal and courts, cannot cope with the new issues arising. John W. Reps suggests that:

The lay board of appeals should be replaced by a board of experts or by a single zoning appeals administrator. The concept of the board of appeals as a kind of poor man’s court where common sense justice is dispensed by one’s friends and neighbours no longer has much validity. With zoning ordinances increasing in complexity and detail with the growing demands for more positive zoning as an aid to vigorous community planning and urban renewal, zoning appeals should be reviewed by those qualified through professional training or experience. There may be compelling arguments for retaining the board form in our zoning appeals organization, but we have had experience in other fields with appeals to a single administrator, and some examples also exist in zoning. The difficulties in the selection of an expert board or administrator should not prove insurmountable, and the potential benefits may well outweigh possible dangers. Our statutes should at least make possible the use of a single administrator as an alternative to the traditional board, and we should begin to reconsider the methods of selection of board members should we elect to retain the existing form of organization.

12

Such an expert board of single administrator could be paid by a city the size of Vancouver, but it cannot be expected that a small community could afford one. It is partly for this reason that a central review board would be more suitable. Also, it must be assumed that there is a greater likelihood of impartial decisions by an outside agency rather than one closely associated with, and perhaps paid by the city. A further point must also be mentioned here. It is not certain yet if a rezoning decision by City Council can be reviewed by the Zoning Board of Appeal. To this date no rezoning issue has been heard by the Board. Since no tests have arisen yet it could be that rezoning issues can only be appealed by judicial review.

This chapter's analysis gives an answer to criticisms 8, 16 and 17, that all deal with the necessity to re-evaluate the decisions of zoning officials. As was discussed in the summary of the previous chapter, it is not possible to prove the validity of the criticism of spot zoning. This is partly true due to the absence of a general development plan. The need for review agencies is clearly apparent and proves the criticism to be true.

---

13 At present half of the members of the zoning Board of Appeal are appointed by City Council. See Appendices G and H.

14 From interviews - D. Fleming, legal advisor to the City of Vancouver and with the Secretary of the Zoning Board of Appeal, April 1967.

15 For grounds of appeal see Appendix G.
From experiences in other places the conclusion can be drawn that a central review agency may be a suitable solution. To have rezoning issues reviewed by the local Zoning Board of Appeal does not seem to be suitable because of its close ties to City Council. Even if a review Board were to consist of provincially appointed local experts paid by the city, there would still be the danger of partiality in decision making. The recommendation must therefore be to establish a Provincial Planning Review Board.

16 See page 40 for discussion of the Zoning Board of Appeal
CHAPTER IX

CONCLUSION

Throughout this paper an attempt was made to find methods of repairing individual failures of the CD-1 zoning schedule. The initial identification of the failures was made by inviting expert criticisms. These were analyzed for their validity and rectified by searching for examples that could be transferable to the Vancouver scene.

Most of the criticisms analyzed here (Nos. 2, 5, 6, 11, 12, 13, 14, 15, 16 and 17) proved to be true and in violation with the intent of the CD-1 schedule. More difficult to assess are some of those criticisms that proved to be true, such as criticism No. 1, but the claimed fault was also the intent of the CD-1 schedule. In these cases it can be noted that the intent of the schedule was not violated. The criticisms that fall in this group are Nos. 1, 4, 8, 9 and 10. Finally, there are two criticisms, Nos. 3 and 7, whose validity depends upon the interpretation or on unavailable information. These two must, therefore, be considered not provable. In summary then it can be stated that most of the criticisms - 10 out of 17 - have proven to be valid in the context of the hypothesis. Furthermore, an analysis of the application of CD-1 zoning in Vancouver until 1966 showed that no project required that zoning designation and this way proving that CD-1 zoning was used contrary to the assumed intent. The CD-1 zoning device requires some adjustment.
It is, however, not certain that the recommendations to repair failures of individual parts of the CD-1 schedule can resolve the general non-function of the device. A re-examination of the recommendations as to their internal consistency, is therefore a necessity. This is the purpose of the following pages. From the discussed problems the following sets of recommendations were made to rectify the cause of individual criticisms.

From Chapter V (Political Process):

(1) Provide aldermen with objective planning information so that they have to make rational decisions based on facts.

(2) Let each alderman publicly state his reasons for his decision on rezoning.

(3) Publish the aldermen's reasons on the rezoning issues.

(4) Provide a "cooling-off" period of several days after a public hearing before a decision is made.

(5) Provide for a Provincial Review Board on certain planning decisions.

From Chapter VI (Administrative Process):

(1) Rezoning should not be permitted without a general development plan existing for the city.

(2) A general development plan should be prepared by planners and approved by City Council.

(3) Planners in conjunction with City Council should set clear objectives for the CD-1 schedule.
(4) From these objectives standards should be set that are frequently reviewed and suited to specific circumstances of development.

From Chapter VII (Land-Use and Zoning Implications):

(1) A general development plan should be prepared to avoid "spot zoning".

(2) A clause should be inserted in most existing zoning schedules to permit comprehensive development (relaxing layout and intensity of use) as conditional use conforming to the existing land-uses in that schedule.

(3) Developers should be given guidelines in the form of by-laws as to requirements in respect to: minimum lot size and shape, and time of completion of projects.

(4) Following an analysis of the Planning Department of specific problem areas, the developers should be given guidelines in the form of by-laws as to how CD-1 developments in such areas should conform.

(5) More than one compatible land-use should exist in a CD-1 project to make this rezoning necessary.

(6) All owners of land in a CD-1 project should sign the rezoning conditions and supply a part of the performance bond guaranteeing time of completion of the project and adherence to special conditions imposed on them.

From Chapter IX (Administrative Review):

(1) A Provincial Planning Review Board should be established.

When these recommendations are reviewed in context of the assumed objectives that: "CD-1 zoning should provide a zoning category that can
accommodate such a variety of land-uses within a project that cannot be properly accommodated under presently existing zoning schedules", and that: "CD-1 zoning should provide for such developments where physical layout cannot be assessed by traditional zoning standards but are appropriate in their location and design", we see that there is hardly any conflict in the suggested changes.

When the list of recommendations is scrutinized it is noticeable that several are repeated to solve a problem in a different context of the planning process. Thus, the need for a general development plan is essential both for the efficient administration of the CD-1 schedule as well as for the purpose of assuring proper land-use planning and zoning. Also, for the purpose of administrative review and the supplying of reliable information to the City Council upon which to make decisions, the need for a general development plan was noted. None of these recommendations is in conflict with the assumed objectives, since the two objectives ought to be a reflection of the general development plan.

