IMPLICATIONS OF AIR SPACE UTILIZATION IN BRITISH COLUMBIA

by

TERRENCE WILLIAM JOHNSTON

B.E., University of Saskatchewan, 1961

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

MASTER OF SCIENCE

in the School of

COMMUNITY AND REGIONAL PLANNING

We accept this thesis as conforming to the required standard

THE UNIVERSITY OF BRITISH COLUMBIA

April, 1968
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.

Department of **Community and Regional Planning**

The University of British Columbia  
Vancouver 8, Canada

Date  **April 26, 1968.**
ABSTRACT

Intensive development of the city and efficient use of space are essential if rapidly increasing populations are to be accommodated in urban areas. Land requirements for transportation functions can be minimized by utilization of air space above transportation facilities.

The problems of rapid urbanization and scarcity of land are of particular concern in the major metropolitan areas of British Columbia. British Columbia has experienced the most rapid rate of growth of any Canadian province yet most of this growth has been confined to a few hundred square miles of the province's vast area. These factors suggest utilization of air space above or below transportation facilities has particular relevance to land use and transportation planning in British Columbia.

The object of this thesis is to examine the legal and legislative implications, the financial aspects and planning considerations of air rights development in British Columbia.

In Chapter II, the position of air space at common law is analyzed. Statutes regulating the ownership of land and the powers of municipalities, governmental agencies and
railway companies have been examined. Common law courts have ruled that air and space are not susceptible of ownership except as incidental to the use and enjoyment of the land surface or as space within a structure bearing upon the soil. The Land Registry Act and the Strata Titles Act regulate land ownership in British Columbia. The Strata Titles Act passed in 1966 provides for the individual and multiple ownership of land within an administrative framework. A critical prerequisite to strata development is that land included in the strata plan must be registered in indefeasible title as a single parcel in the name of the Strata corporation. Public and private agencies responsible for administering highways and rights-of-way are prohibited by legislation from alienating lands that are required, therefore, air rights cannot be developed using the Strata Titles Act. It is shown that these agencies only have authority to lease interest in air space. Of all the agencies examined, none are restricted from developing air rights for their own purposes.

The financial aspects of air space utilization are examined in Chapter III. Three methods of valuating air space are examined and the applicability of each is evaluated. Air rights have no real estate value if the cost of developing the air rights platform is greater than the cost of comparable land in fee simple. Air space may be utilized as a matter of public policy if long term costs and benefits show air space utilization to be economically feasible. Programs of financial assistance for air rights development are finally considered.
Mortgage financing from private lenders is not readily available because of the legal implications and the traditional blighting influence of freeways and railways on adjacent urban areas. In view of the blighting influence, of highways and railways, it is suggested that provisions of the existing National Housing Act be extended to include assistance for air rights projects in conjunction with urban renewal assistance.

Chapter IV outlines the planning considerations that must be recognized in air rights development. The value of determining potential air rights development areas and the methods of regulating air rights development are examined. Public ownership of air rights is the most effective method of control. Municipalities in British Columbia do not own streets, lanes or highways, therefore, their powers of control are limited only to land that they own. Controls can be exercised over private air rights development using the zoning powers of the municipal government. Special "overlay zones" or comprehensive development provisions of most zoning bylaws can be adapted to control air rights projects.

Chapter V contains the conclusions and recommendations of this thesis. Individual and multiple ownership of land is permissible through the regulations of the Land Registry Act and the Strata Titles Act. Public and private agencies controlling transportation facilities are prohibited by Statute from alienating lands required for transportation purposes. It is recommended that legislation be adopted granting powers to these agencies to participate in strata developments providing
the transportation facility is maintained within the development. Extension of the Strata Titles Act to include the ownership of space would provide for easier conveyancing of air rights. Feasibility studies of air rights development must be based on the long term costs and benefits rather than on costs of comparative land for conventional development. Extension of urban renewal legislation to include air rights developments would assist in mitigating against the blighting influence of freeways and railways on adjacent urban areas. Air rights development can be most effectively controlled by vesting ownership of all air rights with the municipality or city. Failing this, boards consisting of representatives from agencies owning potential air rights sites should be established to insure that maximum potential of air rights above various transportation facilities is achieved. When zoning controls are used to control air rights, special provisions should be made within zoning by-laws to accommodate air rights projects. Finally, an order of priority for use of publicly controlled air rights is suggested.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ABSTRACT</td>
<td>iii</td>
</tr>
<tr>
<td></td>
<td>LIST OF TABLES</td>
<td>ix</td>
</tr>
<tr>
<td></td>
<td>LIST OF APPENDICES</td>
<td>x</td>
</tr>
<tr>
<td></td>
<td>ACKNOWLEDGEMENTS</td>
<td>xi</td>
</tr>
<tr>
<td></td>
<td>Chapters</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1. INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>The Air Rights Concept</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>The History of Air Space Usage</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Examples of Air Rights Development</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>Implications of Air Space Usage</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>II. LEGAL AND LEGISLATIVE IMPLICATIONS OF AIR SPACE USAGE</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>Air Rights and the Law of Real Property</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>Air Rights and Statutory Law</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>The Land Registry Act</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>The Strata Titles Act</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>The Municipality and Air Rights</td>
<td>26</td>
</tr>
<tr>
<td></td>
<td>Air Rights in the City of Vancouver</td>
<td>28</td>
</tr>
<tr>
<td></td>
<td>Air Rights Development Above Highways</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>Air Rights Development Above Railways</td>
<td>31</td>
</tr>
<tr>
<td></td>
<td>Implications to Air Rights Development</td>
<td>32</td>
</tr>
<tr>
<td></td>
<td>III. FINANCIAL ASPECTS OF AIR RIGHTS DEVELOPMENT</td>
<td>39</td>
</tr>
<tr>
<td></td>
<td>Valuation of Air Rights</td>
<td>39</td>
</tr>
<tr>
<td></td>
<td>Valuation Techniques</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>Community Benefits of Air Rights Development</td>
<td>50</td>
</tr>
<tr>
<td></td>
<td>The Impact of Governmental Authority on Air Rights</td>
<td>52</td>
</tr>
<tr>
<td>Chapter</td>
<td>Page</td>
<td></td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>------</td>
<td></td>
</tr>
<tr>
<td>Programs of Financial Assistance</td>
<td>54</td>
<td></td>
</tr>
<tr>
<td>Summary and Conclusions</td>
<td>55</td>
<td></td>
</tr>
<tr>
<td>IV PLANNING CONSIDERATIONS OF AIR RIGHTS DEVELOPMENT</td>
<td>58</td>
<td></td>
</tr>
<tr>
<td>Problems of Air Space Utilization</td>
<td>58</td>
<td></td>
</tr>
<tr>
<td>Regulating Air Space Development</td>
<td>60</td>
<td></td>
</tr>
<tr>
<td>Public Ownership and Resale or Lease</td>
<td>61</td>
<td></td>
</tr>
<tr>
<td>Regulatory Controls</td>
<td>62</td>
<td></td>
</tr>
<tr>
<td>Air Space Regulation in British Columbia</td>
<td>64</td>
<td></td>
</tr>
<tr>
<td>Summary and Conclusions</td>
<td>67</td>
<td></td>
</tr>
<tr>
<td>V CONCLUSIONS AND RECOMMENDATIONS</td>
<td>70</td>
<td></td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>76</td>
<td></td>
</tr>
<tr>
<td>APPENDICES</td>
<td>82</td>
<td></td>
</tr>
</tbody>
</table>
# LIST OF TABLES

<table>
<thead>
<tr>
<th>Table</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Air Space Appraisal, Residual Capitalization Approach</td>
<td>48</td>
</tr>
<tr>
<td>2</td>
<td>Air Space Appraisal, Proportionate Method</td>
<td>49</td>
</tr>
</tbody>
</table>
# LIST OF APPENDICES

<table>
<thead>
<tr>
<th>Appendix</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>Extracts from the B. C. Land Registry Act</td>
<td>82</td>
</tr>
<tr>
<td>B.</td>
<td>Extracts from the B. C. Strata Titles Act</td>
<td>90</td>
</tr>
<tr>
<td>C.</td>
<td>Extracts from the B. C. Municipal Act</td>
<td>95</td>
</tr>
<tr>
<td>D.</td>
<td>Extracts from the Vancouver Charter</td>
<td>102</td>
</tr>
<tr>
<td>E.</td>
<td>Extracts from the B. C. Highway Act</td>
<td>108</td>
</tr>
<tr>
<td>F.</td>
<td>Extracts from the B. C. Department of Highways Act</td>
<td>110</td>
</tr>
<tr>
<td>G.</td>
<td>Extracts from the B. C. Railway Act</td>
<td>111</td>
</tr>
<tr>
<td>H.</td>
<td>Extracts from City of Vancouver By-law No. 2346</td>
<td>114</td>
</tr>
</tbody>
</table>
ACKNOWLEDGEMENTS

It is virtually impossible to acknowledge all those who offered guidance, assistance and inspiration during the preparation of this thesis. However, I will endeavor to thank those who have helped directly in its preparation. Grateful appreciation is extended to Dr. V. Setty Pendakur and Dr. Robert W. Collier for their guidance and constructive criticisms offered during the preparation of this thesis; and to the Richard King Mellon Foundation for their financial assistance. I am also indebted to a number of people who so generously offered advice and information when it was requested; namely, Mr. Norval Norton, Canadian Pacific Railway, Vancouver, Mr. J. Gilmore, Grosvenor-Laing Ltd., Vancouver, Mr. W.T. Lane, The Corporation of the Township of Richmond, Richmond, Mr. J.A.C. Andrews, N.D. Lea and Associates, Vancouver, and innumerable public and private officials in Canada and the United States.

Finally, I would be remisce if I did not publicly acknowledge my gratefulness to my wife and family who afforded me the privilege of this educational experience.
CHAPTER I

INTRODUCTION

The process of urbanization has created an unequalled demand for urban space. Urban agglomerations of a size never previously attained have emerged. Also, a higher percentage of the world's total population is living in urban centers than ever before. In the United States in 1960 over 53% of the population was concentrated in 213 urban centers that occupied less than 0.7% of the nation's land. In 1966 in British Columbia over 50% of the population occupied less than 0.25% of the province's land. Although the rate of urbanization has been accelerating since 1850, the rate of change from 1950 to 1960 was twice that of preceding years.

Historically, the impact of an expanding urban population has been most evident in the central area of the city. During the mid-nineteenth century inadequate transportation limited the physical growth of the city to a radius of approximately three miles. Absence of elevators limited vertical expansion. Therefore, it was only possible for growth to occur by covering every square inch of available space. Residences, factories, shops, and offices all crowded closely together around the center. There was little space allotted for park or recreation activity in the city center. This heritage of city growth still remains and is evident in present day structures,
street patterns, institutions and concepts.

Technological improvements in transportation and industrial production have allowed the area of the city to increase and have permitted dispersal of many activities to peripheral locations. Despite the movement of many functions away from the central city the demand for space has not been reduced. Generally, the central area is mutually accessible from all parts of the metropolitan region. For this reason, it now attracts those functions that serve the metropolis as a whole and those that require a considerable amount of interpersonal contact. In other words, the role of the central area of the modern city has changed from one of diversification to one of specialization. The most conspicuous occupant of the city center is the diversified retail business; large department stores and specialty shops. The importance of retail activities, however, is surpassed by the closely interrelated complex of business services that occupy the office buildings characteristic of the central core: the corporations, the financial institutions, public administration and the professionals who serve them. The support establishments such as hotels, restaurants, entertainment centers, and printers are also found in the core.

Indications are that the trend toward specialization will continue and that the specialized activities in the central core will attract an increasing number of persons. Evidence of this trend is found in the rapid expansion of the service and tertiary sectors of the economy. If this trend continues, and it appears that it will, serious consideration must be given to
the effect increased activity will have on the central city and how this activity will be accommodated. Aside from the many technical, economic and social problems associated with high density development, basic consideration must be given to the space that is available. Land supplies are diminishing in those areas where urban concentration exists or can exist. Land is irreplaceable; it cannot be imported from other places. The scarcity of land in the central city is reflected in the increase in land values that has occurred during recent years. A new system providing for more efficient use of urban space must be developed.

The Air Rights Concept

Intensive development of the city and efficient use of urban space is still almost an unchartered frontier. Attempts are being made now to develop concepts that will provide for efficient utilization of space within cities. One concept that has received considerable attention in recent years but has not yet been implemented to any large degree is the concept of air rights usage and the multiple use of transportation rights of way. Application of this concept of development permits efficient use of space within the crowded downtown area and the utilization of the space above or below the major transportation corridors that lead to the city center. This concept has been eloquently described in the "Buchanan Report":

"There is a new and largely unexplored field ..... it involves abandoning the idea that urban areas must necessarily consist of buildings set along streets with one design for the buildings and one for the streets. This is only a convention."
If the buildings and access ways are thought of together as constituting the basic materials of cities, then they can be molded and combined in all sorts of ways, many of which are more advantageous than the conventional street."

Added support is given to the concept of the multiple use of transportation rights of way in a report prepared in 1963 by Lawrence Halprin for the San Francisco Board of Supervisors. Halprin recommended the following principles for freeway design:

1. Urban freeways should be integrated with the city and not simply be corridors through it. They should pass through buildings, have shops, restaurants and parking garages integrated into their structure.

2. Freeways should be built as part of a total community development, not unilaterally. They can take the lead in generating amenity in a city in new or rebuilt areas by having parks and playgrounds pass under them and new structures built over them. Ultimately it is the design of the freeway which counts more than the structure itself.

The History of Air Space Usage

Although interest in air rights has recently been aroused, the concept of air space utilization is not entirely new. One of the earliest remaining examples is the Ponte Vecchio Bridge over the Arno River in Florence, Italy. Since its reconstruction in 1345 and in spite of bomb damage during World War II, the shops over the span still remain a tourist attraction today.
Air space utilization in North America first began with the use of the air space over railroads. Because of the railroads' early land holdings, many of their terminal facilities often preceded the downtown development of cities. Most of the railroads have sizeable land holdings near the core areas of cities. Such areas are usually of high density and high land value. The profitable development of the air space over these facilities was first recognized by railroad officials in 1902.

Considerable interest in air rights development has been generated in recent years in conjunction with accelerated freeway building programs. Air rights utilization is considered to be an effective way of solving some of the problems caused by freeways in urban areas.

The traditional complaints about freeways within urban areas have centered on four basic issues:

1. The dislocation of families and businesses along the freeway right of way.
2. The taking up of valuable land for a single purpose, which while directly associated with economic growth does not of itself generate commercial activity.
3. The removal of land from the tax rolls of the community.
4. The aesthetic impact of the freeway on the neighbourhood. Associated with this complaint is the destructive or disruptive effect of freeways on neighbourhood pattern where neighbourhoods are separated, truncated or even destroyed.
Dislocation of Families and Business

Freeway alignments in urban areas are often determined by law acquisition costs for right-of-way. This least cost criteria often dictates freeways to pass through areas of marginal economic activity or run down residential areas. One of the most serious problems facing freeway builders is the matter of dislocating families and businesses with limited capability for adequate relocation. Use of freeway air rights not only provides for new accommodation for displaced persons and business, but can also contribute to solving the broader problem of overall inadequate shelter supply. An air rights development project for Washington, D. C. proposes accommodation for 327 families. The area affected previously housed 195 families. Judicious use of air space throughout a freeway system within the confines of a community can contribute much to efforts to provide new housing for increasing urban populations.

Single Use of Urban Land

While a freeway is capable of providing vehicle access to the center of the city, the physical characteristic, and its inherent traffic generating characteristics require that increasing areas of the city be devoted to vehicle movement or storage. Although traffic may be generated, commercial activity may be squeezed from the center of the city. Integration of freeways with parking and commercial facilities makes more space available for commercial activity that has greater economic activity generating characteristics. Rapid transit or
mass surface transit should be integrated with freeway development to provide a complete transport system in which the components are complementary rather than competitive.

The Impact on City Revenues

City governments are constantly being called upon to increase the quality and scope of public services. At the same time they face rising public opposition to tax increases and erosion of the assessment base by increasing demand for land for public uses. Air rights development allows for the continued acquisition of space for public transportation facilities without substantially reducing the amount of taxable land within the city.

Impact of Aesthetics

The aesthetic importance of air rights is fairly obvious. Instead of a six or eight lane strip of concrete in the heart of the city, air rights development would permit much of the freeways to be covered over by attractive housing and business structures, parks, greenery or play areas. As well, freeways then would no longer divide neighbourhoods or cut communities into sections. Freeways would essentially be out of sight, be inconspicuous and integrated with civic design as a whole.

Many critical arguments have been put forth in opposition to air rights utilization including air pollution, noise and vibration. Upon careful evaluation of these arguments, it has been found that critics are not against the higher use of land or the multiple use of space. Instead, their argument is against the internal combustion engine, against freeways and
other non-air rights issues.

**Examples of Air Rights Development**

There are many examples of air rights development projects throughout the world today. Generally, there are two trends that predominate air rights utilization:

1. Use of air space above railroads and railroad yards.
2. Use of air space above freeways and urban streets.

**United States**

The first air rights development in the United States began in New York City in 1902 with the development of the Park Avenue Complex over the New York Central Marshalling Yards. Today, this development occupies 19 acres of land in Manhattan and stretches for ten blocks along Park Avenue. The most spectacular building in New York Central's air rights development is the PANAM Building which rises over the Grand Central Terminal. The PANAM Building rises 59 storeys and contains some 2,400,000 square feet of floor space. Other air rights uses over New York Central land include a middle income housing project: Concourse Village, on 10 acres over the North Haven Yards. Another new landmark on the Manhattan Scene in New York is the New York Telephone Building. A new sports area is proposed in air rights over the Pennsylvania Station. Penn Station and trackage will remain in use underneath.

The City of Chicago has long witnessed extensive utilization of air rights over railroad trackage. The Merchandise Mart, one of the largest office buildings in the world, was
erected over Chicago and Northwestern Railroad Trackage in 1929. More recent developments include the twin towered Marina City Apartments and the Outer East Drive Apartments. Other examples of air rights utilization in Chicago include the 40 storey Prudential Building, the Chicago Sun-Times Building, the old Chicago Daily News Building and Chicago Union Station. Several other developments are in the stage of contemplation.\(^\text{21}\)

In Philadelphia on a 23 acre site the Penn Center Complex rises above the Pennsylvania Railroad. The development includes three 20 storey office buildings, one 18 storey office building, a 1000 room hotel, a transportation center combining an underground bus terminal and a four level 1000 car parking garage, a luxury apartment building and one co-operative apartment house.\(^\text{22}\) A pleasant esplanade runs between the buildings and provides an attractive setting for buildings and pedestrians in the downtown area. Underground, the buildings are connected by a concourse which leads to the bus terminal, to the Pennsylvania suburban railroad station and to subway stations. The concourse also contains a variety of stores, an ice skating rink and sunken gardens.