Similarly the recommendations to provide clear objectives and some guidelines within the CD-1 schedule are repeated in Chapter Seven in respect to Administration and Chapter Eight in respect to Land-Use Planning. For the purpose of political decisions making and administrative review the need for guidelines is implied. The need for an administrative review agency consisting of planning experts is also noted several times in different contexts. However, since more discretionary powers by officials are needed in the administration
of the CD-I schedule to further the assumed objectives, one must also build in
administrative review to safeguard civil rights of the individual. Thus, the
Provincial Review Board is a necessary complement to zoning that incorporates
the two stated objectives.

As none of the above-mentioned recommendations conflicts with each other
but rather they complement one another, none of them can be considered as subject
to needed compromise and adjustment. A look at the table of recommendations
will show that the remaining ones are generally further details of the major items.

In Chapter Six, where the political process is discussed, the need for
better information to make decisions upon is seen to be important. For this
reason a general plan is needed, as well as proper guidelines in the CD-I schedule.
These guidelines should be derived from the two objectives which are assumed
here. Except for the suggestion of a Provincial Review Board the other recom­
mendations are more specific details that cannot conflict with findings in the other
chapters.

Chapter Seven's main suggestion is to provide for a general development
plan whose details are proposed in the remaining items as well as in Chapter Eight.
To control arbitrary decisions of civic officials the central review board is again
noted to be necessary in Chapter Nine.

As the complementary nature of all recommendations is apparent and in
harmony with the assumed objectives, the conclusions must be that the uncovered
answers are possible means to rectify the CD-I schedule's failures. Since faults
have been proven to be true in the operation of the CD-1 schedule and possible solutions found, it can be concluded from this examination that:

"The CD-1 district schedule of the Vancouver Zoning and Development By-law No. 3575 is used contrary to the intent, and its usefulness has been impaired by deficiencies related to its political, administrative, land-use planning and legal functions."

Suggestions as to how the defects in the CD-1 schedule can be repaired have been made and the hypothesis of this paper has proven to be true. A re-evaluation of the practicality of the suggestions may be appropriate. It appears at times that the minor issue of a fault in a zoning schedule results in major recommendations, such as a general development plan or a central review board of experts. Thus, the solutions to the problems seem to be out of scale.

Such a conclusion is, however, not necessarily correct, and a variety of lessons can be learned from such incidents. The need for valid criteria to assess a CD-1 project proved also the need for a general development plan. Also, increasing discretionary powers given to civic officials through the introduction of the CD-1 schedule, pointed out the need to have the decisions of these officials reviewed. Because of its close ties to City Council the Zoning Board of Appeal was not able nor the right agency to review rezoning issues. On the other hand, the courts were only trained to handle issues of law and not of planning. A provincial review agency, made up of planning experts, was therefore the logical solution.
A further point that can be noted in relationship to the scale of recommendation is the interdependency between the various facets of planning. Thus, zoning and planning seem to be interdependent in the case of the CD-1 zoned areas of Marine Drive. Here the CD-1 schedule is used in the absence of a general development plan to control the future development. A general development plan could have made a statement about what ought to be there, and the area could have been zoned accordingly. Also, it was pointed out that rezoning should never be done without a general development plan to follow.

The need to re-evaluate the planning tools after some time can also be seen from this paper's findings. When the CD-1 schedule was introduced, the problems that are now apparent could probably not be foreseen. Proper "social engineering" needs a continuous review of the existing laws and their application. The best example here is the recognition that the Zoning Board of Appeal is not in the proper position to hear any complaints about the CD-1 schedule. With increasing discretionary powers of officials the need to review their decisions is becoming increasingly important. A new method to provide for such needs must therefore be found.

This paper also shows a method whereby existing planning tools can be re-examined. If, in this process the need for more elaborate changes becomes apparent, as it did in this paper, it should be accepted as evidence that there is a need to look also at the other planning devices.
Finally it may be appropriate at this stage to speculate upon the future of the CD-I schedule. As was pointed out in Chapter II, which reviewed the history of zoning, CD-I type zoning is a tool that approaches the new synthesis of land-use controls. Gradually a point seems to be reached where arbitrary zoning standards are replaced by individual assessment of projects. Thus the blindness of uniform standards to special circumstances is slowly but certainly disappearing as is evident by the increase of conditional use permits and comprehensive district schedules in zoning by-laws, also the growth of such tools as CD-I zoning. To prevent arbitrariness of officials assessing projects, review agencies have already been established in the more populated and advanced areas such as Great Britain and Ontario, Canada.

The question that is now before us in Vancouver is how do we move from the traditional arbitrary zoning standards to the state where individual projects can be assessed on their own merits?

It is apparent that we cannot simply forget our present zones in the city by assessing each proposed project on its own merit, which is partly because there are not enough qualified people to do the assessing of the developments and partly due to lack of a general development plan and proper policies to assess the projects against. Also it is unlikely that such a radical change would prove politically acceptable. Instead we should gradually acquire the tools to make such a change.
Initially the steps should be to agree upon a development plan and a proper set of development policies. Following this could be a relaxation of strict zoning standards so that comprehensively planned land-uses can be permitted in any zone provided that they do not run contrary to the established development policies. In conjunction with the increasing individual assessment of projects a better review method should be established. Initially during such a change the traditional zones should be retained where development could still occur as an unconditional use of presently permitted developments. Eventually, however, as experience with individual assessment of projects accumulates and proper tools are established, the old zones can disappear. It is then that we may expect that all special consideration of site and circumstances in assessment of projects and surroundings will result in a more enjoyable city.
BIBLIOGRAPHY

Bassett, Edward M.  *Zoning - The Laws, Administration and Court Decisions During the First Twenty Years.* New York:


OTHER SOURCES


An interview with D. Fleming, legal advisor to the City of Vancouver, April, 1967.

Notes taken at a lecture delivered by Moshe Safdie, designer of Expo’s Habitat, at the University of British Columbia, Fall, 1966.


Vancouver City Hall. Development Permit File Nos. 28843, 33744, 35306 and 3971, 40053, 2799.


Vancouver, City of. Minutes of a Public Hearing at a Special Council Meeting, December 19, 1966, at City Hall to handle zoning matters.

Vancouver Experts interviewed for criticisms: Architects 4, Non-Professionals 5, Planners 10 and others 5. (The Non-Professionals worked with the CD-I schedule). These interviews took place Winter and Spring, 1967.

**NEWSPAPERS**


"48-Storey Skyscraper Pops Up for West End", *The Vancouver Sun*. January 8, 1966.


"Vancouver Must Grow Taller", *The Province*. March 30, 1955, Vancouver, B.C.
APPENDIX A

PREAMBLE TO ZONING AND DEVELOPMENT

BY-LAW No. 3575 (1956)

A By-law to regulate, within the City of Vancouver, the development of land, as defined herein, with respect to the use of the same, and the location, design, construction, and use of buildings and structures for residence, commerce, trade, industry, recreation, culture, and other purposes; to regulate and limit the height, number of storeys and the size of buildings and other structures to be erected hereafter or the alterations of existing buildings and structures; to regulate and determine the size of yards, courts, and other open spaces; to prescribe building lines, to regulate and limit the density of population; to conserve and stabilize the value of property; to provide adequate open spaces for light and air; to protect and improve amenity; to lessen congestion on streets; to promote health, safety and the general welfare; and for all or any of the said purposes to divide the City into districts of such number, shape and area as may be deemed best suited to carry out these regulations in accordance with a Town Plan and to provide for the granting or refusal of development permits in accordance therewith including where necessary the imposition of conditions relative to the granting of such permits, and to provide for the enforcement of this By-law and to prescribe penalties for the violation of its provisions.
APPENDIX B

TOWN PLANNING COMMISSION

City Hall,
Vancouver, B.C.

January 20, 1967.

His Worship the Mayor,
and Members of the City Council,
City Hall,
Vancouver 10, B.C.

Gentlemen:

Re: CD-I Zoning

The Town Planning Commission is becoming increasingly concerned about the number and type of applications for CD-I Zoning, many of which have been approved. When the CD-I zone was incorporated in By-law No. 3575 in 1956, it was clearly stated that such a zone was intended to permit a comprehensive development consisting of numerous buildings and uses on one large site which could also include both commercial and residential structures. The purpose of such a zone was also to encourage developments of higher than average standard than might be permitted on small, individual lots, although it was also anticipated that in such a comprehensive scheme it may not be possible to comply strictly with all the normal requirements in relation to yards, height, etc., as may be set out in the Zoning and Development By-law for smaller sites.

Present Position:

There are now over 50 sites zoned CD-1 in the City, varying in size from one lot, to almost 50 acres at Oakridge and 70 acres at the P.N.E. In addition, there have been a number of applications for CD-1 zoning submitted to the Commission for consideration to allow developments which would not otherwise be acceptable under the regulations contained in the existing Zoning District Schedules of the By-law.

Furthermore, there has also been an increasing tendency by developers, after their first plans have been approved by Council, to re-apply for approval of alternate schemes of development which still incorporate the...
original concessions or variations of the By-law to which Council has agreed, but which no longer include the added amenities on which such concessions or variations were originally justified. In other cases, having obtained approval of the particular use, the applicant has applied for and been granted increased density.

The Commission is aware of the need for occasional variances in regulations, particularly in cases with site peculiarities or, for example, certain forms of development such as senior citizens' housing where they are located within the (RS-1) One-Family Dwelling District.

Nevertheless, the Commission feels strongly that CD-1 Zoning should not be used to spot zone to permit developments contrary to the basic intent of the Zoning and Development By-law.

The Director of Planning has pointed out that a review of the CD-1 Schedule of the Zoning and Development By-law is on the Department's work programme but that the study has a fairly low priority.

Accordingly, it is recommended:

1. THAT the Commission's concern about the use of the CD-1 Zoning, as expressed in this report to Council be drawn to the attention of the Technical Planning Board;

2. THAT the Director of Planning be asked to review the whole of the (CD-1) procedure as currently contained in the Zoning and Development By-law to include;

   (a) restating the function and purpose of this type of land use control including comparison with methods used in other cities;

   (b) the advisability of establishing more precise guidelines for this or alternate types of controls. I.e. minimum site size, etc.;

   (c) procedure with respect to resubmission of modified or alternate schemes;

   (d) the control of special comprehensive schemes on very small sites;
(e) improved means to better safeguard and stabilize the development rights of all property owners;

(f) any other related matters.

3. THAT the City Council instruct the Director of Planning to give this matter priority. The Commission would welcome the opportunity of reviewing the report of the Director of Planning on this matter before it is submitted to Council.

Respectfully submitted,

(Signed) H. PETER OBERLANDER
Dr. H. Peter Oberlander,
Chairman
APPENDIX C

VARIOUS DELEGATIONS OF POWER
FROM THE ENABLING ACT,
THE VANCOUVER CHARTER

Section 560. The Council may appoint a Director of Planning, who shall have such duties and powers as the Council may from time to time prescribe. 1959, c.107, s.20.

Section 565(g). The Council may make by-laws

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

Section 565A(d). Council may make by-laws

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

Vancouver Charter op. cit.
APPENDIX D

BY-LAW NO. 3497 OF THE CITY OF VANCOUVER

A by-law to establish a Board, to be known as the Technical Planning Board, to appoint the members of such Board, and to determine the powers and duties of the same.

WHEREAS by Section 306(k) (iii) of the Vancouver Charter, S. B. C. 1953, Chapter 55, the Council of the City of Vancouver is empowered to appoint a Technical Planning Board and to delegate to the same all or any of the powers exercisable by the said Council under such clause:

AND WHEREAS the said Council deems it expedient to make such appointment, to delegate such powers, and to define the duties of such Board.

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

1. A Board, to be known as the Technical Planning Board, is hereby established and appointed.

2. The membership of the said Board shall comprise the following: namely,
   The Director of Planning
   The Commissioner of Finance (8/1/57 - *3615)
   The Commissioner of Works (8/1/57 - *3615)
   The City Engineer
   The Corporation Counsel
   The City Comptroller
   The Supervisor of Property and Insurance (28/1/58 - *3679)
   The Medical Health Officer
   The Superintendent of Schools
   The Superintendent of Parks
   The City Building Inspector.

3. The duties of the Board shall be:
   To act as a co-ordinating Board and to consider and report upon technical or administrative matters bearing on the development of the City of Vancouver and without restricting the generality of the foregoing, to carry out any or all of the following functions:

(a) Prepare and submit to Council a development plan for the future physical development of the said City which shall include a programme of works and may include any other scheme for implementing such development plan;
(b) Act in an advisory capacity to Council in regard to any applications to change the zoning of any particular area and prepare and submit to Council any resultant amendments to the Zoning By-law;
(c) Act in an advisory capacity to Council in matters appertaining to planning;
(d) Recommend to Council such revisions or amendments of the Zoning By-law as may from time to time be considered necessary;
(e) Compile data and carry out surveys and investigations;
(f) Prepare for submission to Council outline planning proposals for the whole or any part of the City including specific projects;
(g) During the period of preparation of the overall development plan and a Zoning By-law, prepare supplementary schemes or plans for submission to Council;
(h) Prepare at the request of Council or other administrative bodies or the Board of School Trustees reports and schemes supplementary to the overall development plan and in particular with a view to integrating the plans of the last mentioned bodies with the development plan. Provided that in any case where the preparation of such a report or the execution of the scheme involves major expenditure by the City the approval of Council shall be obtained before undertaking the preparation of such reports or schemes;
(i) Do all such acts, matters, or things as may be necessary or incidental to the carrying out of such functions.