The utilization of air space on highways first occurred in 1940 when parking areas were developed under the San Francisco approach to the San Francisco-Oakland Bay Bridge.\(^\text{23}\) Further developments of this type in the U. S. were limited until after the initiation of the Federal Aid Highway Act of 1956. Public use of the air space over and under highways for parking purposes was permissible under this legislation.
Examples of parking under Interstate Highways can be found in Orlando, Florida, under the Alaskan Way Viaduct in Seattle, Washington, and under the Santa Monica Freeway in Santa Monica, California. Cobo Hall Civic Center over the John Lodge Expressway in Detroit is an impressive example of the utilization of air space above freeways for parking purposes.

In the Federal Highway Act of 1961, U. S. Congress saw the need to permit private as well as public development in freeway air rights — and not limited to parking alone. Legislation was effected to provide for any use that did not impair the full use and safety of the highway or interfere with the free and safe flow of traffic on the highway facility. Since 1961 more than 150 applications for the use of interstate highway air space have been approved. About two-thirds of these applications were for parking structures.

Other uses of highway air space are feasible as exhibited by an impressive array of projects that have been undertaken since 1961. In Birmingham, Alabama, the University of Alabama Medical Center is constructed in air space. In Fall River, Massachusetts a new city hall complex is proposed for construction in freeway air rights. The complex will consist of three buildings and the community objective of the development is to restore downtown continuity.

Since the 1961 Act, urban space under freeways has been effectively used for recreational areas and playgrounds in some areas. Excellent examples of this type of development can be found at the southern end of the Bronx Whitestone Bridge in
New York. Recreational uses are proposed for an elevated section of freeway that passes through a section of Newark, N. J. that was torn by racial riots in the summer of 1967.

Part of the United Nations Building is constructed over Franklin D. Roosevelt Drive. Also in New York, a park and pedestrian promenade and a local service street are constructed in two tiers above the Brooklyn-Owens Expressway between Brooklyn Bridge and Atlantic Avenue. Another excellent development in New York has taken place at the east end approaches to the George Washington Bridge. In 1958 the U. S. Bureau of Public Roads co-operated with the City of New York in arranging for appropriation of a "three dimensional" easement to accommodate the highway; leaving the rest of the air rights estate to the city. A $13 million project was constructed by the Port of New York Authority in part of this residual space. The city then sold the balance of the air rights at an auction in 1960 for $1,065,000 to accommodate construction of four 32 storey apartment buildings. These buildings have since been constructed and provide 960 suites for low to moderate income families.25

In Chicago the Post Office stands above the Eisenhower Expressway.

Some toll roads have found air rights usage to be an effective way to join their service area facilities — by providing restaurants in air space over the toll way. The oasis Restaurant constructed over the Illinois Tollway just at the outskirts of Chicago is one example.26

Other notable air rights development projects are in the active planning stage in the United States. In Philadelphia,
a landscaped cover over a section of the Delaware Expressway is proposed. The landscaped cover will provide a link over the highway between the new Penns Landing Waterfront Development which will contain two visitor centers, a substantive new hotel, a 30 storey world trade center, a yacht basin for historic and private vessels, a river related museum and a science museum. On the other side of the highway is Independence National Historic Park and an Old Historic Neighbourhood.

In Flint, Michigan, a study has recently been completed for the Flint Housing Corporation to investigate the possible use of air rights for a low rental housing development. Another study of a similar nature has recently been completed in Washington, D. C.

The plan developed by Victor Gruen for renewal of the Central area of Cincinnati, Ohio incorporates the use of air space. The 15 block core area is ringed by a double one way loop road. In the center of the core one large block is to be used for a public transportation terminal, underground facilities of which are reachable by roads routed underground within the core area. Surfaces of streets within the area remain free from all traffic for the exclusive use of pedestrians.

Japan

There are several excellent examples of air space utilization and multiple-use of rights-of-way in Japan. The concept is of particular importance to a country like Japan where land area is small and the population is large. Included in the examples is an elevated section of highway near the Ginza in the heart of Tokyo. Below the expressway are three stories of
shops and offices. The facade of the buildings is designed as a brick faced building right to the top of the elevated highway railing; this tends to preserve the architectural integrity of the environment and few shoppers below are aware of the transportation corridor that passes above them. Another example is found at Tokyo University where tennis courts are built above a section of urban expressway.

Canada

In Canada, the best examples of air rights developments can be found in Montreal. In Montreal, Place Ville Marie, Place Bonaventure and the Queen Elizabeth Hotel have been built over railway tracks. The impressive feature of air rights development, however, has been not only the development of these projects but also the fact that they are interconnected and linked with underground transit facilities by underground pedestrian corridors. Also in Montreal, Expo's Habitat is an example of the adaption of air rights development for purposes of providing housing.

Other Canadian cities including Vancouver and Edmonton have air rights development projects above railroads in the planning stage. A consortium representing the Canadian Pacific Railway, commercial and financial interests is planning an 8,800,000 square feet business and residential complex that will cover 742,000 square feet of railway trackage on the Vancouver waterfront.32

In Edmonton, it has recently been announced that the city and the Canadian National Railway have entered into an
agreement whereby the railroad will make 98 acres of land in downtown Edmonton available for air rights developments. Initial reports indicate that accommodation for an integrated freeway and transit system will be made within the air rights development. Pedestrian circulation in the core of the CBD is to be moved to an underground system of sub-streets. The initial phase of this development is scheduled for implementation during 1968-1969.

Europe and the United Kingdom

Examples of air space utilization in Europe are limited. In Stockholm a restaurant is constructed above the entrance to a tunnel. In Poznom, Poland a valued old section of the city has been preserved by tunnelling an urban freeway below the area.

In British new towns, such as Cumbernauld and Irwine, the downtown core is designed as a single multi-level building or megastructure containing within it highways, pedestrian streets, parking and all the public and private uses normally associated with a downtown.

Implications of Air Space Usage in British Columbia

The completed or contemplated air rights projects that have been examined in the section indicate the wide range of projects in which the air rights concept is applicable. These examples also serve to illustrate that air rights development is not a new concept, and that sufficient precedent has been set in air rights development that a meaningful study of the associated problems can be made.
The concept of air rights development has particular relevance to the Province of British Columbia. At the present time, the population of B. C. is growing at a faster rate than any other province in Canada. The rugged topography and varied climate, however, provide only small areas that are attractive for human settlement. One air rights project is scheduled to be constructed in Vancouver in 1968. Rapid population growth and increased demand for urban land suggest that it would be desirable to incorporate other air rights projects with future transportation and land use planning.

Officials associated with "Project 200", the first major air rights project to be undertaken in British Columbia have indicated that a number of problems have been encountered in developing this project. The first problem arises from controls that have been legislated upon the railway companies by the Federal government. Railways in Canada receive government subsidies and are therefore restricted by statute from alienating lands required for railway purposes. The authority of the railway company to use air space above railway rights-of-way is not clearly defined.

A further problem is created by the zoning that is in effect in the project area. The existing zoning by-law controls the surface use of land but does not contain provisions for the multiple use of land. Re-zoning of the site for "Project 200" will be applied for under the Comprehensive Development section of the zoning by-law. These provisions are particularly vague, however, and do not establish specific guidelines.
relating to air space usage. Indecision on the type and location of future transportation facilities is also causing the developer considerable difficulty. This results from the lack of an integrated policy on land use and transportation planning.

The object of this thesis is to examine these problems that have been encountered in the development of "Project 200" and other problems that may develop in utilizing air space above other transportation corridors. Potential sites exist for air rights developments above highways, freeways, streets, lanes or transit lines. Implications of air rights developments over these facilities will be examined. The implicit assumption is made that the current status of architectural, engineering and construction technology is adequate to provide functional air rights developments. The methodology of study will include an examination of the following factors:

1. Documentation of air rights development projects in Canada, United States, Japan, Europe and the United Kingdom.

2. Legal and legislative implications.

3. Financial implications.

4. Planning considerations.

Recommendations will then be made that will:

1. Encourage the utilization of air rights above highways and other transportation corridors.

2. Insure that the full potential of air rights development will be achieved.
Footnotes


3 Davis, Kingsley, op. cit., p. 4.


5 Blumenfeld, Hans, ibid., p. 50.


This author quotes statistics from the City of Los Angeles:
(a) 2/3 of downtown Los Angeles is given over to the
automobile;
(b) each interchange requires approximately 80 acres of
land;
(c) each mile of freeway consumes approximately 24 acres
of land;
(d) parking space provided in L. A. between 1951 and 1961
deducted $10 million worth of assessment from the
city's revenue potential.

Thompson, loc. cit. p. 6.
Thompson, loc. cit. p. 6.
Thompson, loc. cit. p. 8.
Lesch, Lyndon H., CPM, "Air Rights: Past, Present and
1, Fall 1963.
U. S. Congress, Senate, loc. cit., p. 61.
U. S. Congress, Senate, loc. cit., p. 108.
U. S. Department of Commerce, Bureau of Public Roads,
Instructional Memorandum 21-3-62, Use of Air Space on the
White, John Robert, "George Washington Bridge Approach:
A Case Study", The Appraisal Journal, Vol. XXXIV, No. 1,
U. S., Congress, Senate, loc. cit.
U. S., Congress, Senate, Loc. cit.
Sedgewick, Sellers and Associates, Inc., Air Rights Above
Tippetts-Abbet-McCarthy-Stratton, The Joint Development of
Housing and Freeways for the District of Columbia, Depart-
Victor Gruen, The Heart of Our Cities, (New York: Simon and
Sadamu, Mino, "Multiple Use of Highway Rights-of Way",
Proceedings of the Thirty-Fifth Annual Meeting, Institute of
Traffic Engineers (1955).
CHAPTER II

LEGAL AND LEGISLATIVE IMPLICATIONS OF AIR SPACE USAGE

In order that air rights may be developed in British Columbia, the concept must have a sound legal basis and conform with existing legislation. This Chapter examines the position of air rights at common law and also the relevant legislative statutes to determine the feasibility of air rights development. If conflicts and discrepancies exist between the common law principles and the statutes or between the various statutes, they will be noted and revisions will be suggested.

Air Rights and the Law of Real Property

At common law, the general rule respecting the private owners' rights in land is the maxim: \textit{cujus est solum est usque ad coelum et ad inferos}; he who owns the soil owns everything up to the heavens and down to hell.\footnote{1} This historic concept of the freedom of land owners has been limited in a number of ways:\footnote{2}

(a) By other rights over his land - Rights-of-way, rights of tenants under lease or the rights of mortgagees.

(b) By administrative law - Zoning Bylaws, Pollution Bylaws.

(c) By liability in tort - Liability for damages caused to third parties by his acts or omissions in respect of things brought or artificially stored on his land.

(d) Air space - The Canada Aeronautics Act of 1920 provides that a landowner has no action with respect to occasional passage of aircraft above his land,
provided proper flying regulations are observed. Airport zoning restricts what a landowner can and cannot build on his land. Actions for nuisance and/or trespassing may be filed for the passage of dangerous projectiles over land at a height of 75 feet or less, or for permanent occupation of airspace over the land of another without his consent.

(e) Minerals - The Crown has the right to all gold, silver and petroleum found beneath or on the land.

(f) Treasure Trove - The Crown is entitled to all treasure trove that may be found on a land owner's property.

(g) Wild Animals - Wild animals are not the subject of ownership.

(h) Water - A land owner has no property in water which either percolates through his land or flows through it in a defined channel.

At common law, land includes all things permanently affixed to it - trees, buildings, fences. Thus, when land is transferred, the document may describe the land according to its location or dimensions; nevertheless, it is presumed that everything affixed to land goes with it. No distinction is drawn between land and buildings at law; the two are lumped together when ascertaining ownership or transferring the land.

The description of land as outlined above creates problems in establishing legal authority for the sale of air rights and the development of air space. It has not been necessary for English Courts to give literal effect to the maxim, cujus est solum ejus est usque ad coelum, and no court has done so. The courts have established, that land as a physical object may have boundaries horizontal as well as vertical, curvilinear as well as rectilinear. It therefore follows that just as the strata which makes up the land may be divided among different
owners as in the case of tunnels, mine shafts or other underground facilities, it should be possible to own the strata of air above the surface. Although this approach appears to be correct it does not necessarily follow that it applies to air space *simpliciter* (by itself).\(^5\) In the view of Fournier J., air and space as such are not susceptible of ownership but fall into the category of *res omnium communis* (things of all the community).\(^6\) "Strata above the surface cannot be severed in title unless actually forming part of the buildings because no feoffment could be made of such strata or buildings. However, there can be no doubt about the general right of the landowner to the uninterrupted use and enjoyment of his property by, for example, building upwards from his land nor to his right to object to anyone who purports to occupy the column of air above his land; the right to the enjoyment of the surface carries with it the incidental right to use the airspace above the land. So long as the element of effectiveness is present, it would seem that air space used in connection with activities on the ground is susceptible to possession. Buildings upon land forming part of the land itself and passing with it have no bearing on air rights *simpliciter*."\(^7\) The decisions that have been described above do not inhibit persons from making transient use of air space above private property in circumstances having no bearing on an occupiers use and enjoyment of the subjacent soil.\(^8\)

The foregoing discussion may be summarized as follows:

1. Air and space by themselves are not susceptible of ownership. Only after a building is constructed does the airspace become subject to possession by virtue of becoming part of the land.
2. The possibility of individual and separate ownership of different strata and space within a building has been recognized by the courts.

The major problem with respect to individual and separate ownership is one of description. "It may be noted that present subdivision regulations and procedures under the Torrens Act in terms of ground survey evidenced by posting, traverses and a conformity with existing registered and deposited subdivisions make little or no provision for the descriptions necessary to identify with precision those areas comprising rooms, flats, offices and apartments not resting directly upon the soil but supported entirely by the surrounding parts of the building or structure." Therefore, the problem has been one of adequately describing the position of units of space within strata such that legal interest in the units can be registered.

Air Rights and Statutory Law

The preceding section has described the position of air rights at common law. This section will examine the Statutes related to air rights with a view to illustrating inadequacies and conflicts in the legislation.

Firstly, it must be established where the authority rests in dealing with matters concerning air rights. The British North America Act granted all powers respecting property and civil rights to the provinces. The Canadian government maintains control of matters relating to railroads and aeronautics. Examination of the Canada Aeronautics Act and the Canada Railway Act has revealed no serious conflict with any of the powers granted to the Provinces. The Aeronautics Act (R.S. 1952 c.3) empowers
the federal government to deal with all matters relating to the use of aircraft and is not concerned with permanent occupation of air space.\textsuperscript{11} The \textbf{Railway Act (R. S. 1952, c. 234)} grants powers to the railway companies permitting them to operate.\textsuperscript{12} Although the federal government has given the railway companies authority to purchase and dispose of property it must be done so within the constraints of the land registry system in each province.

In this section provisions of the \textbf{Land Registry Act (R.S.B.C. 1960, c. 208)} and the \textbf{Strata Titles Act (R.S.B.C. 1966, c. 55)} respecting the use of air space will be examined. The applicability and relationship of these two Statutes to other Statutes governing the ownership of land by municipalities, the City of Vancouver, the B. C. Department of Highways and the railway companies will then be examined. Sections of those Statutes considered to be relevant are found in Appendixes A to F.

The \textbf{Land Registry Act (R.S.B.C. 1960, c. 208)}\textsuperscript{13}

The \textbf{Land Registry Act} provides statutory regulations respecting the ownership of land and stipulates procedures to be followed in subdividing, conveying and registering interests in land. Relevant sections of this Act have been extracted and are found in Appendix A.

It is significant to recognize that under the terms of this Act "highway" is defined differently than "right-of-way".\textsuperscript{14} Generally, ownership of all highways is vested with the Crown and the fee simple title to highways is withheld. Right-of-way, however, includes land or any interest in land that is acquired
for transportation purposes other than highways and they may be privately or publicly owned. Either a fee simple title or a charge against a fee simple title are required to establish a right-of-way interest.

Only the owner of the surface is entitled to be or remain registered as the owner of the fee simple.\(^{15}\) The owner of any part of land above or below its surface who is not also the owner of the surface is only entitled to register his estate or interest as a charge. A "charge" is defined as "any estate less than fee simple, and shall include any equitable interest in land and any encumbrance upon land and any estate or interest registered as a charge ..."\(^{16}\) In the case where no grant of the surface has been registered, the Crown shall be entered as owner of the surface and the charge can be registered thereon. In special circumstances, the powers of the Lieutenant-Governor in Council may be invoked to "recommend a form or forms of deed transfer, mortgage agreement for sale, lease, assignment or any other form required for dealing with registered interests in land."\(^{17}\)

The limitations of this Act with respect to air rights development appear to be consistent with common law decisions that air and space as such are not susceptible of ownership. An air rights development project upon being built could become subject of a form of ownership less than fee simple. Interest in the air space development could only be registered as a charge against the title. If ownership less than fee simple is not a deterrent to the development of any air rights project, the major problem would be to secure licence to use the air space. The
interest of the air space developer could be registered after the project was completed. The broad powers of the Lieutenant Governor in Council could be called upon to grant the special licence required.

In the case of air rights development above highways, subject to other Acts, the Crown could be entered in the Register as owner of the surface rights of the land within the development and a charge could be registered thereon. Air rights development above rights-of-way would be limited to those rights-of-way where fee simple title is held, subject to the provisions of other Acts.

The Strata Titles Act (R.S.B.C. 1966, c. 55)\(^{18}\)

The Strata Titles Act fulfils two functions:\(^{19}\)

1. It provides for the individual and common ownership of property and thereby overcomes the limitations of the Land Registry Act.

2. It establishes an administrative framework that enables the owners of the units to manage the common property.

The limitations of the Torrens System of Land Registry in adequately describing property for purposes of issuing a fee simple title have previously been discussed. Within provisions of the Strata Titles Act (see Appendix B) it is possible for the owner of strata lots to secure an indefeasible title that may be leased, mortgaged, transferred or otherwise dealt with in the same manner and form of any land, the title to which is registered under the Land Registry Act.\(^{20}\) The Act requires that title to the land included in the strata plan be registered in the register of indefeasible fees; and the land must be shown as a single parcel on a subdivision plan deposited pursuant to the Land Registry Act.\(^{21}\)
The procedures required to invoke the Strata Titles Act for purposes of developing air rights above highways or rights-of-way with respect to securing title to the land included in the strata plan are similar to those established under the discussion of the Land Registry Act. Subject to other Acts, the Strata Titles Act may then be used to provide indefeasible title to the strata units within the development.

The Municipality and Air Rights

The Municipal Act (R.S.B.C. 1960, c. 255) establishes that the right of possession of every highway in a municipality, subject to rights which may have been reserved or prescriptive rights, is vested with the municipality. (See Appendix C) The soil and freehold of every highway, however, is vested with the Crown. Only when a municipality has purchased or taken land for a highway is the title registered in the name of a municipality. The Council of the municipality may sell by auction or otherwise, on such terms as may be advisable the interest of the municipality in any real property not required for municipal purposes and which is not reserved or dedicated. This applies only to property owned by the municipality and does not apply to lands possessed by the municipality, but owned by the Crown. In addition, Council is empowered to grant easements or rights-of-way over any real property owned by the municipality. With the exception of lands held for community recreational or pleasure uses the Council is permitted to absolutely lease any real property held or owned by the municipality.