4. The Board shall have specific power:
(a) To authorize the issue of development permits under and by virtue of the Zoning By-law of the said City. Such issue to be subject to such limitation in time and to such conditions as the said Board may prescribe;
(b) Subject to the provisions of Section 573(1) of the Vancouver Charter to relax any provisions of any Zoning By-law or of any by-law prescribing requirements for dwellings in any case where literal enforcement would result in unnecessary hardship, or would not, in the opinion of the Board, be in the best interests of the City. Such relaxation to be subject to such limitations in time and to such conditions as the said Board may prescribe. (16/6/60 - *3852).
5. Without prejudice to Section 3 of this By-law, and during the period while a development plan or general scheme is in course of preparation, the duties of the Board shall include the following:
   (i) To ensure as far as possible that all development proposals which administrative bodies or the Board of School Trustees initiate shall be in conformity with the development plan;
   (ii) The principles of development underlying the preparation of the overall development plan having once been agreed upon, then to ensure that all projects for development, or the administrative procedure therewith concerned, shall be in conformity with such principles and the practical application of the same.

6. The members of the said Board shall hold office by virtue of their respective appointments.

7. Any member of the Board may designate his Deputy to act as his alternate at any particular meeting of the Board.

8. The Director of Planning shall be the Chairman of the Board.

9. The Board shall hold meetings at least once in each month but the Chairman of the Board may call a special meeting at his discretion.

10. (a) At any meeting of the Board any six members shall form a quorum. (27/2/56 - *3555 and 16/6/60 - *3852).
   (b) No report shall be submitted to Council unless such report has been adopted by the Board by a two-thirds majority of the members present.

11. The Board shall keep written minutes of all business transacted at any meeting.

12. Subject to the provisions of this By-law the Board shall determine its own procedure.

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

DONE AND PASSED in open Council this 15th day of November, 1954.

F. HUME,
Mayor

R. THOMPSON,
City Clerk.
APPENDIX E

THE DIRECTOR OF PLANNING AND THE TECHNICAL PLANNING BOARD

DUTIES AND POWERS

3. (1) It shall be the duty of the Director of Planning to carry out and enforce the provisions of this By-law.

(2) It shall be the duty of the Technical Planning Board to exercise on behalf of Council such powers as are hereby expressly delegated to them.

(3) (a) The Director of Planning may make rules and regulations for the management of the Planning and Development Department, and shall order, direct and supervise all the work of the staff of such Department.

(b) The Director of Planning shall keep an account of all moneys that may be received by him on behalf of the City.

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

(5) The Director of Planning or his accredited representatives shall have the right of entry and may enter on to any land, or into any building at all reasonable hours, in order to inspect the same, and to ascertain whether the provisions of this By-law are being, or have been, carried out. Any person interfering with, or obstructing, the entry of the Director of Planning or his accredited representatives on any such land, or into any such building, which said entry is made or attempted to be made pursuant to the provisions of this By-law shall be deemed to be guilty of an infraction of this By-law. (28/5/63 - #4063).

(6) The Director of Planning shall keep a register of all applications for development permits and there shall be entered therein the terms upon which a permit is issued, or the reasons for refusing the same, as the case may be, with respect to each application; such register shall be considered a public record and shall be open for inspection by any member of the public during normal working hours.
(7) The power to approve or disapprove applications for development permits relevant to buildings or uses for which the consent of the Technical Planning Board is required shall be vested in such Board.

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

(9) (a) The Technical Planning Board may relax the provision of this By-Law where, due to conditions peculiar either to the site or to the proposed development, literal enforcement would result in unnecessary hardship in any of the following cases:

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

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

(iii) Developments which lack the minimum parking or loading space required by this By-law;

(aa) The Technical Planning Board may relax the provisions of this by-law relating to:

(i) Required setbacks to off-street parking areas where, in the opinion of the Technical Planning Board, the landscaping provided or to be provided is adequate to warrant such relaxation provided in a (C-1) Commercial District or any (R) District. Such relaxation shall not permit a landscaped front setback to be less on the side where the site abuts a site in a (C-1) Commercial District or any (R) District than the required front yard of such abutting site, tapering to not less than five feet at the side of the parking area abutting a street, lane or site zoned other than as a (C-1).
(ii) Required screening on the boundary of a parking area, serving a school, park or similar use on a site in excess of two acres, in cases where the distance between such boundary and (R) Districts outside the site of the principal use served by the parking area, is in excess of 250 feet. (10/11/64 - *4139).

(b) The Technical Planning Board before granting any relaxation shall be satisfied that any property owner who is likely to be adversely affected is notified; such notification shall be in the form appropriate to the circumstances;

(c) If any property owner so notified shall object then such relaxation shall not be granted but the applicant for such relaxation may then exercise his right of appeal to the Zoning Board of Appeal at which time the representatives of the Technical Planning Board and of any such property owner shall be heard;

PROVIDED ALWAYS in granting any relaxation pursuant to the above powers, the Board shall adhere to the spirit of the By-law.

(10) (a) Any application may be referred to a Design Panel appointed by the City Council to consider and advise on architectural design.

(b) The Design Panel shall consist of:
   (i) The Director of Planning, who shall be the Chairman.
   (ii) The City Building Inspector.
   (iii) Three members of the Architectural Institute of British Columbia.
   (iv) One member of the Association of Professional Engineers of the Province of British Columbia.

(ii) In granting or refusal of development permits, and in the granting of relaxations or the imposition of conditions, due regard shall be given to the intent of the By-law as the same applied to the particular development under consideration.

(12) Notwithstanding the provisions of this By-law a development permit may be refused, if the development in respect of which application is made:
   (a) Does not conform to an amendment to the Zoning and Development By-law for which a formal application has been made prior to the application for the development permit.
(b) Refers to a site or a portion thereof required for any civic purpose, in which event the Technical Planning Board shall refer the application to the City Council for authority either to negotiate with the applicant or to issue the development permit.

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

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

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

(f) Would in the opinion of the Technical Planning Board adversely affect public amenity. If matters of design are involved, the Technical Planning Board may refer the application to the Design Panel to consider and advise.
APPENDIX F

THE ZONING ENABLING SEC. OF THE VANCOUVER CHARTER

565. The Council may make by-laws
(a) dividing the city or any portion thereof into districts or zones of such number, shape, or size as Council may deem fit;
(b) regulating, within any designated district or zone, the use or occupancy of land and land covered by water for or except for such purposes as may be set out in the by-law;
(c) regulating, within any designated district or zone, the construction, use, or occupancy of buildings for or except for such purposes as may be set out in the by-law;
(d) regulating the height, bulk, location, size, floor area, spacing, and external design of buildings to be erected within the city or within designated districts or zones;
(e) prescribing, in any district or zone, building lines and the area of yards, courts, and open spaces to be maintained; and regulating in any district or zone the maximum density of population or the maximum floor-space ratio permissible;
(f) designating districts or zones in which there shall be no uniform regulations and in which any person wishing to carry out development must submit such plans and specifications as may be required by the Director of Planning and obtain the approval of Council to the form of development;
(g) delegating to the Director of Planning or such other persons as are authorized by Council the authority to certify the authorized use or occupancy of any land or building;
(h) providing for certificates of use or occupancy and providing that the use or occupancy of any land or building other than in accordance with the certificate of use or occupancy applicable to such land or building shall constitute a violation of the by-law and shall render the owner of the land or building liable to the penalties provided in the by-law;
(i) authorizing the collection of a fee for a certificate of use or occupancy, which fee may vary according to the type of use or occupancy or the value of the land or building used or occupied;
(j) describing the zones or districts by the use of maps or plans, and the information shown on such maps or plans shall form part of the by-law to the same extent as if included therein. 1959, c.107, s.20; 1964, c.72, s.17.

from the Vancouver Charter, op. cit.
572. In this and the following section "Board" means "Zoning Board of Appeal".

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

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

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

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

(5) Three members of the Board shall constitute a quorum.

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

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

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

(9) The by-law establishing the Board shall set out the procedure to be followed by the Board, including the manner in which appeals are to be lodged and the method of giving notices required under section 573. 1959, c.107, s. 20.

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

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

(b) by any person who alleges that the enforcement of a zoning by-law with regard to sitting, size, shape, or design of a building would cause him undue or unnecessary hardship arising out of peculiarities in the site or special circumstances connected with the development. In any such case the Board may, to the extent necessary to give effect to its determination, exempt the applicant from the applicable provisions of the zoning by-law;
(c) by any person who alleges that due to special circumstances or conditions the provisions of subsection (3) of section 568 will result in undue or unnecessary hardship to him;

(d) with respect to matters arising under subsections (4) and (5) of section 568;

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

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

(a) The undue or unnecessary hardship arises from circumstances applying to the applicant's property only; and

(b) The strict application of the provisions of the by-law would impose an unreasonable restraint or unnecessary hardship on the use of the property inconsistent with the general purpose and intent of the zoning by-law; and

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

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

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

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

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

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

(8) Council may by by-law provide that failure to comply with any restrictions, limitations, or conditions imposed by the Board pursuant to subsection (7) shall constitute an offence against the by-law. 1959, c.107, s.20; 1960, s.80, s.14; 1964, c.72, ss. 20, 21.
APPENDIX H

BY-LAW NO. 3844 OF THE CITY OF VANCOUVER

A By-law to establish a Board, to be known as the Zoning Board of Appeal and to set out the procedure to be followed by the same.

WHEREAS by Sections 572 and 573 of the Vancouver Charter the Council of the City of Vancouver is empowered to establish a Zoning Board of Appeal and to set out the procedure to be followed by the Board:

AND WHEREAS the said Council deems it expedient to establish such a Board and to set out the procedure to be followed by it:

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

1. A Board, to be known as the Zoning Board of Appeal is hereby established.

2. In this by-law:
   "Board" means Zoning Board of Appeal;
   "Chairman" means the Chairman of the Zoning Board of Appeal;
   "Charter" means the Vancouver Charter, S.B.C. 1953 as amended;
   "Secretary" means the Secretary of the Zoning Board of Appeal.

3. The Secretary appointed by the Board shall be an employee of the City Planning Department and, in addition to recording the decisions of the Board at its meetings, shall:
   (a) Receive notices of appeal and present them to the Board;
   (b) Cause such notices of appeal or of meetings of the Board to be published or served as directed by the Board or its Chairman.
   (c) Notify applicants in writing of the decisions of the Board;
   (d) Have custody of the records of the Board;
   (e) Perform such other duties as are customary to the office of Secretary.

4. An appeal shall be filed with the Secretary in writing on a form approved by the Board, to be obtained from the Secretary, and shall state in a simple manner the grounds of the appeal.
5. The Secretary shall examine the notices of appeal as submitted and may request applicants to furnish such further information including building or site plans as the Secretary may deem necessary for the proper understanding of the nature of the appeal.

6. Any person appealing a decision of an official pursuant to Section 573(1)(a) of the Charter shall file a notice of appeal within fifteen days of the date on which the official's decision was made; provided however that the Board may extend the time for filing such notice of appeal in any given case for cause on the written request of the applicant.

7. Any person appealing a decision of the Technical Planning Board which (a) grants or refuses an application for a development permit, or (b) grants or refuses an application for the relaxation of the provisions of the Zoning and Development By-law No. 3575, shall file a Notice of Appeal within fifteen days of the date on which the Director of Planning issues a development permit or gives notification of the refusal by the Technical Planning Board of the application, as the case may be; provided that the Board may extend the time for filing such Notice of Appeal in any given case for cause on the written request of the applicant. For the purposes only of an appeal under this section the Technical Planning Board shall be deemed to be an official charged with the enforcement of a Zoning By-law.

8. The Chairman shall fix a convenient time and place for the hearing of an appeal of which the Secretary has received notice but the Chairman need not convene the Board more often than once in any two-week period.

9. (1) Notice of the time and place of the hearing of the appeal shall be mailed to the applicant by the Secretary at least five days prior to the hearing by the Board.

(2) The Secretary shall give notice of the hearing to the Director of Planning and to such other officials of the City as the Chairman deems proper.

(3) Public notice of a hearing shall be given if the appeal is deemed by the Board of sufficient importance and such public notice shall be given by publication in a newspaper circulating in the City in not less than two consecutive issues and at a time not more than ten days nor less than three days before the hearing.
10. (1) The Board on being convened at the appointed time and place shall hear applicants and any witnesses or other persons whose evidence may assist the Board in reaching a decision provided however, that where the appeal is from the decision of an official charged with the enforcement of the Zoning By-law the official concerned or his representative shall be afforded an opportunity to be heard and where the appeal is from the decision of the Technical Planning Board to grant or refuse an application for a development permit the Chairman of that Board or his representative shall be afforded an opportunity to be heard.