Within the provisions of this Act, the powers of
Council are restricted in matters relating to the sale or development of air rights. Although the Act permits Council to sell the interest of the municipality in real property not required for municipal purposes, grant easements and rights-of-way over real property, or lease real property other than parks or recreation land owned by the municipality, the powers of Council in dealing with air rights are not specifically stated. Further, the ownership of the majority of streets and lanes in the municipality is vested with the Crown, and as such is beyond control of the municipality.

Presumably, Council does not have the power to enter agreements involving rights in land other than those listed. Therefore, the following alternatives exist for a municipality wishing to develop air rights:

(a) Air rights may be developed by the municipality for public purposes where no transfer of rights or interest in land is involved;

(b) When the land in the street is owned by the municipality, that portion of land owned by the municipality but contained in the air rights development can be leased to the air rights developer. Surface uses of the municipality can be maintained by a covenant in the lease;

(c) The municipality may construct the air rights platform and lease the platform to air rights developers.

The Act only provides for the sale of real property not required by the municipality, therefore, the municipality is precluded from selling required lands such as municipally owned streets to a "strata corporation" for purposes of air rights.
development.

On streets and lanes that are possessed by the municipality and owned by the Crown, a three-party agreement between the municipality, the Crown and the air rights developer may be used to effect a lease of land for air rights development similar to (b) above.

Although Council is empowered to regulate all uses of or involving any highway, the Act requires that none of these uses can be inconsistent with highway uses given in the Motor Vehicle Act (R.S.B.C. 1960, c. 352).

The Motor Vehicle Act regulates the power of the municipality to provide for the control of vehicles and pedestrians who use the highway, rather than regulating the power of the municipality to deal with the highway per se. This Act, therefore, does not prohibit the municipality from using a highway for other than highway purposes.

Air Rights in the City of Vancouver

The Province of British Columbia has granted powers to the City of Vancouver through the Vancouver Charter (R.S.B.C. 1960, c. 55), (See Appendix D). Unlike municipalities in British Columbia where title to all highways, streets and lanes is vested with the Crown, the real property comprised in every street, park or public square in the city is absolutely vested in fee simple in the city, unless the street is classified under the Highways Act.23

The Charter empowers the city to:

"...provide for regulating encroachments for a stipulated length of time upon under or over a street upon such terms as to rental, indemnity or otherwise as may be prescribed, and where it is deemed necessary,
upon condition that the city shall have a registered charge upon the parcel to which such access or encroachment is appurtenant for the due performance of any term so prescribed and for the payment of any sums of money due the city for rental or otherwise, and providing that any such terms may be inserted in the real property tax roll as a charge imposed with respect to such parcel. Any provision in an agreement with the city purporting to create a charge against any parcel aforesaid for the due performance of any terms prescribed as aforesaid, or for the payment of any sums of money aforesaid, may be registered as a charge against the interest in such parcel of the person making the agreement;” 24

Further, to the powers outlined above regulating encroachments upon city owned land, the City have passed Area By-law No. 2346: A By-law for prohibiting, controlling and regulating areas, footings, foundations, cellars and openings constructed or to be constructed in, on, under or over sidewalks, streets, boulevards and other public places in the city. (See Appendix H) The By-law establishes the procedures and rates respecting the multiple use of city owned land. It has been invoked on a number of occasions in the city for purposes of providing skywalks access to theatres and to accommodate such street encroachments as fire-escapes, balconies and roof overhangs.

The Charter further provides Council with the power to dispose of any real or personal property owned by the city by sale, conveyance, lease or licence when, in the opinion of Council, such property is not required for any purpose of the city, under such terms and conditions as may be deemed expedient. This power is limited to real property and therefore Council cannot grant rights to space above property. On one occasion, the city has entered an agreement involving airspace where the entire portion of a lane has been leased and the lessee has
covenanted to permit the city continued use of the lane and to provide accommodation for city owned services. To date, this is the only instance where the City have leased any property to accommodate air rights development. An alternate procedure could be for the City to grant a licence to construct a structure above city property and the interest of the owner could be registered on the title after the structure is built.

With the powers that the City of Vancouver has over the public lands within the city it appears that it may be possible for the City to participate in air rights development through the **Strata Titles Act**. The portion street or right-of-way to be involved with the air rights development could be incorporated with the Strata plan and the city could be declared as owner of the surface strata by the "strata corporation".

**Air Rights Development Above Highways**

The Department of Highways derives its powers from the **Highways Act** (**R.S.B.C. 1960, c. 103**). Unless otherwise provided for, the soil and freehold of every public highway is vested with the Crown. Under special circumstances, however, the Lieutenant-Governor in Council may transfer or direct the issue of a lease to any person of any part of a highway vested in the Crown (See Appendix E). The Lieutenant-Governor in Council is further empowered to sell, lease or dispose of by tender or public auction, any real property no longer required for the use of any public works, (See Appendix F).

Although the Department of Highways is empowered to enter into certain agreements concerning highway property,
authority regarding air rights is not clear. Presumably, the Lieutenant-Governor in Council could grant a licence for the purpose of erecting a structure above a highway, and a lease could be registered after the structure was completed. Sale of highway property is restricted to real property deemed not required, therefore, sale of portions of a highway with a view to developing an air rights project utilizing provisions of the Strata Titles Act would appear to be an impossibility.

Air Rights Development Above Railways

In Canada, railways operate under special provisions of the British North America Act. Except for railways wholly contained within the Province of British Columbia, Schedule III of the B.N.A. Act provides that the federal government has control over railways and railway companies. The powers and duties of railway companies are enumerated in the Railway Act (R. S. 1952, c. 234). The powers of railway companies in dealing with real property are contained in Section 164 (1)(c):

"The Company may, for the purposes of the undertaking, subject to the provisions in this and the Special Act contained, purchase, take and hold of any person, any lands or other property necessary for the construction, maintenance and operation of the railway and also alienate, sell or dispose of any lands or property of the Company that for any reason have become not necessary for the purposes of the railway (Italics mine);"

This subsection gives a railway company power to sell any of its land which have become not necessary for the purposes of its railway. The question whether the land has become "superfluous" within the meaning of the Railway Act is a question of mixed law and fact. The Courts have ruled that the rule that a railway company when acting in good faith, is the judge of what
is required for the purposes of its railway does not apply to a proceeding by a creditor against the Company. The power of the railway to judge that the air space above the right-of-way is not necessary for the purposes of the railway is therefore questionable.

There is no question, however, as to the power of a railway company to give leave and licence to anyone to make use of railway property for certain purposes, e.g. to traverse a route across the railway right-of-way, or to erect and maintain a line of telegraph poles and wires along the right-of-way. The English Courts have held that a railway company has power to grant an easement over its right-of-way. In view of these decisions, it would appear that a railway may be able to grant an interest in land less than fee simple that would permit utilization of air rights. Then the problem reverts to the "ownership of space" which is not recognized by the courts. Two alternatives exist to enable development of air rights above railway right-of-way:

1. The railway company develops the air rights project and sells or leases space within the development after it is completed.

2. The railway company grants a licence to the air rights developer and after the project is built leasing arrangements are completed and the lease is registered as a charge against the railway's land.

Implications to Air Rights Development

There are many legal complications involved in utilizing air rights above highways and transportation rights-of-way in British Columbia. Within the provisions of the Land Registry Act, the ruling that air and space is not susceptible of owner-
ship is rigidly adhered to. The owner of surface land is alone entitled to be or remain registered as the owner of the fee simple. An interest in any development in air space cannot be registered until after the project is completed and then, it must be an estate less than freehold. Before air rights developments are undertaken, precaution should be taken to secure approval of the Land Registrar to insure that the interest of the air space developer can be registered against the title. Subject to the provisions of other Acts, development of air space within the limitations of the Land Registry Act can be accomplished in two ways:

1. A leasehold interest in the fee simple can be registered against the title by the air rights developer after the development is complete.

2. The air rights developer can purchase the fee simple and grant easements through the development for transportation purposes.

The Strata Titles Act of 1966 provides for the individual and multiple ownership of land. However, it is not an adequate vehicle for air rights development. The necessity that the land included in the strata plan must be registered as a single parcel in indefeasible title restricts applicability of the Act to those agencies who are only empowered to lease rather than sell interests in right-of-way or highways. The other problem with the Act results from the concept that space is not susceptible of ownership. Indefeasible title to units within a strata development cannot be secured until after the structure is completed. Therefore, the most practical approach is for the owner of the fee simple to create the strata development within
the provisions of the Act and sell units of space within the
development after its completion. This is not a very practical
solution for public authorities who generally do not become in­
volved in projects of this type.

The Statutory limitations imposed by the legislature
on municipalities, the City of Vancouver, the Department of
Highways and railway companies were previously examined. Only
in the Vancouver Charter is specific provision made for the use
of space, under or over City owned property. The powers of the
other agencies are limited to disposing of surplus real property
only or granting interests less than freehold in land which is
not surplus for highway or railway uses. Again, the "ownership
of space" rule prohibits these agencies from selling or leasing
air rights which are not real property, but in many instances
are not required. Although these agencies presumably have the
power to participate in air rights development as members of a
strata corporation, this power is not stated specifically. There
appear to be no restrictions upon agencies who wish to develop
air rights above highways or rights-of-way for their own purposes.

It is concluded therefore that:

1. The Land Registry Act imposes a rigid control on the
subdivision of land that is oriented to the single use and
singular ownership of land. In the view of Ruoff this inflexible
approach may not be as necessary as suspected:

"If (referring to the location of flying freeholds)
in defining the parcels, our meticulous friend the sur­
veyor, who is noted for his integrity, can help by
giving us a picture of the premises with dimensions and
is prepared to describe the position of a flat in terms
of height above street level (or even sea level) we should
be grateful. In England we regard all plans as good
servants but bad masters, so that for that reason as well as on account of the permanence of our topography, we prefer to identify a flat merely by a short verbal description. This 'ground floor flat No. 1, 83 South Hill Park, Hampstead'—no more—is in every way and for all time adequate to describe my own home."  

Ruoff concludes that if members of the community wish to make their homes in freehold flats or leasehold flats, the Torrens system must be moulded to suit these needs.  

2. The Strata Titles Act partially fulfils the need mentioned above in satisfying the legal requirements of the individual and multiple ownership of land. The Act could be much more effective, however, if it included provisions for the ownership of airspace. The Condominium Act of Ontario has done this by inserting the disarmingly simple fiat. "For the purposes of the Act the ownership of land includes the ownership of airspace."  

3. The section of the Strata Titles Act requiring that the land in the strata plan be registered in indefeasible title prohibits those agencies who only have power to lease interests in land included in rights-of-way or highways from invoking the Act. If these agencies are to utilize the concept of air rights development, the provisions of the Act must be extended to include interests less than freehold or the agencies must be given authority to sell portions of highways and rights-of-way for air rights development and then participate in the corporation as owners of the surface strata.  

4. The Statutes regulating municipalities, the Department of Highways and the railway companies do not provide sufficient authority in matters relating to air rights and the multiple use
If the concept of air rights is to be encouraged these agencies should be given special powers by their respective legislators to enter agreements involving air rights. At the present time these powers are at least vague if not non-existent.

5. The City of Vancouver is the only agency in British Columbia that has been given specific authority to regulate the use of air space above city owned property. These powers of the City are restricted to city owned streets or other property and do not include streets classified as a provincial highway. If major freeway construction in the City were to be undertaken by the provincial Department of Highways the City would not have control over air rights development.

6. In all cases, it appears that the agency that has control over highways or rights-of-way can undertake air rights development for its own purposes.
Footnotes


7 DiCastri ed. op. cit., p. 116.

8 Richardson, Jack E., loc. cit.


10 British North America Act (S. 92, (13) 1867.

11 Canada, Revised Statutes (1952), c. 3, S. 1.

12 Canada, Revised Statutes (1952) c. 234.

13 Hereinafter referred to as the Land Registry Act.


15 ibid., S. 145.

16 ibid., S. 2.

17 ibid., S. 258, (1)(f).

18 Hereinafter referred to as the Strata Titles Act.


20 British Columbia Revised Statutes (1966), c. 55, S. 3 (1).

21 ibid., S. 3 (2).

22 Hereinafter referred to as the Municipal Act.
24 ibid., S. 296.
25 ibid., S. 189.
26 Personal interview with Mr. Elliott, Assistant City Solicitor, City of Vancouver, March 6, 1968.
27 Hereinafter referred to as the Highways Act.
29 ibid., p. 17.
31 Third Schedule, *BNA Act* 1867.
33 ibid., p. 182.
35 ibid., p. 65.
37 Personal interview with Mr. Norval Norton, Legal Department, C.P.R., Vancouver, B. C. confirmed this conclusion.
CHAPTER III

FINANCIAL ASPECTS OF AIR RIGHTS DEVELOPMENT

The financial aspects of air rights development are considered under two general topics. The first relates to the appraisal of specific air rights developments for the purpose of sale, lease or assessment. The second, relates the role of public authorities whose responsibility it is, to insure that maximum benefits will accrue to a community where air rights projects are undertaken. This Chapter examines these two aspects of air rights development.

Valuation of Air Rights

The marketing of air rights requires determination of their value. This involves both an appraisal for sale or lease and an assessment for taxation purposes. In the valuation of air rights several factors not generally associated with the appraisal of ordinary types of property are considered. Some of these factors arise as a result of the complicated interrelationships that exist between the user of surface rights and the developer of air space. Other problems arise in the valuating of the elevated platform which the development of air rights requires.
Accessibility

Accessibility is a normal real estate appraisal problem that must be given special consideration in air rights developments. In order to utilize air space a platform is usually created above the freeway, railway or other surface use. This means that access from streets, alleys and sidewalks or adjacent property may be limited, and construction of special facilities such as ramps, embankments, escalators or other items is necessary to provide adequate means of access. The additional cost of these items must be considered.

In addition, the effect of limited access on the value of the development must be considered. Frequently access to air rights projects may be limited to a few points, whereas surface developments usually have long stretches of street and alley frontage. Whether or not this becomes a matter of serious consideration depends upon the activities that will be carried on in the project and also the grade and elevation of adjacent surface streets. These are simple cost and access problems but they must be properly considered in valuating air space.

The factor of accessibility may not always have a depressing effect on the value of air rights. There may be some special accessibility advantage to air rights located above transportation terminals; that is, for delivery of goods or for personnel convenience.

Limited Ownership

Three major classifications of ownership disadvantage result to the air rights purchaser. These disadvantages are
as follows:

1. **There is considerable inflexibility regarding future use of the property.** Air rights are normally purchased in anticipation of a specific project. The conditions under which a developer buys the air rights are largely guided by the requirements and restrictions which the specific development creates. Therefore, it is doubtful that these terms of purchase could be adapted to other development or redevelopment at some future time. As a result, the appraiser must consider the economic life of the air space equal to the economic life of the development created in it. A prudent appraisal technique is to amortize both the building and "land" over the economic life of the development. Generally, income from this type of project is capitalized over a period of from 35-60 years.

This contrasts to the techniques used in the appraisal of conventional real estate property. With conventional property it is common to amortize the land in perpetuity and the improvements over a 35-60 year period representing their functional and economic lifetime. The difference between value of land using the two techniques can be expressed mathematically. It is the difference between the value of an annuity for a fixed period of time at a given rate of interest and an annuity in perpetuity at the same rate of interest. For example, the difference between an annuity for 50 years at 5% and an annuity in perpetuity at 5% interest is equal to factor 18.256 over factor 20.000 or 91.28%. This is the difference in value as calculated using the two techniques.
2. One hazard in air rights is that economically incompatible development may occur on or above adjacent pieces of land. From the example of air rights projects given in Chapter I it is apparent that the majority of air rights projects are located over railroads and freeways. Historically, these facilities are located or exist in transitional areas of mixed land use. The importance of this factor depends upon the permanency of the existing surface uses and the prospects about the general future of adjacent land uses. The effect of this hazard will depress the value approximately 5% in most situations. It conceivably could be lower in locations adjacent to central business districts or higher for projects in industrial zones or low assessment areas.

3. Financing problems arise out of land 2 above, and out of restrictions imposed by the legal system. There is no doubt that an air rights development is more difficult to finance than normal types of development. Traditionally, mortgage companies have been unwilling to invest in projects located in areas where adjacent land uses are not compatible with the development, or where the trends in future land uses are uncertain. Historically railways and freeways in urban areas have had a blighting effect on adjoining property. It is difficult for a mortgagor to reconcile this trend with investing in new projects in air space above freeways or railways. In addition, the legal restrictions and complications of purchasing and leasing air space make it difficult to secure mortgage financing for this type of development.
Additional Cost

The analysis of the cost of the platform presents an appraisal problem unique to air rights development. The problems of accessibility, inflexibility, hazard of surrounding land uses and financing are normal appraisal problems related to all parcels of land. To estimate the cost of the air rights platform engineering and architectural details must be determined. Platform construction costs on existing air rights projects range from a low of $4.00 to a high of $25.00 per square foot. The costs which have to be considered include:

1. Additional cost of constructing the platform above the freeway, railway or other surface use.

2. Additional construction costs because of inflexibility as to location of columns, girders, caissons, utility lines and the like.

3. Additional costs because of the necessity for allowing freeway or railway traffic to continue to operate during the period of construction of the platform. If it is impossible to maintain the surface uses during construction an estimate must be made of the cost of detouring traffic around the development. If the surface facility is being constructed concurrently with the air rights platform, construction of the air rights platform may delay completion of the surface development resulting in higher construction costs.

4. Additional costs through what may be an unnatural elevation of the building; that is, the presence of structural members in a non-rentable area between the platform and the ground level.
5. The cost of constructing a new ground level providing sidewalks, planting areas and the like at a new elevation around the building, particularly where there are setbacks or courts at the new ground level. This is in addition to whatever access facilities may be needed.

6. The addition of legal, engineering, architectural and appraisal costs in a development considerably more complicated than on a normal piece of ground.

7. The additional interest and carrying charges resulting from the longer time required to construct the elevated platform. If it were not for having to construct the platform, construction of the project could start immediately.

8. Savings in the cost of demolishing structures that would ordinarily have to be cleared from a potential building site. There is an additional saving in that the developer is freed from the responsibility of providing new locations for displaced tenants. Also the time ordinarily required for demolition is saved and the project can be completed and begin earning revenue that much sooner.

9. Savings in cost of excavation and foundations that are required in most conventional projects but are not required in air rights developments.

Inconvenience and Nuisance

In air rights developments, certain losses in property value result from the absence of subsurface space for parking, storage and building facilities.