   (2) Proceedings at the hearing shall be informal and evidence need not be given under oath unless the Chairman so requires.

11. Before reaching a decision on the appeal before it, the Board may require further information, either in corroboration of the statements made by the applicant or other witnesses or in explanation of the wording or intent of the Zoning and Development By-law, or to determine more fully the effect upon neighbouring properties affected by the appeal and may adjourn the hearing from time to time as the Board may deem advisable and may cause notice of the hearing so adjourned to be mailed to such owners of real property as the Board deem to be affected by the appeal, and may view the site either before or after the hearing, provided however that the decision of the Board when given shall be based upon the evidence submitted and in accordance with the limitations imposed upon the Board by Sub-section (2) of Section 573 of the Charter.

12. (1) The applicant may request an adjournment of the hearing if he notifies the Secretary of such request prior to the hearing and the Board may grant such adjournment.

   (2) In the event of an applicant or his representative failing to appear at the hearing of his appeal and no adjournment having been requested by him, or in the event of the applicant or his representative being present at the hearing and failing to proceed with his appeal when called upon by the Secretary to do so, the appeal may be adjourned by the Board.

   (3) The applicant may withdraw his appeal by a written request from him filed with the Secretary at any time prior to the hearing or may withdraw his appeal orally at the hearing at any time prior to the Chairman polling the members of the Board for their decision on the appeal.

   (4) The applicant may request the Secretary in writing at any time prior to the hearing to have his appeal proceeded with in his absence and the Board may grant the request and may then conduct the hearing of the appeal without the applicant being present and may hear other interested persons and may decide the appeal.
13. (1) At the conclusion of the hearing, the Board may thereupon render its decision or may adjourn the appeal and render its decision at a subsequent meeting.

(2) The Board may grant or deny the appeal and may reverse or uphold the decision of the Director of Planning or other official charged with the enforcement of the Zoning By-law being appealed against either in whole or in part or may modify such decision as appears warranted by the facts disclosed at the hearing.

14. The Board shall not re-hear an appeal covering the identical grounds or principles upon which the Board had already rendered a decision.

15. Members of the Board shall be entitled to receive payment for their expenses necessarily incurred in the conduct of their official duties on the Board including their transportation to and from their home or office to meetings of the Board or on inspection trips to view sites involved in appeals.

16. Subject to the provisions of this By-law, the Board shall determine its own procedure.

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

DONE AND PASSED in open Council this 17th day of May, 1960.

(Sgd) A. T. Alsbury, Mayor

(Sgd) D. H. Little, Deputy City Clerk

This By-law received:

1st Reading -- May 17, 1960.
2nd Reading -- May 17, 1960.
3rd Reading -- May 17, 1960.

Deputy City Clerk.
(Sgd) D. H. Little

I hereby certify that the foregoing is a correct copy of a by-law duly passed by the Council of the City of Vancouver on the 17th day of May, 1960, and numbered 3844.
APPENDIX I

AMENDMENT OR REPEAL OF ZONING BY-LAW

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

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

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

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

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

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

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

1959, c. 107, s.20; 1962, c.82, s.16.

from the Vancouver Charter, op. cit.
APPENDIX J

Extract from proposed controls for terrace housing:

El Paso, Texas (1960)

"FLOATING ZONE"

Standards for R.6. Zone: single-family attached dwellings

A. The tract shall include a minimum usable area of 3 acres.
B. There should be a maximum of 25 dwelling units per acre.
C. There should be a minimum of one off-street parking space per dwelling unit.
D. The minimum lot width should be not less than 18 (20) feet.
E. There should be a lot depth of not less than 90 feet.
F. The minimum corner lot width should be not less than 28 (30) feet.
G. There should be a lot area of not less than 1620 square feet.
H. At least 60 per cent of the net lot area should be open space.
I. The maximum height of structures should be two storeys.
J. All sites should have frontage on a dedicated public way, with a minimum width of 40 feet.
K. There should be no detached accessory structures permitted. All accessory uses should be included as part of the main dwelling and conforming to the space requirements for that building.
L. The number of dwelling units per structure should not exceed eight (144 feet maximum length).

M. The pattern of parking for each structure of eight units or less should be the same except for corner units. Parking for these units, if required to protect vision clearance at the street intersection, may be located at the front of the building.

N. Consideration should be given to providing all parking areas next to the street, while locating all pedestrian activities at the rear of the lot.

Delafons, op. cit., Appendix xxv.
APPENDIX K

EXAMPLES OF NEIGHBOURHOOD STANDARDS

from

NEW HAVEN, CONNECTICUT BY-LAW

Residence 'AAA' Districts

This district exists for the protection of certain multifamily areas of relatively small total size but of unique and irreplaceable value to the community as a whole. The specific purpose of this district is to stabilize and preserve the existing residential character of these areas to the maximum possible extent. To this end the use of land and buildings within these areas is limited primarily to relatively high density residential uses, as the particular character, size and surroundings of these areas create little need for the location within their boundaries of further such non-residential uses as generally support a residential area. Moreover, these areas are found especially along major streets traversing large residential sections of the City, and the outward movement of streets would constitute a serious threat to the residential quality of the areas to either side of them. Encroachment of office or other commercial uses along these streets would violate the spirit of this ordinance and its general purpose and intent and, any other provision of this ordinance to the contrary notwithstanding, no variance shall be granted for such uses in this district. It is hereby found and declared that these regulations are necessary to the protection of these areas and that their protection is essential to the maintenance of a balanced community of sound residential areas of diverse types.

Delafons, op. cit., p. 49.
APPENDIX L

EXTRACT FROM ZONING ORDINANCE, CITY OF SAN FRANCISCO

PLANNED UNIT DEVELOPMENT

The authorization of a Planned Unit Development as described herein, shall be subject to the following additional conditions. The Planning Commission may authorize the development as submitted or may modify, alter, adjust or amend the plan before authorization, and in authorizing it may prescribe other conditions as provided in this Code. The development as authorized shall be subject to all conditions so imposed, and shall be excepted from other provisions of this Code only to the extent specified in the authorization.

1. The application must be accompanied by an over-all development plan showing the use or uses, dimensions and locations of proposed structures, of parking spaces, and of areas, if any, to be reserved for streets, parks, playgrounds, school sites and other open spaces, with such other pertinent information as may be necessary to a determination that the contemplated arrangement or use makes it desirable to apply regulations and requirements differing from those ordinarily applicable under this Code.