In addition, noise, odors and vibrations created by
the surface uses have the effect of a dual depressant on the appraisal value. Mechanisms and devices installed to mitigate against the objections of these factors increase the cost of the total project. As well, revenues are usually depressed because of the inconvenience and discomforts caused to persons living in this environment. For example, rental rates of the George Washington Bridge Apartments are slightly depressed because only 90,000 square feet of the total 130,000 square feet of the site area was covered by a concrete platform. The difference was used for open air venting.\(^3\) Unfortunately, the open air venting system has not proved satisfactory and a serious air pollution problem exists within this development.\(^4\)

Valuation Techniques

Several approaches can be used in the appraisal of air rights. In this thesis, three techniques that have been employed will be examined. The "Comparative Approach" and the "Residual Capitalization Approach" are sophisticated methods that can take into account all factors affecting the value of air rights. The "Proportionate Approach" is a simple technique that can be used in appraising small scale air rights projects where all the factors previously examined are not of particular importance.

The Comparative Approach

This method relies as a starting point on the comparative market value of land in fee simple, unencumbered by any air rights agreement.\(^5\) From this must be subtracted any impairment to the air rights value as may be created by any or all of the
factors previously discussed in this Chapter. A case study of the appraisal procedures used in valuating the air rights occupied by the George Washington Bridge apartments illustrates this procedure.6

A formula that can be used for calculating the value of air rights is:

\[ A = V_C - X (C - D) - I \]

also, \[ R = V_C - A \], where:

\( A \) = Air rights value

\( V_C \) = Land value by comparison in fee simple; vacant but improved with all utilities at the lot line.

\( X \) = Loss of residual value from functional or economic obsolescence arising from the creation of air rights.

\( C \) = Added capital improvement costs to air rights purchaser or lessee in cost of building.

\( D \) = Savings to air rights purchaser or lessee in excavation and foundation costs, demolition, tenant relocation and income losses during relocation and demolition.

\( I \) = Added interest and carrying charges as a result of the capital improvement costs in \( C \).

\( R \) = Residual value of the fee interest.
As is evident from this formula, air rights have no property value when the cost of development and reduction in value incurred through air rights development exceeds the cost of comparable property in fee simple.

The Residual Capitalization Approach

Where comparable land values cannot be determined or where a special character of land utilization is contemplated, such as state financed or publicly subsidized developments the residual capitalization approach may be used.

The key judgment factor is the selection of the rental rates of the development. Upon selection of the rental rates, operating costs can be estimated and the net income before debt service and depreciation can be determined. In projects such as limited dividend housing where the rate of return is fixed the direct capitalization cost of the entire project can then be calculated. Deductions of the building cost and adjustment for the cost considerations in air rights development are made to arrive at value of the air rights. The procedure is illustrated in Table 1.

Proportionate Approach

The City of Vancouver have employed a relatively simple technique to evaluate the air rights of the lane between Seymour Street and Richards Street where a parking structure has been erected by the Hudson's Bay Company. The formula as suggested by the Supervisor of Property and Insurance is as follows:

1. Establish the market value of the lane as if for sale.
2. Estimate the full rental value of the lane. In the
TABLE I
RESIDUAL CAPITALIZATION APPROACH
AIR SPACE APPRAISAL
GEORGE WASHINGTON BRIDGE APARTMENTS
NEW YORK CITY

Gross revenue at 100% occupancy:

- 5040 rooms at $348 per room annually $1,753,920
- 73,440
- 204 garage spaces at $360 $1,827,000
- 55,360

Allowances for vacancies and collection losses $55,360
Effective gross revenue $1,772,000

Estimated expenses:

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxes</td>
<td>$340,000</td>
</tr>
<tr>
<td>Operation</td>
<td>$412,000</td>
</tr>
<tr>
<td>Replacements</td>
<td>$35,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$787,000</strong></td>
</tr>
</tbody>
</table>

Net income before debt service: $985,000

Direct Capitalization:

Over-all rate or return: 5%
Mortgage: 90% of .0505
Equity: 10% of .0509

Indicated capital value $19,700,000
Less building cost (without abnormal cost) - $17,825,000
Residual value before creation of air rights $1,875,000

Less: Abnormal costs $1,500,000
Savings - $750,000
$750,000
Interest and Carrying $175,000
Carrying $925,000 - $925,000
Residual Air Rights Value $950,000
study case rental value was estimated to be 6% of market value. Add the amount equal to the estimated taxes.

3. Proportion the said rental charge between the city and occupier in accordance with the number of floors to be built; the City to be considered as occupying the first floor.

In the terms of the lease, the Lessee has covenanted with the City to maintain access, provide illumination and accommodate City utilities that are passing through the lane. The lessor has agreed to remove the structure from the lane on one year's notice from the City.

The procedure followed is shown in Table 2.

TABLE 2

PROPORTIONATE METHOD

AIR SPACE APPRAISAL

HUDSON'S BAY COMPANY PARKADE

CITY OF VANCOUVER

Estimated Value of the lane

$32,000.00

Estimated annual rental rate

- 6% of market value = $1,920.00
- Estimated Taxes = $363.90

Annual rental rate = $2,283.90

Assume a 5 storey structure.

City share of rent = 1/5 x 2283.40 = $458.90
Lessee's share of rent = 4/5 x 2283.40 = $1,825.00
In the process of negotiation, the Lessee evaluated the air space at $1,000.00 rental per annum. The Supervisor of Property and Insurance has commented on the method of evaluation as follows:

"The Lessee's valuation process is remarkably close to that utilized by ourselves — except they have considered it as a straight leasing of air rights over the lanes whereas the City has taken the approach that this is a special privilege and a lessee should be charged in accordance with the proposed lane allowance."

Summary

The three techniques examined fulfil a need in valuing different air rights projects.

The "comparative approach" is useful in establishing the value of air rights when the nature of an air rights development is not known and only the value of comparable land is known.

The "residual capitalization approach" can be used where the income from an air rights project is fixed as in the case of low income or limited dividend housing. If construction and development costs are known the value of air rights can then be determined.

The "proportionate approach" is a simple technique and can be used on small scale projects such as parking lot developments or other similar land uses where an elaborate platform is not required to accommodate the development.

Community Benefits of Air Rights Development

The preceding section has outlined procedures that may be used in determining the value of air rights from the
point of view of an air rights developer and the tax assessor. These techniques however are inadequate to assess the impact of air rights development on the total community.

It was established that air rights have no property value when the cost of development and reduction in value incurred through air rights development exceeds the cost of comparable property in fee simple. When the concept of air rights development is viewed from a city wide point of view other important factors must be considered. In a sense, an area that acquires potential for air rights development increases the supply of buildable land. Even if the cost of developing air rights is equal to or greater than the cost of comparable land in fee simple, there are additional benefits that may outweigh this cost discrepancy:

1. The cost of constructing the air space platform requires that air rights developments must be large expensive projects, that are a tremendous source of tax revenue for the City or municipality.

2. Air space usage provides for assembling large tracts of land within urban areas that can be used for developing projects such as major hospitals, or other public buildings that otherwise would be forced to locate in suburban areas where adequate space was available.

3. Properly designed air rights projects over highways or other transportation rights-of-way that take advantage of excellent access can be used as an instrument of change and improvement in urban areas. Traditionally, transportation corridors have had a blighting influence on surrounding property that
has resulted in declining city revenues. Air rights development can be used to overcome this problem and maintain tax revenues.

4. Cities at the present time are burdened with large expenditures in the fields of transportation, urban renewal, pollution control and a host of other community needs. Where joint use can be made of one piece of land for transportation and other uses, air rights development can be used to reduce high land acquisition costs.

The Impact of Governmental Authority on Air Rights

Some financial implications are a direct result of the tri-level governmental structure. Air rights development by railway companies or municipalities and cities who hold fee simple title to the land over which air rights development is proposed does not create any problems. Revenues from the sale of air rights go directly to the owner of the fee simple title and the municipality or city are entitled to collect property taxes on the air rights development.

In the case of municipalities where possession of streets and highways rests with the municipality and title is vested with the Crown a point of possible conflict results. Responsibility for construction, maintenance and control of the street rests with the municipality, but title is vested with the Crown.9 The Municipal Act limits the power to dispose of highway property to the Lieutenant-Governor in Council.10 The municipality is only empowered to exchange portions of highway land for other land.11 It appears, therefore, that the municipality is not entitled to any revenues that may be accrued from the
sale or leasing of air rights. They are, however, entitled to collect property taxes on the air rights development.

Further conflict over revenues is created from the sale of air rights over highways in British Columbia. Arterial highways are completely constructed, controlled and maintained by the province and revenues from the sale of air rights would clearly be the property of the Crown.\textsuperscript{12} The case for secondary highways is not as clear. The cost of construction of secondary highways is shared by the municipality and the province on a 60-40 basis.\textsuperscript{13} Control of construction and maintenance of secondary highways is vested with the municipal corporation through which the highway runs.\textsuperscript{14} The provincial government provides grants to the municipalities for maintenance purposes\textsuperscript{15}, but otherwise, all payments made by the municipality must be funded under provisions of the \textit{Municipal Act}. Title to the highway is vested with the Crown, and theoretically any revenues received from the sale of air rights should be paid to the province. Because of their large responsibility in providing secondary highways, some provision should be made for the municipality to collect revenue from the sale of air rights.

Financial assistance is provided by the Federal government to the Provinces under the terms of the \textit{Trans-Canada Highway Act}. The problem that could arise is one that has received some attention in the United States involving sale of air rights above the Interstate Highway System. The U. S. Bureau of Public Roads pays 90\% of the total cost of constructing interstate highways, whereas the Canadian Government pays 50\% of a two lane equivalent.
The U. S. Bureau of Public Roads has maintained they are entitled to collect the revenue from the sale of air rights over the freeways because only through their financial assistance was the freeway made possible. Under the Interstate program federal funds are supplied as grants to the state governments for purposes of constructing the freeway system. In the view of U. S. Congress, after the grant has been made to the state government, the federal government has no direct claim on any revenues that may be produced by the freeway system. Similarly in Canada, it is evident that the Federal Government can not exercise a claim on revenues produced from air rights development over the Trans-Canada Highway system.

Programs of Financial Assistance

Programs of financial assistance for air rights development in British Columbia reflect the limitations of the common law and legal attitude toward the ownership of space. Publicly sponsored financial assistance is available through the National Housing Act for Condominium developments undertaken in air rights using the Strata Titles Act. Because air and space are not susceptible of ownership specific programs are not available for purposes of acquiring air rights. In the United States where the attitude toward air rights is somewhat different, financial assistance for air rights development is available through provisions of the 1964 Housing Act. Section 308 (i)(iv) of this Act permits the use of federal funds for the:

"...acquisition of air rights in an area consisting principally of land in highways, railways or subway tracks, bridge or tunnel entrances, or other similar facilities which have a blighting influence on the
surrounding area and over which air rights sites are to be developed for the elimination of such blighting influences and for the provision of housing (and related facilities and uses) designed specifically for and limited to, families and individuals of moderate or low income."

Extension of urban renewal legislation in Canada to provide this degree of financial assistance would encourage utilization of air space in urban areas.

The apprehensiveness of conventional mortgage lenders about air rights development has previously been discussed. Legislation that more clearly establishes the position of air rights at law and provides greater security to mortgagors of air rights developments is also required.

**Summary and Conclusions:**

In this Chapter, some of the financial implications of air rights development have been examined. The appraisal profession has developed techniques for determining the value of various types of air rights projects for purposes of sale, lease or assessment. Using appraisal techniques, experience indicates that air rights have no value if the cost of the air rights platform and other development costs exceed the value of comparable land in fee simple. From the community point of view, this conclusion may not be valid. Long term costs and benefits of air rights development to the community must be estimated and decisions about the feasibility of air rights development should not be made on the appraised value of land alone.

The tri-level governmental structure in British Columbia creates some confusion in matters relating to the sale or granting of air rights. In cases where title to the highway
or right-of-way rests with the same agency that is responsible for maintenance and control no problem exists. However, in the case of municipal streets and secondary highways where title is vested with the Crown and maintenance control and the major share of construction costs are borne by the municipality there is cause for some confusion. Air rights development in British Columbia requires that this impasse be resolved. The federal government does not have powers to claim revenues from air rights development within the powers of the Trans-Canada Highway Act.

Financial assistance programs and policies require revision if air rights developments are to be encouraged. Urban renewal legislation should be extended to include assistance to air rights developments. Legislation should be passed to more clearly define the position of mortgage lenders who loan money for air rights projects.
Footnotes


6 White, loc. cit.

7 Personal interview with Mr. C. N. Elliott, Assistant City Solicitor, City of Vancouver, March 6, 1968.

8 Final Report to the City Solicitor for the City of Vancouver from the Supervisor of Property and Insurance, re: Hudson's Bay Parkade, September, 1958.

9 British Columbia, Revised Statutes (1960), c.255, S.506, 507

10 Ibid., S. 508

11 Ibid., S. 509

12 British Columbia, Revised Statutes (1960), c.172, S. 33, 34

13 Ibid., S. 33

14 Ibid., S. 34

15 Ibid., S. 42


CHAPTER IV

PLANNING CONSIDERATIONS OF AIR RIGHTS DEVELOPMENT

Air space utilization adds a new dimension to land use planning. Traditionally, land use plans have been prepared on the basis of singular uses. Land uses have been separated one from another and the transportation network has been planned as a separate system. It has been unusual for consideration to be given to the possibility of air rights improvements over tracks and expressways.

Problems of Air Space Utilization

1. Increased density:

Air space utilization increases the supply of buildable space. Areas that acquire potential for air rights development are usually within or adjacent to existing areas of highest density and highest land cost within the urban area. The addition of air rights projects to these areas increases the existing building density and presses greater demands on existing utility and transportation services. At the present time, existing buildings rely on open space created by streets, expressways, tracks and parking lots. If air rights structures are built these open spaces will be destroyed in downtown districts.
2. Differential Rates of Obsolescence:

Differential rates of obsolescence between surface and air development is another potential source of conflict, especially where the ground use has a shorter life expectancy or has early expansion needs. Once a highway has been covered by an air rights structure it is difficult to relocate or expand the right-of-way. Similarly, space occupied by railroad tracks and yards cannot be easily altered for modernization or converted to other usage.

3. Compatibility:

Problems of compatibility between contemplated improvements and existing surface uses should be carefully investigated. Some uses such as commercial establishments over parking lots or office buildings over subway stations may be complementary. Other uses such as residences above railways or hospitals above freeways may interfere with each other unless they are effectively separated by a platform completely covering the ground use. Railroads and expressways fall into this category where dirt, noise and fumes would be objectionable to the airspace users. Conversely, ramps from commercial or residential air rights projects can disrupt traffic flow on the freeway below.

4. Access and Circulation:

Concentration of population and activity above or below transportation routes requires that serious consideration be given to the problems of access to and circulation within the air rights development. Provision must be made to move people to an air rights project without interrupting or interfering with the
free flow of traffic on the transportation facility.

Regulating Air Space Development

In urban areas where air space utilization is possible, it is important that a plan for air space usage be prepared. The purpose of the plan should be two-fold:

1. To determine potential air rights development areas and to specify areas where such development would be in the public interest.

2. To suggest the kind of air rights improvements, public or private, that would conform to an overall plan for the area.

Whatever regulatory measures are adopted for the control of air rights it must be remembered they will apply only to privately owned and city owned and controlled areas. In British Columbia, regulations would apply to railway companies, the City of Vancouver, or the pieces of land owned by other municipalities. Undertakings of the Crown which are not subject to the municipal or city authorities could not be forced to conform to the air rights regulations. The sale or leasing of air rights over city owned property is subject to any conditions for development the city may wish to establish. The solution of the problem of assuming conformity to a general plan may call for two approaches:

1. The City itself can acquire the air rights and build portions of the development such as the platform. The City would then sell or lease parcels for private development in accordance with the plan. Aside from the financial question, this approach is simplest and could be used for air space development over land which the City already owns or over land where the city
acquires the air rights.

2. The City may adopt regulations under which approval for private owners to build is conditioned on conformance with the plan. This is difficult if a large parcel is to be developed and construction involves several developers working in stages.

Public Ownership and Resale or Lease

Public ownership and resale or lease is the most effective way air rights may be controlled. Acquisition of the whole land parcel and construction of the platform could be part of a program to construct a public facility, the cost of which could be financed by a debenture issue. For example, an off-street parking garage, might be constructed and revenues pledged to the payment of the bonds. The revenues might come from the lease of space over the parking lot as well as from the lot itself. It may be possible for the city to lease parking facilities before construction, with an obligation on the lessee to do all the construction, including the streets, with the city sharing in the street costs. In Japan, a similar procedure has been successfully employed. Space beneath a proposed freeway was granted for a three storey commercial development on the condition that the developers would bear the additional cost of supporting a freeway on the top of their stores.³

The concept of joint development of urban renewal and transportation facilities provides another means of air rights control through public ownership.⁴ Using funds that are available from senior levels of government cities and municipalities can acquire blighted areas and incorporate freeway or transit
Regulatory Controls

Two regulatory controls have been used with some success to insure that air rights development conforms with an overall plan for the area. Both of these controls are based on adopting appropriate zoning regulations.

1. Overlay Zone:

One concept that may be applied is the "overlay zone". An overlay zone would impose upon an existing basic use district certain permissive uses and regulatory standards applicable to such uses, without changing the application of the basic underlying district regulations. In effect, it represents predetermining certain areas for specified conditional uses. In mapping an overlay zone there would be no requirement that the overlay zone boundaries should be coincident with boundaries of the underlying zone. The additional uses permitted and the standards applicable to such conditional uses would be spelled out in the zoning ordinance.

2. Planned Unit Development:

Air rights projects can be regulated by adoption of planned unit development or comprehensive development provisions that exist in most zoning ordinances. Some cities, such as the City of Vancouver, require rezoning for every planned unit development. This procedure is in effect a special district that appears in the zoning map as a planned development district. The provisions of planned unit development zoning are intended to allow considerable flexibility in design, but ground coverage and corridors with the redevelopment plan.
floor area requirements should be at least as restrictive as those applied to other properties in the same zone.

New York and Chicago have incorporated extensive provision within their zoning ordinances for control of air rights development. The Zoning Resolution of the City of New York states that the City Planning Commission may permit developments or enlargements in railroad or transit air space for any use permitted by the applicable district regulations, provided that the following findings are made: 6

(a) That the lot area for such development or enlargement includes only that portion of the right-of-way or yard which is to be completely covered over by a permanent fireproof platform unperforated except for such suitably protected openings as may be required for ventilation, drainage or other necessary purposes.

(b) That adequate access to one or more streets is provided.

(c) That, considering the size of the proposed development or enlargement, the streets providing access to such use will be adequate to handle increased traffic resulting therefrom.

(d) That, from the standpoint of effects upon the character of surrounding areas, the floor area or number of rooms is not unduly concentrated in any portion of such development or enlargement, including any portion located beyond the boundaries of such railroad or transit air space.

In addition, the City Planning Commission "may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, and may require that the structural design of such development or enlargement make due allowance for changes in the layout of tracks or other structures within such right-of-way or yard, which may be deemed necessary in connection with future improvements of the trans-
Thus, air rights developments over railroad yards in New York are permitted by essentially administrative decisions of the Planning Commission, leaving the Commission a certain range of discretion. Approval by the Board of Estimate, the City's governing board is not required.

In Chicago, all air rights developments must be submitted and processed under the planned development provisions of the zoning ordinance. A tract of land designated as a planned development, may be permitted in any zoning district and is given a special district designation on the official zoning map. All former district boundaries are superseded and eliminated.

The zoning ordinance makes a distinction between air rights developments and other types of developments that might qualify as a planned development.

"The zoning ordinance provides that a Planned Unit Development must qualify as a tract of land which is developed as a unit under single ownership or control, or which is under single designated control by a common ownership at the time it is certified as a "Planned Development". It must include two or more principal buildings, except in the case of hospital planned developments or air rights planned developments which may have only one principal building. A Planned Development shall be at least two acres in area. Manufacturing planned developments shall be at least ten acres in area. Air rights planned developments shall not require any minimum area. (Italics mine)"

Air Space Regulation in British Columbia

The planning considerations previously discussed indicate the necessity for the control of air rights development. Accordingly, measures available for the control of air rights
development in British Columbia have been examined.

The City of Vancouver

The Vancouver Charter has empowered the City of Vancouver to make by-laws regulating the use of land within the city.\(^9\) In addition the city has expropriation powers that may be used for acquiring land for development by the City or for resale to private developers.\(^10\) As indicated previously in Chapter II, special powers have been granted to the City to regulate the use of space under, on or above city owned properties. Three alternatives exist for the control of air space development in the City of Vancouver:

1. In accordance with the power to regulate the use of land above, under or on city owned property an Area By-law has been adopted that establishes procedures and rates for this same type of air space development.\(^11\)

2. Within the provisions of the Zoning and Development By-law, no specific regulations are given for air space usage, but presumably the regulations for Comprehensive Unit Development would apply.\(^12\) These regulations are as follows:

11. SPECIAL PROVISIONS:

(4) Comprehensive Unit Development

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 as they deem requisite; provided that the scheme conforms to the following general requirements;

(a) That the scheme is consistent with the intent and the 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.

COMPREHENSIVE DEVELOPMENT DISTRICT SCHEDULE:
1. 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.

3. The City's powers of expropriation may be used to acquire lands and control over air rights projects can be exercised by the City in the terms of a resale contract or development can be done by the city itself. Existing urban renewal legislation and financial assistance could be used for this purpose.

The Municipalities

Whereas the Municipal Act empowers municipalities to adopt zoning regulations and expropriate property, their powers are not as broad as the City of Vancouver. Powers for the control of encroachments on, under or above municipal streets have not been specially granted to the municipalities. The reason for this may be that ownership of most streets and highways in a municipality is vested with the Crown. The controls available to municipalities to regulate air rights projects include their powers of zoning and public development using the municipalities powers of expropriation.

Highways and Railroads

The powers for the control of development on, under or above highways and railways in British Columbia are contained
in the provisions of their respective Acts. The nature of the controls, however, is to specify distance and clearance requirements to provide for the free flow of traffic on the facility, rather than to exercise control over the type of development that may occur. In the case of railways the control over the type of development would be exercised by the municipality or city in which the project was situated. In Vancouver, zoning required for "Project 200" will be applied for in accordance with the requirements of the Comprehensive Development sections of the Vancouver Zoning Bylaw. Air rights developments controlled by agencies of the Crown, however, are not required to conform with the provisions of municipal or zoning ordinances. Only a strong policy of cooperation exists to insure that Crown sponsored air rights developments will conform with the long range plans and objectives of the community in which they are located.

Summary and Conclusions

Problems of compatibility, differential obsolescence, increased density and access and circulation indicate the need for comprehensive planning of air rights projects. The controls that exist in British Columbia to insure that air rights projects conform to the long range planning objectives of a community have been investigated.

The City of Vancouver possesses the most extensive powers for the regulation of air rights development. Municipalities have limited power in controlling air rights development above streets and lanes. The powers of railway companies to develop air space are limited by the controls of the municipality
in which the project is located. Only the Department of Highways and other Crown agencies are not restricted by the regulatory controls of municipality and city. If air rights projects are to be undertaken by Crown agencies, the municipalities and cities in British Columbia have no means whereby this development can be controlled except through a policy of active cooperation. In many municipalities where Crown holdings are extensive planning problems having a severe impact on the community could result from air space usage and the community has no means by which to insure that its best interests are protected.
Footnotes


2 Goldschmidt, Leopold A., ibid.


5 Goldschmidt, Leopold A., loc. cit.


7 City of Chicago, Chicago Zoning Ordinance, 1963.

8 City of Chicago, Rules, Regulations and Procedures in Relation to Planned Development Amendments to the Chicago Zoning Ordinance, as Amended, 1963.


10 Ibid., S. 564

11 City of Vancouver, Area By-law 720.

12 City of Vancouver, Zoning and Development By-law No. 3575.


14 Personal interview with Mr. J. Gilmour, Project Planner for Grosvenor/Laing Ltd., partners in the Project 200 Development, Vancouver, B. C.
CHAPTER V

CONCLUSIONS AND RECOMMENDATIONS

This analysis of air space utilization has revealed numerous legislative and administrative inadequacies that make large scale use of the air rights concept in British Columbia difficult and in some instances impossible. It is important that these inadequacies be studied and that certain legislative changes be made if air space utilization is to become an integral part of future transportation planning and urban development. The conclusions and recommendations of this thesis are summarized as follows:

1. Air space utilization is not a new concept, but one which has been used successfully for many centuries. The air rights concept has been used with greatest success in large metropolitan centers where land values and building densities are high. The most notable air rights projects have been built or are being contemplated above railway trackage located in central cities or in multi-level, multi-purpose downtown redevelopment schemes. Transportation facilities occupy the lower levels of these massive developments. The third type of air rights development that is widely recognized is the use of space above or below freeways or other transportation rights-of-way. At the
present time, one major air rights project is about to be undertaken in British Columbia. Rapid population growth and increased demand for urban land indicate that other air rights projects may be incorporated with future transportation and land use planning.

2. The concept of land ownership and tenure as promulgated by the Canadian Courts and the Land Registry Act is not conducive to air rights development. Canadian Courts have ruled that air and space are not susceptible of ownership and, therefore, cannot be sold, conveyed or leased in any manner. Only when air and space are enclosed by a physical structure bearing on the land surface are they susceptible of ownership. Within the provisions of the Land Registry Act only the surface owner is entitled to be registered as the owner of the fee simple. The interest in land held by other owners can only be registered as a charge against the indefeasible title. In the view of Ruoff, changes must be made in the Land Registry system if it becomes apparent that the singular ownership of indefeasible title is inadequate to meet the needs of society.

3. The Strata Titles Act fulfills a partial need in extending the provision of the Land Registry Act to allow for the individual and multiple ownership of land. The applicability of the Act to strata development above highways and rights-of-way is severely restricted.

(a) Agencies responsible for highways and rights-of-way are only permitted to dispose of real property not required for the purposes of the agency. Application of the Strata Titles Act to air rights development requires
that the land included in the strata plan be registered in indefeasible title as a single parcel in the name of the "strata corporation". Thus, if the agency that owns the right-of-way wishes to develop air rights using this Act, the land involved must be sold to a strata corporation. At the present, no specific authority has been granted by the legislature that will permit the City of Vancouver, the municipalities, the Department of Highways, or the railway companies to participate in this type of development. Only the City of Vancouver may have sufficient power to undertake air rights development, but this is not clearly stated in the Vancouver Charter.

It is recommended that the legislature grant to agencies responsible for highways and rights-of-way the power to alienate lands required for air rights development provided that adequate accommodation is made for the transportation facility within the development.

(b) The Strata Titles Act is restricted to the ownership of land. Title to units of space within a strata development cannot be registered until after the development is completed. To provide for the ownership of space and thus a means whereby ownership of space can be conveyed the Ontario Condominium Act defines the ownership of land to also mean the ownership of space. Thus, title can be issued for space within a strata development prior to its being constructed. If similar legislation were adopted in British Columbia legal procedures could be established that would
permit the owner of the highway or right-of-way to sell the space for air rights development. The air rights platform could be constructed by the agency concerned or by the developer depending upon the terms of the agreement.  

4. In all instances the agencies examined have been granted powers to lease interest in highways and rights-of-way. To accommodate air rights development using the leasing method, two alternatives to development exist:

(a) The agency may lease a section of the highway or right-of-way to the air rights developer. The developer will construct the air rights platform and covenant within the terms of the lease to provide for the free flow of traffic on the transportation facility;

(b) The agency may construct an air rights platform above the transportation facility and lease space on the platform to air rights developers.

5. Feasibility studies of air rights development should consider the long term costs and revenues as well as estimates of the cost of air rights platform. Whereas the cost of the air rights platform may be greater than the cost of comparable land in fee simple, the long term benefits of air rights development may exceed this cost differential.

6. The blighting influence of freeways, rail lines and transit lines on adjacent urban areas has long been recognized. In the United States, provisions were made in the 1964 Housing Act to assist urban areas in acquiring air rights above highways and railways for purposes of developing low and moderate
income housing. Immediate consideration should be given to incorporating similar legislation into the National Housing Act in Canada.

7. If the maximum potential of air rights development is to be achieved, plans for development must be prepared and controls established to insure that plans are adhered to.

In Vancouver where the city owns all the streets, possesses special powers for regulating encroachments on city owned land, and exercises control over private lands through the zoning bylaw, air rights development should be capable of being rigidly controlled. Only in the case of provincial highways or other Crown owned right-of-way is the controlling power of the city limited.

Municipalities in British Columbia are less fortunate. Whereas the City of Vancouver holds title to all streets and lanes, title to all streets and lanes in municipalities is vested with the Crown. In addition, the Crown holds title to all secondary and arterial highways in the municipality. The municipality exercises control only over highway lands they have specifically acquired and over private lands through the zoning bylaw.

To insure successful air rights development in municipalities it is recommended that title to all streets and lanes and perhaps secondary highways be granted to the municipalities, or air rights development "boards" be established in municipalities to select potential air rights sites and to establish controls for development. The "board" should consist of planning
representatives from the municipality, the agencies of the Crown and the railway companies. Coordinated development in this instance is possible only through policies of cooperative effort.

8. In jurisdictions where control over streets, lanes and highways is shared by the provincial government and the municipality, distribution of revenues earned from the sale or leasing of air rights could be a problem. Theoretically, the Province is entitled to collect the revenue for the sale of any interest in the fee simple. The costs of construction, maintenance and control on the highways and streets is a major responsibility of the municipality. Some special method of distributing revenues from sale of air rights should be considered.

9. It has been stated that any agency desirous of developing air rights for its own purposes may do so. Public authorities exercise control over private air rights developments by legislative or administrative regulations. Publicly owned developments, however, are not subject to these same controls. Therefore, the possible uses of publicly owned air space should be carefully studied. The following uses may be appropriate for publicly owned air space:

(a) Municipal uses, such as low income housing, schools, recreation spaces, city office buildings, public parking;
(b) Public housing;
(c) Federal buildings;
(d) Privately developed low income housing;
(e) Hospitals and social welfare facilities operated by non-profit organizations;
(f) Business purposes such as office buildings, commercial structures, and privately owned and operated housing.
BIBLIOGRAPHY
A. Books


B. Public Documents


Canada. Revised Statutes. c. 3. (1952).


Vancouver, City of. Area Bylaw No. 2346. (March 1, 1962).
C. Articles, Periodicals and Journals


"Transportation and the City", Architectural Forum, (October, 1963), 61-94.

D. Reports


E. Speeches and Unpublished Papers


F. Newspaper Articles


G. Correspondence

Letter to the Author from Mr. J. C. Cowan, Barrister and Solicitor, 1070 Douglas Street, Victoria, B. C., dated March 6, 1968.
APPENDICES
APPENDIX "A"

Extracts From the Land Registry Act. R.S.B.C. 1960, c. 208

1. This Act may be cited as the Land Registry Act. R.S. 1948, c. 171, s. 1.

2. (1) In this Act, unless the context otherwise requires,
   "charge" means any estate less than the fee-simple, and shall include any equitable interest in land, and any encumbrance upon land, and any estate or interest registered as a charge under section 145;
   "encumbrance" includes any Crown debt, judgment, mortgage, lien, or other claim to or upon land created, effected, or given for any purpose whatever, whether by the act of the parties or by or in pursuance of any Statute or law, and whether voluntary or involuntary;
   "highway" includes all public streets, roads, trails, lanes, thoroughfares, bridges, and any other public way;
   "instrument" means any Crown grant or other conveyance of Crown lands, or any document in writing relating to the transfer of land or otherwise dealing with or affecting land, or any estate or interest in land, or evidencing title thereto, and shall include any plan or survey of land;
   "judgment" means any judgment, decree, or order of any Court whereby the possession of land is given to or any estate in land is vested in or charge on land is created in favour of any person, and in that part of the Act dealing with the registration of judgments shall include a judgment for the payment of money as defined by the Execution Act for the purpose of execution against lands;
   "municipality" includes, in accordance with the context, either an area incorporated as a city, town, district, township, or village by or under any Act of the Legislature, or the corporation into which the residents of the area have been incorporated as a municipality, and "municipal" has a corresponding meaning;
   "owner" and "registered owner" mean any person registered in the books of any Land Registry Office as owner of land or of any charge on land, whether entitled thereto in his own right or in a representative capacity or otherwise;
   "parcel" means any lot, block, or other area in which land is held or into which land is subdivided;
   "register" means the volumes kept in the respective Land Registry Offices in which certificates of indefeasible title are entered and bound, or the register of those titles as kept at the time to which the context applies;
   "Registrar" includes a Deputy Registrar or Acting-Registrar;
"right-of-way" includes land or any interest in land acquired for the purpose of

(a) constructing, maintaining, or operating any railway, street-railway, tramway, or aerial tramway; or

(b) erecting and maintaining any pole-line, wood or timber chute; or

(c) laying, placing, and maintaining drains, ditches, pipes, transmission-lines, or wires for the conveyance, transmission, or transportation of water, electric power, forest products, oil, or gas, or both oil and gas, or for the disposal of sewage,

or any right-of-way of a like nature or for any purpose necessary for the operation and maintenance of the undertaking;

"transmission" means any change of ownership consequent upon death, or upon any settlement, or upon change of trustees, or upon foreclosure or sale under mortgage or encumbrance, sale under order of Court or for arrears of taxes or assessments, or upon a vesting under an order of Court or the provisions of a Statute; and shall include survivorship under a joint tenancy.

2a. This Act, except Part VI thereof, applies, mutatis mutandis, to any dealing with land under the Strata Titles Act unless inconsistent therewith. 1966, c. 24, s. 2.

23. (1) No estate in fee-simple shall be changed into any limited fee or fee-tail, but the land, whatever form of words is used in any instrument, shall be and remain an estate in fee-simple in the owner for the time being.

(2) Any limitation which before the first day of June, 1921, would have created an estate tail shall transfer the fee-simple or the greatest estate that the transferor had in his land. R.S. 1948, c. 171, s. 23.

24. (1) A right-of-way on, over or under land for the purposes defined under the definition of "right-of-way" in section 2, granted or created by the Crown in right of the Province, or by any public officer or department of the Crown under any Statute having the force of law, or by an instrument executed by the registered owner of the land, or by an instrument having the same effect as if executed by the registered owner of the land, in favour of the Crown, a municipality, an improvement district, a railway, a public utility company, a pulp or timber company, or a company authorized to transport oil or gas, or both oil and gas, upon registration of the instrument, constitutes a charge on the land in favour of the grantee, notwithstanding that the benefit of the right-of-way is not annexed to any land of the grantee, and confers upon the grantee the right to use the land charged in accordance with the terms of the grant, and all the terms, conditions, and covenants expressed in the grant are binding upon and inure to the benefit of the grantee, its successors and assigns, and the grantor, his heirs, personal representatives, successors and assigns, except in so far as a contrary intention appears.
(2) No person who executes an instrument, whereby such a right-of-way as is referred to in subsection (1) is created, is liable for any breach of any covenant contained in the instrument after he has ceased to be owner of the land.

(3) This section is retroactive in its application and applies to all instruments of the nature described in subsection (1) registered before as well as after the enactment of this section. R.S. 1948, c. 171, s. 24; 1951, c. 42, s. 3.

24A. (1) There may be registered as annexed to any land that is being or has been registered a condition or covenant in favour of the Crown or of a municipality that the land, or any specified portion thereof, is not to be built on, or is to be or not to be used in a particular manner.

(2) When any such condition or covenant is registered, the Registrar shall enter a memorandum thereof upon the proper certificate or certificates of title.

(3) The first owner of the land in respect of which a condition or covenant is registered under subsection (2) as being annexed thereto,

104. (1) Where the plan has been signed by an owner prima facie entitled to subdivide the lands, but the concurrence of other owners is required, the plan to be signed shall be submitted for signature by delivery to the person whose signature is required, who may, within thirty days after the plan is submitted for signature, by notice in writing, require the person submitting the plan to furnish profiles and sketch as referred to in section 92.

(2) If at the expiration of thirty days from the delivery of the plan, or from the furnishing of the profile or sketch required, the plan has not been signed and returned to the person who submitted it for signature, the Registrar, at the request of the person who submitted the plan for signature, shall issue an appointment for the hearing of all parties interested, and on the return of the appointment may, if he considers the plan a proper one to be deposited, order it to be deposited.

(3) Any party dissatisfied with such order may appeal therefrom to the Lieutenant-Governor in Council, by notice served upon the Registrar and the other parties interested within ten days from the making of the order, and the Lieutenant-Governor in Council may vary, alter, or rescind the order as to him may appear just.

(4) Upon the plan being deposited pursuant to the order for its deposit, it has the same force and effect in all respects as if it had been duly signed, without prejudice, however (except as to any highway, public park, or public square shown on the plan), to any condition, exception, reservation, charge, lien, or interest to which the registered title is subject. R.S. 1948, c. 171, s. 104.

105. (1) The Registrar shall examine the application and the instruments and plan produced in support thereof, and if satisfied that they are in order and in compliance with all the requirements of this Act, shall assign to the plan a serial deposit number and issue such new certificates of title for the parcels shown upon the plan as may be necessary.
(2) No certificate of title shall contain more than fifty parcels.

(3) Upon the issue of the new certificate of title, the former certificate shall be cancelled or endorsed, as the case may be, in like manner as provided in section 159 in the case of a transfer of the whole or a portion of lands included in a certificate of title.

(4) Upon the issue of the new certificate, the blue-print of the plan shall be transmitted to the Municipal or Provincial Assessor, as the case may be. R.S. 1948, c. 171, s. 104.