2. The tract or parcel of land involved must be either in own ownership of the subject of an application filed jointly by the owners of all the property included or by the Redevelopment Agency of the City. It must constitute all or part of a Redevelopment Project Area, or if not must either include an area of at least three (3) acres or be bounded on all sides by streets, public open spaces or the boundary lines of less restrictive use districts.

3. The proposed development must be designed to produce an environment of stable and desirable character, and must provide standards of open space and permanently reserved areas for off-street parking adequate for the occupancy proposed, and at least equivalent to those required by the terms of this Code for such occupancy in the zoning district. It must include provisions for recreation areas to meet the needs of the anticipated population or as specified in the Masters Plan.
A conditional use of this category may contain, as an integral part of a residential development, a shopping center for service to the residents, if designed as a unit of limited size and controlled by more restrictive and specific regulations than would result from a reclassification of the area so used to a Commercial District. No other commercial use of any Planned Unit Development in any Residential district shall be authorized except an office building or buildings to be occupied primarily by administrative, clerical, accounting or business research organizations, where the principal use does not involve any of the following:

1. The handling or display on the premises of any merchandising services except as permitted as an accessory use for the accommodation of the occupants;

2. Frequent personal visits of clients, members or customers or other persons not employed on the premises;

3. Show windows or exterior display advertising of any kind.

From Delafons, op. cit., Appendix xxvii.
On December 3, 1965, an application for rezoning was received by Vancouver City Council. The request was to rezone an area of approximately 1-1/2 acres from C-3 (Commercial - Medium Density) and RM-4 (Multiple Dwelling - High Density) to CD-1.

The location of this land is in Vancouver's West End, a residential area on a 1-1/2 mile wide peninsula that is abutting the Central Business District of Vancouver and a major park on the other end. This area is primarily zoned for High Density multiple residential development with a strip of commercial zoning along some of its major roads. Most of the proposed project was abutting such a commercial zoned strip (Denman Street) and as indicated, part of the subject land was under commercial zoning. (See Map I for the location).

According to the application, the proposed project consisted of a commercial area on the first floor with a large interior pedestrian mall that was at all times to be left open to the public. Above the commercial area a 48-storey office and residential tower structure was proposed with offices on the first few floors and apartments above.

Because the proposed project did not conform to the existing zoning a request was made to rezone the parcel to CD-1. This was due to several factors. Commercial development was not permitted in the RM-4 zone which covered part of the assembled parcel. In addition, the project did not conform to either of the existing zones in such factors as the height of the building, bulk distribution, set-back requirements and density of the development. The Technical Planning Board, as a result, recommended to City Council that the project not be approved. The Town Planning Commission, however, recommended approval of the project and following a public hearing City Council also approved the project.

On December 8, 1966, a substantially revised proposal for the same site went before Council. Due to economic circumstances the developer claimed he could not go ahead with the project as it was earlier approved. The Technical Planning Board recommended not to approve the revised plan as it...
Case Study (1) (cont’d)

was substantially different from the earlier proposal. A large public amenity area within the project that previously was 15,500 square feet and supposed to be open to the public was reduced to 7,200 square feet. In addition, the slender residential and office tower of the earlier proposal was reduced in height but made bulkier in the process, thereby reducing the light access of adjacent properties.

On December 20, 1966, Council considered the latter proposal. The developers were thereafter requested to conform with the normal floor-space ratio as under the previous C-3 and RM-4 zoning and to retain the public amenity areas as in the previous proposal. A new scheme was submitted on January 30, 1967, that retained the amenities of the first proposal and conformed otherwise with Council's request of the December 20, 1966 deliberations.

On June 13, 1967, the development permit was issued by the Technical Planning Board. A minor amendment was requested at a later date but was only in respect to minor design details which did not change the design concept.

CASE STUDY (2)

Point Grey Townhouses

On January 26, 1965, City Council received an application to rezone six standard residential lots of a greater than normal depth in the 3200 block Point Grey Road from the RS-2 (one-family Dwellings zone) to CD-1. These lots were overlooking from a high bank the waterfront of Vancouver's English Bay and were within a single residential area (for location see Map I). Most of the adjacent houses were of an older type built in the first decades of this century and frequently were converted to rooming houses and duplexes as is permitted under the RS-2 schedule. Most of the houses along the waterfront were, however, of a higher quality and generally well maintained.

According to the application it was the developer's intention to build six attached townhouse units of a very high quality on this site. The design was done by the well-known Canadian architects Erickson and Massey and was of a unique appearance.

---

1 Source: Development Permit File No. 40053, City Hall, Planning Department, Vancouver, B.C.
Case Study (2) (cont'd)

Because the project did not conform to the existing zoning the CD-1 zone was requested. The existing zoning did not permit the building of attached houses; a slightly higher floor space ratio had to be requested and the proposed side-yards did not comply with existing zoning legislation.

In addition to the problems of zoning, the civic officials had to consider an earlier project that was proposed in this area. For many decades a proposal existed to build a scenic driveway along this waterfront. The dispute was, if this scenic road should be on top of the bank or near the water level along the beach. If the final decision - the more expensive one - were to be to put the scenic driveway on top of the bank, it would be necessary for the city to acquire these lots in question. The building of the townhouses would then have increased the cost significantly if the property were to be acquired at a later date.

In view of these problems the Technical Planning Board recommended to City Council not to approve the project. Council, however, approved it subject to the owner giving up his riparian rights by dedicating five feet along the waterfront to the City of Vancouver.

The developer complied with the condition requested by City Council. On May 28, 1965, the development permit and the building permit were issued after two minor amendments were made to the development permit with no major change to the original design concept. 2

CASE STUDY (3)

Oakridge Shopping Centre and Apartment Area.

On February 21, 1956, a rezoning application was received by Vancouver City Council to rezone a 35.5 acre tract of land from the RS-1 (One-family Dwelling) zone to CD-1.

The location of this tract was at an intersection of two major arterial roads, 41st Avenue and Cambie Street. Some commercial and institutional development existed on this intersection, but generally the area was built up with single residential houses except for the large vacant tract, part of which was now applied to be rezoned.

2 Source: Development Permit File No. 33744, City Hall, Planning Department, Vancouver, B.C.
Case Study (3) (cont'd)

According to the application the proposed project consisted of a regional shopping centre with high-rise apartment and garden apartments adjacent to it. The commercial centre consisted of a central mall with a department store and several other shops grouped around the mall. Truck service was designed to be by a tunnel to basement entrances to the stores above. Around the shopping centre a large parking area isolated the shopping centre from the adjacent land uses. The parking area was screened with a landscaped setback. Away from the main intersection beyond the shopping centre a mixed high-rise and garden apartment area was planned.