Reference and Explanatory Plans

106. (1) The Registrar, in his discretion, may accept a full metes and bounds description or abbreviated description, with or without a reference plan or an explanatory plan, in any of the following cases:

(a) Where a subdivision plan creating blocks of lots has been duly registered and the new parcel is created by dividing the frontage of a lot:

(b) Where the new parcel is created for the purpose of adding the same to an already existing adjoining parcel, in which event the new parcel shall thereafter be deemed, for the purposes of the provisions of this Act respecting subdivision, as an integral portion of the parcel to which it is added:

(c) Where an easement is being created over land for the benefit of adjoining or surrounding lands:

(d) Where a parcel is being dedicated for highway purposes, or is being conveyed for public purposes to the Crown or to the municipality in which the land is situate, or to any public corporate body exercising public functions over the area in which the land is situate, or where there is a statutory right to acquire a parcel smaller than the registered parcel:

(e) Where the Registrar is satisfied that the new parcel is created to provide for an isolated transaction, and that the creation thereof is not a step in a progressive subdivision, and that, owing to the previous legal establishment of such sufficient public highways as are or may be required to be provided by or under section 86, the acceptance of the description or the deposit of the plan is not against the public interest.

(2) The Registrar, before exercising his discretion in respect of the matters covered by clause (a), (b), or (e) of subsection (1), shall be furnished by the applicant with evidence to his satisfaction that approval of the subdivision of the land affected has been granted by the approving officer. R.S. 1948, c. 171, s. 106; 1949, c. 34, s. 6; 1954, c. 18, s. 7.
107. (1) The applicant shall tender an examination fee of two dollars with the initial application for approval of a subdivision being effected under the procedure of section 106.

(2) In considering the application before him, the approving officer shall be guided by the same principles and requirements as apply to the examination of subdivisions being made by subdivision plan.

(3) In case the approving officer refuses to grant approval, or where approval is not granted within sixty days from the date when the application is tendered to him for approval, the owner of the land is entitled to appeal to a Judge of the Supreme Court in Chambers, and such appeals shall be governed by the procedure contained in this Act for appeals from the non-approval of subdivision plans, and the Judge may make such order as the circumstances of the case require, and may declare the proposed subdivision approved, and such declaration will constitute approval by the approving officer within the meaning of this Act. R.S. 1943, c. 171, s. 107; 1954, c. 18, s. 8.

108. Every explanatory or reference plan shall, unless the application of this section to the plan is dispensed with by the Registrar, be signed by the owner of the land dealt with by the plan and witnessed in like manner as other instruments required to be registered. R.S. 1948, c. 171, s. 108.

109. The Registrar shall assign a serial deposit number to each reference or explanatory plan accepted by him. R.S. 1948, c. 171, s. 109.

General

110. The Registrar may, in his discretion, refuse to accept any plan, the measurements of which do not correspond with the measurements shown on any plan covering the same land in whole or in part or having a common boundary, already deposited in his office, and may order a new survey, or that all necessary steps be taken to ascertain the true measurements. R.S. 1948, c. 171, s. 110.

111. Upon the filing of satisfactory evidence of the facts, and upon the giving of notice to such parties and in such form as the Registrar directs, the Registrar may correct any erroneous measurement upon, or any error, defect, or omission in, any deposited plan. R.S. 1948, c. 171, s. 111.

112. (1) Where, on the subdivision of land, any subdivision plan or reference plan covering the land subdivided is deposited in any Land Registry Office, and any portion of the land subdivided is shown on the plan

(a) as a highway, park, or public square, and is not designated thereon to be of a private nature; or

(b) as covered by water and as lying immediately adjacent to a lake, river, stream, or other body of water not within the land subdivided, and designated thereon to be returned to the Crown,
the deposit of the plan shall be deemed to be a dedication by the owner of the land to the public of each portion thereof shown on the plan as a highway, park, or public square, or returned to the Crown, for the purpose and object indicated on or to be inferred from the words or markings on the plan. No certificate of title shall issue for any highway, park, or public square so dedicated.

(2) The deposit of any plan to which this section applies shall be deemed to vest in the Crown in right of the Province the title to such portion of the land subdivided as is shown thereon as a highway, park, or public square; provided that the deposit of the plan shall not be deemed to vest in the Crown or otherwise affect the right or title to the minerals, precious or base, including coal, petroleum, fireclay, and natural gas, underlying any portion of the land shown as a highway, park, or public square, anything in the Highway Act, the Municipal Act, or any other Act to the contrary notwithstanding; but, upon conveyance of a parcel shown upon the plan adjoining a highway, park, or public square so dedicated, such minerals underlying the portion of the highway, park, or public square opposite the parcel conveyed and between that parcel and the middle line of the highway, park, or public square, unless expressly reserved, pass to and vest in the owner for the time being of the parcel conveyed.

(3) Where, on the subdivision of land, any subdivision plan or reference plan covering the land subdivided is deposited in any Land Registry Office, and any portion of the land subdivided is designated on the plan "Returned to Crown," the deposit of the plan shall be deemed to be a grant in fee-simple by the registered owner in favour of Her Majesty the Queen in right of the Province. No certificate of title shall issue for any area designated as aforesaid.

(4) Where the subdivided area shown upon and included within any subdivision plan heretofore or hereafter deposited in any Land Registry Office adjoins land covered by water, and such land is included within the subdivider's certificate of title and abuts land the title to which is vested in Her Majesty the Queen in right of the Province, such deposit shall be deemed to be a grant in fee-simple of such first-mentioned land to Her Majesty the Queen in right of the Province, and the title of such registered owner to such first-mentioned land covered by water shall be deemed to be extinguished. No certificate of title shall issue for any land granted as aforesaid.

(5) A grant pursuant to subsection (3) or (4) is deemed to include the mines and minerals, except where the title to these is registered in the name of an owner not required to sign a subdivision plan. R.S. 1948, c. 171, s. 112; 1965, c. 22, s. 6.

113. (1) The deposit of a subdivision plan duly approved by the approving officer extinguishes all highways within the land covered by the plan that adjoined on both sides land the title to which is registered in the name of the subdivider, and that were previously established whether by notice in the Gazette, by the expenditure of public money, by dedication, or otherwise, other than highways shown on the plan, and the deposit of the plan shall be deemed to vest the title to the highways
Delivery of duplicate certificate.

Ownership of surface necessary to registration in fee-simple.

Ownership of first estate of inheritance necessary to registration in fee-simple.

Registration at instance of several persons interested.

Registration of joint tenants.

Recognition of trust estates.

extinguished in the owner of the land covered by the plan without any instrument of transfer. Where the title to the land covered by the plan is subject to a registered charge, the charge shall be deemed to be modified by including the land covered by the highways extinguished.

(2) This section applies only to highways in unorganized territory that, by notice published in the Gazette, have been discontinued and closed. 1949, c. 34, s. 7; 1950, c. 36, s. 6; 1961, c. 33, s. 14.

144. Delivery of the duplicate certificate of title may be made by mailing it to the person who made the application or the person named in the application for that purpose at his address set out in the application, or by personal delivery to that person, and the person to whom it is personally delivered shall sign a receipt therefor. R.S. 1948, c. 171, s. 143; 1950, c. 36, s. 9; 1961, c. 33, s. 19.

145. The owner of the surface of land is alone entitled to be or remain registered as owner of the fee-simple. The owner of any part of land above or below its surface who is not also the owner of the surface is only entitled to register his estate or interest as a charge. If no Crown grant of the surface has been registered, the Registrar shall enter the Crown in the register as owner of the surface, and the charge shall be registered by endorsement thereon. R.S. 1948, c. 171, s. 144.

146. Where two or more persons are owners of distinct estates or interests in the same land, by way of remainder or otherwise, the first owner of an estate of inheritance shall be registered as the owner of the fee-simple; but in any certificate of title issued by the Registrar thereon the owner of such estate of inheritance shall not be made to appear to be possessed of a larger or different estate from that to which he is by law entitled; and the estates or interests of the other owners shall be registered by way of a charge according to their priority. R.S. 1948, c. 171, s. 145.

147. The Registrar may effect registration of the fee-simple as well at the instance of several persons, who together are entitled to the complement of the fee-simple, as also of any joint tenant or tenant in common. R.S. 1948, c. 171, s. 146.

148. Where, upon the registration of the title to land under any instrument, two or more persons take as joint tenants, the Registrar shall enter in the register and on the duplicate certificate of title, following the names of such persons, the words “joint tenants.” R.S. 1948, c. 171, s. 147.

149. (1) Where any land or any estate or interest in land vests in any executor, administrator, or trustee, the title of such executor, administrator, or trustee may be registered, but no particulars of any trust or purpose created or declared in respect of the same shall be made in the register or on the duplicate certificate of title, but a memorandum shall be made in the register and on the duplicate certificate of title and on any certificate of charge relating to the land by writing the words “in trust” or “upon conditions” or other apt words, and making a reference by number to the instrument creating or declaring the trust or purpose, which instrument shall be filed in the Land Registry Office when the application for registration is made; provided that if the instrument, other than a will,
258. (1) The Lieutenant-Governor in Council may from time to time—

(a) make such rules and orders, forms and directions as may be necessary in relation to any matter to be brought before the Court or a Judge under this Act, and discharge, alter, or modify the same;

(b) establish a scale of fees to be taken on all petitions, motions, applications, and other proceedings authorized by this Act to be taken and preferred;

(c) make such rules and orders, forms and directions for carrying out the provisions of this Act or for regulating procedure hereunder, or for establishing the practice under this Act in so far as any other Act, Provincial or Dominion, relates to or affects the title to land, as may be necessary;

(d) modify or alter the form of and the manner in which the registers and certificates relating to titles are kept or furnished, and may make regulations and orders respecting the manner in which applications under this Act relating to land are made and dealt with, and may therein modify the provisions of this Act relating thereto;

(e) vary or alter any of the forms in the First Schedule, and may substitute other forms of a like nature therefor;

(f) recommend a form or forms of deed, transfer, mortgage, agreement for sale, lease, assignment, or any other form required for dealing with registered interests in land;

(g) in recommending a form for use in a Land Registry Office, define the meaning and legal effect of any word or phrase used therein, and recommend instructions for the use and completion of the form.

(2) The Lieutenant-Governor in Council may also from time to time—

make regulations to permit or require the registration, and to govern the procedure for the registration; in Land Registry Offices of the title to and dealings with any estate or interest in land less than the fee-simple, including rights-of-way which may heretofore have been or may hereafter be granted or created by the Crown in right of the Province, or by the Crown in right of Canada, or by any public officer or department of the Province or Canada under any Statute or regulation having the force of law. The regulations may classify the various estates or interests in any manner that is deemed advisable and apply separate provisions to separate classes, and may make registration compulsory or permissive, and may extend all or any of the provisions of the Act to the registration, and may specify the office or offices in which the registration is to be effected, and may provide that registered judgments shall form a charge on all such estates or interests of the judgment debtor registered under the regulations so made, and, in the case of rights-of-way, may fix the value per mile of the right-of-way for the purpose of payment of ad valorem fees on the registration of the title to the right-of-way.

(3) Notice of every Order in Council made under this section shall be published in one issue of the Gazette, and the Order in Council shall become effective on the completion of publication unless a later date for its becoming effective is fixed by the Order, in which case it shall become effective on that date. R.S. 1948, c. 171, s. 257; 1951, c. 42, s. 7; 1963, c. 22, s. 6; 1965, c. 22, s. 14.
APPENDIX "B".


[Effective September 1, 1966.]

1. This Act may be cited as the Strata Titles Act. 1966, c. 46, s. 1.

2. In this Act, unless the context otherwise requires,
   "building" means the building or buildings shown in the strata plan;
   "common property" means so much of the land for the time being comprised in a strata plan that is not comprised in any strata lot shown in the plan;
   "Court" means the Supreme Court of British Columbia;
   "owner" means the person registered in the books of any Land Registry Office as owner in fee-simple of a strata lot, whether entitled thereto in his own right or in a representative capacity or otherwise;
   "Registrar" means a Registrar within the meaning of the Land Registry Act;
   "special resolution" means a resolution passed at a general meeting of the strata corporation of which at least fourteen days' notice specifying the purpose of the special resolution has been given by a majority of not less than three-fourths of the total unit entitlement of the strata lots, and not less than three-fourths of all members;
   "strata corporation" means the corporation created by section 6;
   "strata lot" means a lot shown as such in a strata plan;
   "strata plan" means a plan that
      (a) is described in the title or heading thereto as a strata plan;
      (b) shows the whole or any part of the land comprised therein as being divided into two or more strata, whether or not any such stratum is divided into two or more strata lots; and
      (c) complies with the requirements of section 4, and includes a plan of resubdivision of any strata lot or strata lots in a strata plan;
   "unanimous resolution" means a resolution unanimously passed at a duly convened meeting of the strata corporation at which all persons entitled to exercise the powers of voting conferred by or under this Act are present personally or by proxy at the time of the motion;
   "unit entitlement" in respect of a strata lot means the unit entitlement of that strata lot, specified or apportioned in accordance with clause (f) of subsection (1) of section 4 or subsection (5) of section 16. 1966, c. 46, s. 2,
3. (1) Land may be subdivided into strata lots by the deposit of a strata plan, and the strata lots created thereby, or any one or more of them, may devolve or be transferred, leased, mortgaged, or otherwise dealt with in the same manner and form as any land the title to which is registered under the Land Registry Act.

(2) A strata plan shall not be accepted for deposit by the Registrar unless

(a) the title to the land included in the strata plan is registered in the register of indefeasible fees; and

(b) the land included in the strata plan is shown as a single parcel on a subdivision plan deposited pursuant to the Land Registry Act.

(3) The Registrar shall examine the application and the instrument and strata plan produced in support thereof, and, if satisfied that they are in order and in compliance with all the applicable requirements of the Land Registry Act, shall assign to the strata plan a serial deposit number and issue such new certificates of title for the strata lots shown upon the strata plan as may be necessary.

(4) Upon the issue of the new certificate of title, the former certificate shall be cancelled in like manner as provided in section 159 of the Land Registry Act in the case of a transfer of the whole or a portion of lands included in a certificate of title.

(5) A strata plan shall be deemed, upon registration, to be embodied in the register and, notwithstanding any other Act, the owner shall hold his strata lot and his share in the common property subject to any interests affecting the same for the time being notified on the registered strata plan and subject to any amendments to strata lots or common property shown on that plan. 1966, c. 46, s. 3.

4. (1) A strata plan shall delineate the plane boundaries of the land included in the strata plan and the location of the building in relation thereto; bear a statement containing such particulars as may be necessary to identify the title to the land included in the strata plan; include a drawing illustrating the strata lots and distinguishing the strata lots by numbers or letters in consecutive order; define the boundaries of each strata lot in the building by reference to floors, walls, and ceilings; have endorsed upon it a schedule specifying in whole numbers the unit entitlement of each lot and a number equal to the aggregate unit entitlement of all lots, which unit entitlement shall determine

(i) the voting rights of owners;
(ii) the quantum of the undivided share of each owner in the common property; and
(iii) the proportion payable by each owner of contributions levied under section 14;

(g) have endorsed upon it the address at which documents may be served on the strata corporation; and

(h) contain such other data as may be prescribed by regulation.

(2) Unless otherwise stipulated in the strata plan, the common boundary of any strata lot with any other strata lot or with common property is the centre of the floor, wall, or ceiling, as the case may be.

(3) Every strata plan tendered for deposit in a Land Registry Office

(a) shall be accompanied by the certificate of a British Columbia land surveyor that the building shown on the strata plan is within the external boundaries of the land that is the subject of the strata plan, or that appropriate and necessary easements or other interests exist to provide for any part or parts of the building that is or are not within the boundaries; and

(b) shall be accompanied by whatever number of copies thereof may be required by the Registrar for taxing authorities; and

(c) shall comply with all regulations which may from time to time be made by the Surveyor-General for the purposes of this Act; and

(d) shall be signed by the owner of the land included in the strata plan and witnessed in like manner as instruments required to be registered under the Land Registry Act; and

(e) shall comply with subsection (1).

(4) (a) Upon registration of an instrument or instruments evidencing a transfer of common property by a strata corporation, the Registrar shall cause the strata plan in which the property transferred was included to be amended by deleting that property therefrom.

(b) Upon registration in accordance with the Land Registry Act of an instrument or instruments evidencing transfer of lands to a strata corporation, the Registrar shall cause the appropriate strata plan to be amended accordingly.

(5) The Registrar shall register a charge against the common property included in the strata plan by endorsing a memorandum thereof on the strata plan. 1966, c. 46, s. 4.

5. (1) The common property shall be held by the owners as tenants in common in shares proportional to the unit entitlement of their respective strata lots.

(2) Save as in this Act provided, no share in the common property shall be dealt with except with the strata lot of the owner, and any instrument dealing with a strata lot shall operate to deal with the share of the owner in the common property, without express reference thereto.

(3) The Registrar shall show on every certificate of title for a strata lot included in a strata plan the owner's share in the common property created by that plan. 1966, c. 46, s. 5.
(1) (a) The owner or owners of the strata lots included in a strata plan and his or their successors shall, upon deposit of the strata plan in a Land Registry Office, constitute and be members of a body corporate under the name "The Owners, Strata Plan No. " (the number to be specified shall be the registration number of the strata plan).

(b) In this subsection, "owners" includes the persons entitled to the land included in the strata plan under subsection (3) of section 18.

(2) The Companies Act and the Companies Clauses Act do not apply to a strata corporation.

(3) Subject to this Act, the strata corporation is responsible for the enforcement of the by-laws, and the control, management, and administration of the common property.

(4) A strata corporation

(a) has perpetual succession;

(b) shall have a common seal;

(c) may sue and be sued;

(d) may, as representative of the owners of the strata lots included in the strata plan, sue for and recover damages and costs, or either, in respect of any damage or injury to the common property caused by any person, whether an owner or not; and

(e) may be sued in respect of any matter connected with the land included in the strata plan for which the owners are jointly liable.

(5) A judgment against the strata corporation shall for all purposes be deemed to be a judgment against the owners of the strata lots included in the strata plan in respective amounts proportionate to their unit entitlements as shown on the strata plan, and execution may be made accordingly. 1966, c. 46, s. 6.

(1) Where an owner's interest is subject to a registered mortgage, the mortgage may provide that the power of voting conferred on an owner by or under this Act be exercised in all cases or in specified cases by the mortgagee.

(2) Subsection (1) does not apply to allow a mortgagee to vote unless the mortgagee has given written notice of his mortgage to the strata corporation. 1966, c. 46, s. 7.

(1) The owners by unanimous or special resolution may direct the strata corporation to transfer or charge common property, or any part thereof.

(2) Where a resolution is duly passed under subsection (1) and all persons other than owners having registered or statutory interests or estates in the land included in the strata plan which have been notified to the strata corporation have, in the case either of a transfer or a charge, consented in writing to the release of those interests or estates in respect
of the land comprised in the proposed transfer or, in the case of a charge, have approved in writing of the execution of the proposed charge, the strata corporation shall execute the appropriate instrument, and the instrument is valid and effective without execution by any person having an interest in the common property, and the receipt of the strata corporation for the purchase money, rent, premiums, or other moneys payable to the strata corporation under the terms of the transfer or charge shall be a sufficient discharge, and shall exonerate the persons taking under the transfer or the charge, as the case may be, from any responsibility for the application of the moneys expressed to have been so received.

(3) Every such instrument presented for registration under the Land Registry Act shall be endorsed with or accompanied by a certificate under the seal of the strata corporation that the resolution was duly passed, that the instrument conforms with the terms thereof, and that all necessary consents were given.

(4) In favour of purchasers of the common property and in favour of the Registrar, the certificate mentioned in subsection (3) is conclusive evidence of the facts stated therein.

(5) The Registrar shall register each transfer by issuing to the transferee a certificate of title for the land transferred, and no notification of the transfer shall be made on any certificate of title or folium of the register.

(6) Upon registration of a transfer of common property, the Registrar shall, before issuing a certificate of title, amend the registered strata plan by deleting therefrom the common property comprised in the transfer. 1966, c. 46, s. 8.
Valuation of interests other than fee-simple.

338. (1) Where any interest in land or improvements other than the ownership of the fee-simple can be assessed within the municipality under the provisions of this or any other Act, the assessed value of the interest shall be the sum which a willing purchaser would be expected to pay to a willing vendor for such interest without including the value of the goodwill of any business connected with such interest.

(2) Any structure, aqueduct, tunnel (except mine-workings), bridge, dam, reservoir, road, storage-tank, transformer, or substation which extends over, under, or through land may be separately assessed to the person owning, leasing, maintaining, operating, or using the same, notwithstanding that the land may be owned by some other person. 1957, c. 42, s. 335.

Uses of highways other than traffic.

431. (1) Notwithstanding any public or private Act, but not inconsistent with the Motor-vehicle Act, in addition to the powers exercisable under section 460, the Council may by-law regulate all other uses of or involving any highway or portion thereof or public place, and, except under such terms and conditions as may be imposed by the Council, no person shall excavate in, cause a nuisance upon, encumber, obstruct, injure, foul, or damage any portion of a highway or other public place.

(2) Any person being unreasonably prevented from carrying out any work, undertaking, or construction lawfully permitted on, over, or under any highway or other public place may appeal to a Judge of the Supreme Court or of the County Court, who may in his discretion order that the applicant be permitted to carry out the work, undertaking, or construction under such conditions as may be prescribed in the order.

(3) Without limiting the foregoing, the Council may authorize the removal, detention, or impounding of any chattel or obstruction unlawfully occupying any portion of a highway or public place, and provide for a scale of fees, costs, and expenses therefor, and provide for the recovery of the fees, costs, and expenses either from the owner of the chattel, or by the sale of the chattel at public auction, or by action in any Court of competent jurisdiction.

(4) The Council may grant to any organization the privilege of using any highway, or highways, or portion or portions thereof, on certain specified dates for the purpose of soliciting aid and prohibit any person from so using unless such privilege has been granted. 1957, c. 42, s. 459; 1958, c. 32, s. 214; 1964, c. 33, s. 48.
462. The Council may by by-law allow the construction of gates across any highway at such points as may be deemed advisable within half a mile of a railway crossing or for the assistance of Customs and other officials in the performance of their duties, and the municipality is not subject to any liability by reason of the fact that gates may have been so constructed across a highway or that damages may have resulted to any person by reason of the existence of such gates. 1957, c. 42, s. 460.

463. For the purposes of this Part, the Council may confer upon an officer or officers of the municipality such powers and authority as may be necessary for the enforcement of any by-law adopted under this Part. 1957, c. 42, s. 461; 1958, c. 32, s. 215.

PART XII

ACQUISITION AND DISPOSAL OF PROPERTY

Division (1)—Acquisition of Real Property

464. (1) The Council may, subject to the restrictions in this Act contained, acquire for municipal purposes by purchase, gift, lease, or otherwise any real property and any rights, easements, rights-of-way, or privileges in and to real property from Canada or the Province, or from any person.

(2) Any agreement to acquire real property entered into by a town, village, or local district containing any restrictive covenant requires the approval of the Inspector of Municipalities. 1957, c. 42, s. 462; 1958, c. 32, s. 216; 1960, c. 37, s. 17.

465. (1) The Council may develop property owned by the municipality for use as a residential, commercial, or industrial area, or any combination of such uses, and provide such works and services as are deemed necessary or beneficial to the development.

(2) For the purposes of subsection (1), the Council of a city or district municipality may,

(a) by resolution or by-law, acquire property other than by expropriation; or,

(b) by by-law and with the approval of the Lieutenant-Governor in Council, acquire property by expropriation.
**469.** The Council of a city, town, or district municipality may by by-law, with the approval of the Lieutenant-Governor in Council, convey to the Board of School Trustees having jurisdiction within the municipality, in trust for school purposes, any lands reserved or acquired by the municipality for school purposes. 1957, c. 42, s. 467.

**470.** The Council shall not grant, either directly or indirectly, any option to purchase real property owned by the municipality, and no sale of municipal property is valid which is based on an option, whether constructive or implied, contained in any agreement or lease entered into by or on behalf of the municipality. 1957, c. 42, s. 468; 1958, c. 32, s. 221.

**471.** The Council may, subject to the requirements of this Division, sell by auction or otherwise, and on such terms and conditions as may be deemed advisable, the interest of the municipality in any real property not required for municipal purposes and which is not reserved or dedicated. 1957, c. 42, s. 469; 1958, c. 32, s. 222; 1959, c. 56, s. 40; 1960, c. 37, s. 19; 1961, c. 43, s. 22.

**472.** (1) Subject to subsection (2), all moneys received from the sale of real property shall be placed to the credit of a special fund under Part VII.

(2) Where there remains any municipal debt incurred for the purchase or improvement of any real property, there shall be set aside the whole of the proceeds of the sale of such real property or such portion thereof as is required to repay the debt as it matures, together with interest. 1957, c. 42, s. 470.

**473.** (1) Unless a parcel of land is intended to be sold or leased by public auction or tender, it shall not be sold or leased by a municipality unless a description thereof, and the lowest price or rental which will be accepted therefor in the event that the parcel is offered for sale or lease, has been posted in the locations specified in subsection (4) of section 55.

(2) No parcel of land upon which there is a building or structure of any kind shall be offered for sale by a municipality unless a notice of intention to sell the parcel has been published in a newspaper published or circulating in the municipality at least one week before and not more than three months before the sale of the parcel. 1957, c. 42, s. 471; 1958, c. 32, s. 223; 1964, c. 33, s. 50.

**474.** (1) Notwithstanding sections 471 and 473, the Council may, by by-law adopted by an affirmative vote of at least two-thirds of all the members thereof, grant easements or rights-of-way over any real property owned by the municipality.

(2) The Council of a city or district municipality may, if deemed expedient, exercise the powers under subsection (1) by resolution. 1957, c. 42, s. 472; 1958, c. 32, s. 224.
475. Tax-sale lands which have been sold by agreement for sale or subject to mortgage, if repossessed by the municipality for satisfaction of amounts due, shall again be deemed to be tax-sale lands. 1957, c. 42, s. 473.

476. (1) Where lands become the property of the municipality as a result of tax sale or non-payment of taxes and are sold by agreement for sale, the Collector, upon default being made in the payment to the municipality of any instalment or interest, shall send by registered mail to the purchaser at his address named in the agreement for sale, or cause to be personally served upon the purchaser, a notice to the effect that if the amounts in default are not paid within ninety days from the date of the service or mailing of the registered notice, all the right, title, and interest of the purchaser in and to the agreement for sale, the amounts paid thereunder, and the lands referred to therein will cease and determine, and that the amounts paid thereunder will be forfeited to the municipality.

(2) If the purchaser fails to pay or cause to be paid within the said period the amounts in default, all his right, title, and interest in and to the agreement for sale, the amounts paid thereunder, and the lands referred to therein cease and determine, and the said lands immediately become revested in the municipality, free from all claims in respect of the agreement for sale, and all amounts paid under the agreement are forfeited to the municipality.

(3) Notwithstanding the provisions of the Laws Declaratory Act or any rule of law or equity to the contrary, no person has the right or is at liberty to commence or bring any suit or action against the municipality for relief against forfeiture or otherwise in respect of the cancellation of the agreement for sale or the retainer of the moneys paid to the municipality under the agreement for sale.

(4) The Registrar of Titles for the district in which the land is situate, upon the Collector filing with him a statutory declaration of the continuation of the default after the expiration of the said ninety days, together with evidence of notice or service, shall cancel all charges or encumbrances, of whatever nature, appearing in the records of the Land Registry Office against the said lands.

(5) The Registrar of Titles may require evidence of sufficiency of service, and if not satisfied the service shall be effected in such manner as a Judge of the County or Supreme Court may direct, upon an ex parte application on behalf of the municipality. 1957, c. 42, s. 474.

Division (3).—Leases

477. (1) The Council may by by-law absolutely lease any real property held or owned by the municipality, other than land acquired or held under section 621, for any term or terms, including any option for renewal not exceeding in the aggregate ninety-nine years.
Every lease made under this section shall contain
(a) a proviso for re-entry by the lessor on non-payment of rent or non-observance or non-performance of covenants therein contained;
(b) a prohibition against subletting without the approval of the Council,
and may be made subject to the Short Form of Leases Act.

Every lease under this section the term of which exceeds ten years shall contain provisions requiring that
(a) the rental fee or fees be renegotiated at the expiration of ten years and every five years thereafter during the term of the lease; and
(b) if the parties to the lease at any time fail to agree under clause (a), the matter shall be referred to arbitration under the Arbitration Act. 1957, c. 42, s. 475; 1958, c. 32, s. 225; 1961, c. 43, s. 23; 1964, c. 33, s. 51.

Exception.

Section 473 and subsections (2) and (3) of section 477 do not apply in the case of the sale or lease of real property to Her Majesty the Queen in right of the Province or of Canada, a regional district, a municipality, or a Board of School Trustees. 1966, c. 31, s. 13; 1967, c. 28, s. 29.

Division (4).—Compensation for Property Expropriated or Injured

(1) The Council shall make to owners, occupiers, or other persons interested in real property entered upon, taken, expropriated, or used by the municipality in the exercise of any of its powers, or injuriously affected by the exercise of any of its powers, due compensation for any damages (including interest upon the compensation at the rate of six per centum per annum from the time the real property was entered upon, taken, or used) necessarily resulting from the exercise of such powers beyond any advantage which the claimant may derive from the contemplated work; and a claim for compensation, if not mutually agreed upon, shall be decided by three arbitrators to be appointed as hereinafter mentioned, namely: The municipality shall appoint one, the owner or tenant or other person making the claim, or his agent, shall appoint another, and such two arbitrators shall appoint a third arbitrator within ten days after their appointment; but in the event of such two arbitrators not appointing a third arbitrator within the time aforesaid, one of the Judges of the Supreme Court shall, on application of either party by summons in Chambers, of which due notice shall be given to the other party, appoint such third arbitrator.

(2) If any doubt arises as to procedure under this Division, the Arbitration Act applies. 1957, c. 42, s. 476.

The parties to the reference may agree to submit the matter to one arbitrator, whose award shall be as binding and conclusive as that of two or three arbitrators, or with consent of the parties any Judge of
PART XIII

PUBLIC WORKS

Division (1).—Municipal Buildings

504. (1) The Council may by by-law acquire, by purchase, lease, or otherwise, and hold and use real or personal property, within or without the municipality, for a municipal hall, and for workshops, storage-sheds, yards, and other buildings, structures, or premises required for municipal purposes.

(2) The Council may, on any property acquired or held for any or all of the purposes mentioned in subsection (1), construct, maintain, operate, and use buildings and improvements and provide any necessary accommodation, facilities, or equipment therefor.

(3) The Council of a city or district municipality may expropriate real or personal property within the municipality for any purpose mentioned in subsection (1) or section 641. 1957, c. 42, s. 502; 1958, c. 32, s. 227.

Division (2).—Highways

505. This Division does not apply to a local district. 1957, c. 42, s. 503.

506. The right of possession of every highway in a municipality is vested in the municipality, subject to any rights in the soil which the persons who laid out such highway may have reserved, and, subject as aforesaid, the right of possession of the municipality is not adversely affected nor derogated from by prescription in favour of any other occupier. 1957, c. 42, s. 504.

507. Except where a municipality has purchased or taken land for a highway and the title thereof is registered in the name of the municipality, the soil and freehold of every highway in a municipality are vested in Her Majesty, her heirs and successors, and no title adverse to or in derogation to the title of Her Majesty shall be acquired by length of possession merely. 1957, c. 42, s. 505.

508. Under special circumstances, the Lieutenant-Governor in Council may abandon any portion of any highway vested in the Crown and vest title in any land comprised in that portion in any person, and such vesting shall have the same effect as a Crown grant. 1957, c. 42, s. 506; 1958, c. 32, s. 228.
509. (1) The Council may by by-law dispose of any portion of a highway in exchange for such lands as may be necessary for the purpose of improving, widening, straightening, relocating, or diverting the highway.

(2) All deeds executed under this section have effect as a Crown grant free of all rights-of-way, and all lands taken in exchange for any portion of a highway under this section are public highways, and the title thereto is vested in the Crown.

(3) Before adopting a by-law under this section, the Council shall cause public notice of intention to be given by advertisement once each week for two consecutive weeks in a newspaper published or circulating in the municipality. 1957, c. 42, s. 507; 1958, c. 32, s. 229.

510. (1) In the event of the Crown not having resumed the entire acreage reserved in any Crown grant for making roads, canals, bridges, towing-paths, or other works of public utility or convenience, a district municipality may, by by-law approved by the Lieutenant-Governor in Council, resume any part of such lands so granted which may be deemed necessary for making roads, canals, bridges, towing-paths, or other works of public utility or convenience, not exceeding one-twentieth part of the whole of the lands granted as aforesaid.

(2) No resumption shall be made of any lands on which any buildings may have been erected, or which may be in use as gardens or otherwise for the more convenient occupation of any such buildings. 1957, c. 42, s. 508.

511. In any district municipality where there have been reserved to the Crown certain road allowances running directly along the boundary-lines of each section, and where it is found to be inadvisable to make such roads, the Council may by by-law provide for the making of a new road, and in that behalf for the purpose of expropriating so much of the land of other persons as shall be necessary for making a road in place of the road allowance so reserved by the Crown, and in exchange therefor to grant to the owner of the land expropriated for that purpose so much of such road allowance as shall be replaced by the new road, and for the purposes of this section the road allowances reserved as aforesaid are vested in the municipality in which the same are situate. 1957, c. 42, s. 509.

512. (1) The Council of a district municipality may enter upon any land and take therefrom timber, stone, gravel, sand, clay, or other material which may be required in the construction, maintenance, or repair of any roads, bridges, or other public works.

(2) Compensation agreed on between the parties, or appraised and awarded under Division (4) of Part XII, for timber, stone, gravel, sand, clay, or other material taken, or for any damage caused thereby to the owner or occupier of real property, or to the persons suffering damage
Appendix "D"


184. The Council for its own information may submit for the opinion of the electors any question with which the Council has or desires to have power to deal; provided that any question necessitating the borrowing of money on the part of the city shall be submitted to owner-electors only. The current annual list of electors shall be used. 1953, c. 55, s. 184.

185. (1) The Council may from time to time make the necessary expenditures for the maintenance, upkeep, repair, and improvement of any property of the city.

(2) Where persons are permitted to enter upon real property held by the city, within or without the city, the Council may make by-laws, either general in their application or special as applied to any particular case, regulating the use of any passage-way, driveway, or other part thereof by such persons. 1953, c. 55, s. 185.

186. Where it is satisfied that any proposed Dominion or Provincial legislation affecting the city should be watched, promoted, or opposed, the Council may provide for such watching, promotion, or opposition, and may defray the expenses incurred in relation thereto. 1953, c. 55, s. 186.

187. Where it is satisfied that the interests of the city are concerned in any proceeding, inquiry, or hearing by any Board or Commission appointed under any Dominion or Provincial Statute, the Council may provide for the representation of the city thereat, and may defray the expenses incurred in relation thereto. 1953, c. 55, s. 187.

188. The Council may provide for joining with another municipality in the construction and maintenance of streets, bridges, tunnels, or other public works which are partly in the city and partly in such other municipality, or which are used by the city in connection with real property in another municipality acquired under any of the city's powers. 1953, c. 55, s. 188.

189. The Council may provide for the good rule and government of the city. 1953, c. 55, s. 189.

190. The Council may provide:

(a) for acquiring such real property (within or without the city) and personal property as may be required for the purposes of the city;

(b) for disposing of any real or personal property of the city by sale, conveyance, lease, or licence when, in the opinion of the Council, such property is not required for any purpose of the city, upon such terms and conditions as may be deemed expedient, and to accept in payment either money or other property; provided, however, that no parcel of real property which
assent of electors.

power to buy and sell commodities.

City may enter into agreements pursuant to statutes.

Power to undertake housing development.

Power to acquire property for commercial or industrial development.

exceeds two hundred thousand dollars in value as certified in writing by the Assessment Commissioner shall be sold to any person other than Her Majesty in her right of Canada or the Province, or any agency of the Crown, unless a by-law has been passed to which the assent of the electors has been obtained. 1953, c. 55, s. 190; 1955, c. 114, s. 7; 1958, c. 72, s. 13; 1966, c. 69, s. 9.

191. The Council shall have power with the vote of not less than two-thirds of all its members and for the period of an actual emergency to provide that the city may buy and sell to the public gasoline, coal, wood, oil, and other fuel, and milk, fish, meat, and other foodstuffs, and may acquire and develop the necessary real property for the purpose. 1953, c. 55, s. 191.

192. The Council shall have power to make the city a party
(a) to any agreement to which under the terms of any Act of the Dominion or the Province it is contemplated that municipalities may be parties and which the Council deems will be for the benefit of the city;
(b) to any agreement with Her Majesty in her right of Canada or the Province, or any of her duly authorized agents, with respect to the construction, improvement, and maintenance of any private roads or ways, sewers, water-mains, poles, wires, pipes, conduits, or other utilities, installations, or equipment at any time situate on, over, or under the surface of any real property in the city in which Her Majesty aforesaid has any interest, and for contributing in whole or in part towards the cost thereof; provided that the entering into any such agreement or the expenditure of any money by the city hereunder shall not of itself constitute any road or way aforesaid a public street or highway or be deemed to be evidence of dedication or acceptance of the same as such. 1953, c. 55, s. 192.

193. The Council may acquire real property and, by removing or remodelling the buildings thereon, or by constructing dwellings thereon, develop such real property for the purpose of providing housing accommodation for such persons and on such terms as the Council shall think fit, and may maintain, improve, manage, and operate such housing accommodation, and may delegate to a board or commission appointed by the Council all or any of the powers of the Council under this section. 1953, c. 55, s. 193.