When the application for rezoning was made the CD-1 schedule was not yet in existence and all studies had to be made under the assumption that the new Zoning and Development By-law No. 3575 was going to be passed by City Council without any major revisions.

An enquiry with civic officials gave the reason to rezone this project to CD-1 rather than any other designation as the need to control possible future development on the site. Some of the conditions of rezoning, such as special landscaping and additional parking area, were also more than normally requested under other district schedules of the Zoning and Development By-law.

Following a public hearing, City Council on April 23, 1956, approved the project as proposed. Until the fall of 1966 there have been no substantial amendments made to the earlier proposal. The amendments that were made have been in respect to advertising signs to be installed.

CASE STUDY (4)

Car Sales Lot on the N-E Corner of Lakewood and Grandview Highway

On June 18, 1963, Vancouver City Council received an application to rezone a parcel of land of the perimeter dimension 176 ft. x 105 ft. x 204 ft. from C-1 (Commercial - local) to C-2 (Commercial - suburban).

The location of this triangular parcel was in Vancouver's East End in a rather complex position in respect to traffic routes. On its north-easterly side

Source: Development Permit File No. 2799, City Hall, Planning Department, Vancouver, B.C.
Case Study (4) (cont'd)

the parcel is bounded by a deep railway cut; on its westerly side it is bounded by Lakewood Drive that crosses the cut; on its southerly side it bounds on a major arterial road. The adjacent land uses are primarily single residences except for a corner store and filling station on the other side of the intersection.

Reasons for the rezoning were to establish a car sales lot on this side which is not permitted in the C-1 zoning districts. In the requested C-2 zoning district a car sales lot is a conditional use, subject to the Technical Planning Board's approval.

Due to possible later changes in the land-use, which are permitted under the C-2 schedule, the Technical Planning Board felt that it could not recommend this zoning change. The civic officials stated that only under the CD-1 schedule would it be possible to control further changes in land-use but would not recommend such a drastic step for such a small site.

City Council subsequently passed a resolution and ordered the Director of Planning to prepare a by-law to zone the parcel CD-1. Council thereafter amended the zoning by-law accordingly.

There have been no amendments since this last rezoning.  

---

4 Source: Development Permit File No. 28843, City Hall Planning Department, Vancouver, B.C.
The First Postwar Planning Act

The 1947 Town and Country Planning Act established Britain's land-use planning system ....
.... In this Act, strong powers to plan and to control the use of land were given to the 80 or so county councils and the 90 or so large city councils in Britain. Each of these councils was obliged to produce a 20-year development plan for its entire area and to submit this for the approval of the appropriate central government minister (now the Minister of Housing and Local Government). After exhaustive public inquiries the Minister issued his approval of the plan, though this usually incorporated substantial modifications. The Minister is thus the supreme land-use planning authority. He has at his disposal, however, a strictly limited range of direct initiatives (such as designation and actual development of towns), but much wider-ranging regulatory powers (such as calling informal personal decision major development proposals of high importance or giving the final decision in conflicts between prospective developers and the local planning authorities).

The county or city development plan, which must be reviewed every five years, is the local planning authority's proposed blueprint and land-use guide for the growth, change, renewal, adaptation, and conservation of all the area in its jurisdiction. No development may take place without the express consent of the local planning authority. (There are exceptions for projects by specific departments of central government and certain major public agencies, but these are not significant for the purpose of this article). This is what is meant by "applying for planning permission", a phrase now so deeply ingrained in the nation's consciousness that if our planning system were dismantled tomorrow it would become part of the folklore of unborn generations.

The local planning authority decides whether or not to give planning permission by referring to its development plan; is the nature and precise character of the proposed development consistent with the development plan? If the prospective developer wants to rebuild an old office block, is the continuation of this use permissible? If so, is the proposed intensity of use
acceptable? Are the proposed siting, height, bulk, and appearance all acceptable? On the test of these and other general and specific criteria the local authority will decide whether to reject the application, to give planning permission, or to give permission subject to stated conditions.

If, in the development plan, substantial and clearly defined areas of open land have been allocated for housing and related services to accommodate growth of a large city or small town, the presumption is that the owner(s) will be allowed to develop accordingly. But detailed plans must still be submitted for approval, and planning permission may still be withheld if, for example, the proposed density is too high or too low, or the designs are considered ugly, or if the layout is unacceptable for a variety of reasons.

APPENDIX P
DEVELOPMENT PERMIT SYSTEM

With the exception of some minor uses set out in General Schedule "A" of the by-law, a development permit is required for all changes in the use of land as covered in the definition of "development". Development permits are intended to ensure greater flexibility in zoning control than is otherwise possible through extensive provisions for the granting of conditional uses and relaxations to the By-law where considered appropriate.

In former Zoning By-laws the function of granting a very small number of conditional uses was exercised partly by the Board of Appeal and partly by the Council. Relaxations were dealt with entirely by the Board of Appeal. The present by-law delegates to the Technical Planning Board the power to approve or reject a large number of conditional uses subject in some cases to Council approval. A small number of conditional uses such as hospitals and churches etc. located in residential areas also require that the Technical Planning Board first of all obtain the advice of the Town Planning Commission. The Technical Planning Board also has the power to relax the By-law in a small number of defined cases, i.e. developments with insufficient parking or loading etc. All other relaxations (or variances as they are called in the United States) must be handled by the Board of Appeal. The objective in delegating power to the Technical Planning Board was to relieve the Council and the Board of Appeal of a vast amount of detailed work so that the Council could be free to act mainly as a policy-making body and the Board of Appeal as an appeal body only. When the by-law was finally approved in 1956 this objective was only partially fulfilled because considerable administrative detail still must go before the Council and the Board of Appeal.

In general the granting of a development permit is automatic if the proposal is an outright use and fulfils the regulations, or if it is a conditional use and is considered satisfactory by the Technical Planning Board. However, there is provision for the Technical Planning Board to refuse a permit if the development would create a traffic hazard, is injurious to amenity, cannot be properly drained, or does not conform to an amendment to the Zoning and Development By-law which is under consideration by the Council. However, it has generally been the policy of the Technical Planning Board to obtain the concurrence of the Council where such refusals are contemplated. Where matters of design are involved provision is made to refer such applications to an advisory Design Panel which includes practising architects and engineers.

Source: General Explanatory Memorandum, Zoning and Development By-law No. 3575, Vancouver, B.C.