193a. The Council may acquire real property for the purpose of providing sites for commercial or industrial development, and for that purpose may
(a) demolish any building situate thereon;
(b) subdivide or resubdivide the said property;
289. (1) Unless otherwise expressly provided, the real property comprised in every street, park, or public square in the city shall be absolutely vested in fee-simple in the city subject only to section 291A of this Act and to any right therein which the person who laid out or dedicated such street may have expressly reserved; provided that section 5 of the Highway Act shall not apply to any street, park, or public square aforesaid; provided further, however, that it shall be lawful for the city to acquire from any person rights or easements for street, park, or public square purposes less than the fee-simple, whether on, above, or below the surface of any real property owned by such person.

(2) In the application of section 112 of the Land Registry Act to any subdivision of land in the City of Vancouver the said section 112 shall be construed as if for the words “land” and “highway” wherever they occur the words “real property” and “street” respectively were substituted and for the words “Crown in the right of the Province” in the second line and the words “the Crown” in the fifth line in subsection (2) thereof were substituted the words “the City of Vancouver.” This subsection shall have a retrospective as well as a prospective effect.

(3) The Registrar of the Vancouver Land Registration District may accept evidence of a transfer of any real property in the city for street, park, or public square purposes in the form of a conveyance duly executed by all persons required by law to execute a conveyance thereof or by a plan only, if so executed, in lieu of or in explanation of a conveyance to the city of such real property if such plan is otherwise satisfactory to the Registrar aforesaid. The Registrar may require that such plan shall show the boundaries of any land remaining in the parcel after such transfer. 1953, c. 55, s. 289; 1953 (2nd Sess.), c. 47, s. 5; 1958, c. 72, s. 16.

290. No person shall excavate in, cause a nuisance upon, encumber, obstruct, injure, foul, or otherwise damage a street, except under such terms and conditions as may be imposed by the Council. 1953, c. 55, s. 290.

291. The Council may provide

(a) for establishing, laying out, opening, maintaining, and improving streets, and for determining the width and boundaries of streets;

(b) for stopping up any street, or part thereof, and, subject to section 190, for disposing of any street, or part thereof, so stopped up;

(c) for widening, altering, or diverting a street or part thereof;

(d) for the prohibition and removal of any unauthorized encroachment or obstruction under, upon, or over a street, or any part thereof;

(e) for establishing a grade or level for any street, or any part thereof;
Bench-marks.

Access to and from streets.

Encroachments on streets.

Snow and ice removal from roofs.

From sidewalks.

Cleanliness of streets.

Ornamental trees.

Their trimming.

Watercourses not to be obstructed.

Maps may be used.

(f) for establishing and maintaining survey monuments and bench-marks;

(g) for regulating

(i) the means of access to and from the street of any parcel abutting thereon and providing for the use of so much of the street as may be designated for the purpose of such access;

(ii) encroachments for a stipulated length of time upon, under, or over a street, upon such terms as to rental, indemnity, or otherwise as may be prescribed, and, where it is deemed necessary, upon condition that the city shall have a registered charge upon the parcel to which such access or encroachment is appurtenant for the due performance of any term so prescribed and for the payment of any sums of money due the city for rental or otherwise, and for providing that any such sums may be inserted in the real-property tax roll as a charge imposed with respect to such parcel. Any provision in an agreement with the city purporting to create a charge against any parcel aforesaid, for the due performance of any terms prescribed as aforesaid, or for the payment of any sums of money aforesaid, may be registered as a charge against the interest in such parcel of the person making the agreement;

(h) for requiring the owner and occupier of any real property to remove snow and ice from the roof or other part of any structure thereon;

(i) for requiring the owner of any real property, in such areas as may be designated by by-law, to remove snow and ice from the sidewalk adjacent to such real property and, in case of his default, for removing such snow and ice at the expense of the owner and for recovering the expense of such removal from the person so defaulting;

(j) for prohibiting persons from depositing upon a street or on any other land without the approval of the owner any rubbish, sweepings, paper, hand-bills, refuse, or other discarded materials or things;

(k) for regulating the planting and care of shade or ornamental trees upon a street, and for prohibiting the injury or destruction of such trees;

(l) for causing any tree upon a street to be trimmed or removed when deemed necessary in the public interest;

(m) for prohibiting any person from obstructing or impeding the flow of any stream, creek, watercourse, drain, or sewer;

(n) for the use of maps of real property, approved by the City Engineer, in a by-law in place of, or in addition to, a detailed
Access to property and right to purchase.

A resolution shall not be passed for stopping up, altering, or diverting any street or part thereof if the effect of such resolution will be completely to deprive any owner of the means of ingress to or egress from any real property owned by him abutting such street unless in addition to making compensation to such owner, as provided in Part XXVI of this Act, another convenient means of access to his real property is provided, the sufficiency of which, for the purposes of this section only, shall be in the sole discretion of the Council; provided that where the owner consents in writing to the stopping-up, altering, or diverting of any street aforesaid the provisions of this subsection shall not apply to any resolution providing for the same. For the purposes of this section, the word "owner" means an owner as defined by the Land Registry Act.

(2) Where a street which has been stopped up, altered, or diverted, whether opened, maintained, or improved by the city or not, was one originally acquired by the city by transfer without any payment therefor and the Council determines to dispose of such street, the price at which it is to be disposed of shall be fixed by the Council, and the owner of the real property which abuts on it shall have the right to purchase the same at that price.

(3) Where there is more than one abutting owner, each shall have the right to purchase so much of the real property comprising such street or portion of street so stopped up as Council may decide, and the price fixed by Council aforesaid shall be apportioned between the parcels to be disposed of accordingly.

(4) If an owner does not exercise his right to purchase within such period as may be fixed by the resolution or any subsequent resolution, the Council may dispose of the part which he has the right to purchase to any other person at the same or greater price.

(5) Where the real property of an owner abutting a street stopped up by resolution also abuts any other street which the Council desires to widen, alter, or divert and requires for that purpose a portion of the real property aforesaid, the Council may, notwithstanding the provisions of subsections (2) and (3) hereof, exchange therefor so much of the real property comprising the street so stopped up for the real property so required as aforesaid as may be mutually agreed upon with such owner.

(6) Where an owner acquires a portion of a street pursuant to this section or otherwise, the Council shall direct as a condition of the disposal thereof that such owner consolidate the portion so acquired with the real property owned by him abutting the street or part thereof so stopped up.

(7) Upon the deposit in the Land Registry Office of a copy of the resolution stopping up, altering, or diverting any street or part thereof,
certified as such by the City Clerk, accompanied by a plan showing thereon the street or part thereof so stopped up, altered, or diverted, together with a conveyance of the whole or any part thereof completed in accordance with the requirements of the *Land Registry Act* and an application Form A of the said Act together with the fees as set out in the Second Schedule thereof, the Registrar aforesaid shall, notwithstanding the provisions of section 112 of the *Land Registry Act* or section 289 (2) of this Act or the provisions of any other Act, and whether the city appears on the records of the Land Registry Office as the owner or not, on finding a good, safeholding marketable title in fee-simple in the applicant, register the real property described in the said conveyance in the name of the grantee therein and issue to him a certificate of indefeasible title thereto. Any conveyance executed under this section shall have effect as a Crown grant. 1958, c. 72, s. 17.

(8) Where the city is the owner of any real property abutting the street or portion thereof stopped up, diverted, or altered by the Council pursuant to this Act, the provisions of this section shall, mutatis mutandis, apply to the city as such owner or applicant, but in any such case it shall not be necessary for the city as the applicant to deposit in the Land Registry Office the conveyance referred to in subsection (7) hereof, and the Registrar aforesaid shall forthwith register the real property in the name of the city. 1958, c. 72, s. 17; 1963, c. 60, s. 7.

291b. In case any person is dissatisfied with any decision of the Registrar of the Vancouver Land Registration District under the provisions of this Act, such person may, within twenty-one days of the receipt of notice of such decision, appeal to a Judge of the Supreme Court in a summary way by petition, and the provisions of section 234 of the *Land Registry Act* shall, mutatis mutandis, apply to such appeal. 1958, c. 72, s. 18.

292. (1) For the purpose of regulating the subdivision of land, the Council may make by-laws

(a) regulating the area, shape, and dimensions of parcels of land and the dimensions, locations, alignment, and gradient of streets in connection with the subdivision of land, and may make different regulations for different uses and for different zones of the city;

(b) prescribing minimum standards with respect to the matters contained in clauses (a) and (d);

(c) requiring that a proposed subdivision

   (i) be suited to the configuration of the land being subdivided; and

   (ii) be suited to the use for which it is intended; and

   (iii) shall not make impracticable the future subdivision of the land within the proposed subdivision or of any adjacent land;
Appendix "E"

Extracts From The Highways Act, R.S.B.C. 1960, C. 172

Part I.

5. Unless otherwise provided for, the soil and freehold of every public highway is vested in Her Majesty, her heirs and successors. R. S. 1948, c. 144, S. 5.

17. The Lieutenant-Governor in Council may, under special circumstances transfer or direct the issue of a lease to any person of any part of a highway vested in the Crown; but no transfer shall be made or direction given under this section until the Minister has given thirty days public notice of the intention to make the transfer or issue the lease, by notice published in one issue of a newspaper published in the Province and circulating in the locality in which the highway or part thereof is situated.

36. (1) Notwithstanding the provisions of any public or private Act, no person shall:

(a) dig up, break up, or remove any part of the improved, graded, surfaced or travelled portions of any highway for the purpose of any work constructed or maintained or proposed to be constructed in, upon or over the arterial highway or for any purpose whatsoever; or
(b) excavate in or under any arterial highway; or
(c) place any sign, erection or obstruction upon any arterial highway,
except with the consent of the Minister and after having obtained from him a permit in writing therefor, and subject to such conditions to be set out in the permit as the Minister may consider proper.

(2) Every person violating any of the provisions of subsection (1) is liable, on summary conviction, to a fine not exceeding two hundred and fifty dollars.

(3) No part of the expense of any work constructed or maintained or thing done by any person under a permit granted by the Minister under subsection (1) shall be borne by the Department, nor is the Crown liable for any loss or damage caused to person or property, directly or indirectly, by any work constructed or maintained or thing done under the permit.

43. (1) The Lieutenant-Governor in Council may fix the distance from any highway or portion of a highway at which fences, buildings and other structures may be placed, and also the distance from any highway or portion of a highway at which trees and shrubs may be planted.
APPENDIX "F"

Extracts From The Department of Highways Act
R.S.B.C. 1960, C. 103

47 (1) Any real property when no longer required for the use of any public work may be sold, leased or disposed of by tender or public auction, under the authority of the Lieutenant-Governor in Council or under the like authority, and either without the consideration may be leased or transferred to the municipality within which the property is situate, but a gravel pit shall not be leased or transferred to a municipality except under the condition that the gravel will be used mainly for municipal purposes, and any leases of property heretofore or hereafter entered into under the authority of the Lieutenant-Governor in Council pursuant to this Act may be extended or renewed by Order in Council for any period not exceeding 5 years.

(2) The proceeds of all sales, leases and dispositions of property under this section shall be accounted for as part of the special fund (if any) out of which the property was purchased or is maintained, or otherwise as part of the Consolidated Revenue Fund.
APPENDIX "G"

Extracts From The Railway Act, R.S.B.C. 1960, C. 329

33. Every company may, subject only to the obtaining of permission or approval from the Minister wherever prescribed by this Act:

(a) purchase and otherwise acquire and deal in, hold, sell, lease, mortgage, and hypothecate real and personal property of all kinds and in particular lands, buildings, hereditaments, timber lands or leases, timber claims, licences to cut timber, mines, mineral claims, placer claims and mineral and mining interests generally, surface rights and rights of way, water records and privileges, business concerns and undertakings, mortgages, charges, annuities, patents, licences, shares, stock debentures, securities, policies, book debts, claims and any interest in real or personal property, and any claims against such property or against any person or company;

(b) acquire by purchase leases, exchange or otherwise, lands, tenements, buildings and hereditaments of any tenure or description and any estate or interest therein and any rights over or connected with land; and sell or otherwise dispose of, exchange, lease, rent, mortgage or otherwise
encumber lands, tenements, buildings and hereditaments of any tenure or description and any estate or interest therein and any rights over or connected with land;

(d) sell, improve, manage, develop, lease, mortgage, dispose of, turn to account or otherwise deal with all or any part of the companies undertaking, railway, property and assets.

40. (1) Whenever the company can purchase a larger quantity of land from any particular owner at a more reasonable price, on the average, or on terms more advantageous than those upon which it could obtain the portion thereof which it may take from him without his consent, it may purchase such larger quantity.

(2) The Company may sell and dispose of any part of the lands so purchased which may be unnecessary for its undertaking.

45. (1) Any contract, agreement, sale, conveyance or assurance made under the authority of any of the last three preceding sections is valid and effectual in law, to all intents and all purposes whatsoever; and any conveyance so authorized vests in the company receiving the same the fee simple in the lands therein described, freed and discharged from all trusts, restrictions and limitations whatsoever.
48. (1) If in any case not hereinbefore provided for any person interested in any lands so set out and ascertained is not authorized by law to sell or alienate the same, he may agree upon a fixed annual rent as an equivalent and not upon the principal seem to be paid therefor.

(2) If the amount of rent is not fixed by agreement, it shall be fixed and all proceedings shall be regulated in the manner by this Act prescribed for the taking of lands.
A By-law for prohibiting, controlling, and regulating areas, footings, foundations, cellars and openings constructed, or to be constructed, in, on, under, or over sidewalks, streets, boulevards and other public places within the City.

(Consolidated for convenience only as at March 1st, 1962, including amending By-law No. 3974)

THE MAYOR AND COUNCIL of the City of Vancouver, in open meeting assembled, enact as follows:-

Citation 1. This by-law may be cited as the "Area By-law".

Definitions 2. In this by-law, unless the context otherwise requires:

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Area</td>
<td>(a) &quot;Area&quot; shall mean any area, cellar, excavation, tank, trapdoor, fuel chute, footing, foundation, building encroachment, opening, or crossing in, on, under or over any sidewalk, street or lane, or other public place; (By-law No. 2993)</td>
</tr>
<tr>
<td>Appurtenant to</td>
<td>(b) &quot;Appurtenant to&quot; shall mean adjacent to, adjoining, or enjoyed with;</td>
</tr>
<tr>
<td>Commercial Crossing</td>
<td>(c) &quot;Commercial crossing&quot; shall mean any crossing provided, or to be provided, to afford vehicular access to and from lands abutting thereon used for other than residential purposes;</td>
</tr>
<tr>
<td>Curb Sidewalk Crossing</td>
<td>(d) Repealed. By-law No. 3778, July 14th, 1959.</td>
</tr>
<tr>
<td>Council</td>
<td>(e) &quot;Council&quot; shall mean the Mayor and Council of the City of Vancouver;</td>
</tr>
</tbody>
</table>
"Engineer" shall mean the City Engineer of the City of Vancouver;


"Owner" shall mean any person who is

(1) the registered owner in fee-simple or for the time being entitled under any duly registered instrument to possession of any lands to which an area is appurtenant, or

(2) a lessee or occupier of the said lands who has obtained permission of the Council and signed an agreement as hereinafter provided;

"Person" shall, when necessary, mean and include natural persons of either sex, associations, corporations, bodies politic, copartnerships, whether acting by themselves or by a servant, agent, or employee, and the heirs, executors, administrators, and assigns or other legal representative of such person to whom the context can apply according to law. The singular shall, when necessary, be held to mean and include the plural; the masculine, the feminine; and the converse thereof;

"Residential purposes" shall mean the use of sites for one or two family dwellings or for boarding or rooming houses." (By-law No. 3974, March 1st, 1962)

No person shall excavate for, construct, or use any area, nor continue the use or existence of any areas heretofore constructed, until such person shall have received permission in writing from the Council so to do, which permission, except as herein otherwise specifically provided, may be revoked by the Council at any time. (By-law No. 2383, September 30, 1935)
(b) Permission is hereby granted for the use and existence of all areas which comprise only crossings now in existence which give access to and from any land used exclusively for residential purposes, and the City Engineer is hereby authorized to grant permission for additional like crossings if he is satisfied as to their safety and advisability. (By-law No. 3778, July 14th, 1959 and By-law No. 3974, March 1st, 1962)

Application for Permission

4. (a) Any owner or lessee desiring to excavate for, construct, use, or to maintain any area not included in Section 3(b) above appurtenant to any property in the City, or desiring to be allowed to continue the existence, maintenance, or use of any area not included in Section 3(b) above appurtenant to his property here-tofore existing, maintained or used without permission obtained and an agreement executed as hereinafter required, shall submit to the Engineer a written application therefor accompanied with such number of copies of a plan as the Engineer may require showing the detail thereof, to the satisfaction of the City Engineer; and upon the Engineer being satisfied of the safety and advisability of such area, he may recommend to the Board of Administration or the Council that such permission be granted. (By-law No. 3974, March 1st, 1962)

(b) In case such area comprises a tank for storage of oil, gasoline or other substance, the storage of which is controlled by a statute or by a by-law of the City, or comprises any connection to any such tank, the person so applying shall submit a drawing thereof showing in detail both plan and section of tank and connection drawn to suitable scale, and conforming to the provisions of such statute or by-law and also to such regulations as may from time to time be prescribed under the "Fire Marshal Act", which drawing shall bear the approval of

Annual or other Charge

7. (a) An annual or other charge is hereby made and imposed for the privilege and use of every such area, which charge shall be paid annually or otherwise in advance to the City by the owner of the lands to which such area is appurtenant in accordance with the schedule here-to, and the payment thereof may be enforced either by action in any Court of competent jurisdiction or in like manner as provided for the recovery of overdue taxes against the land to which such area is appurtenant. (By-law No. 3231, March 27th, 1951)
(b) In case any area is constructed or continued without permission as required by this by-law, the owner of the lands to which such area is appurtenant, and the said lands shall nevertheless be and remain liable for all indemnities, liabilities and charges at the respective rates for the period during which it is so continued; provided that until the permission given under any existing agreement between an owner and the City relating to the regulation of an area is revoked or otherwise determined, the annual sum payable under the said agreement in respect of such area shall be the annual charge in lieu of the annual or other charge imposed by this by-law. (By-law No. 3231, March 27th, 1951)

(c) In case a bond is furnished as security as herein provided, notwithstanding anything herein contained a person who is not a party to the said agreement or the said bond, and the interest of such person in any land to which such area is appurtenant, shall in no way be deemed to be liable for the indemnities, charges, or other obligations for which the said bond is given as security.

Revocation of permit by Council; all spaces, etc., to be kept in good repair

8. All areas which shall be constructed under and in accordance with this by-law, as well as those heretofore existing, in respect of which an agreement is outstanding and in effect if an agreement is required under the provisions of this by-law, may continue in use until such permission is revoked by the Council; and until such permission is revoked, the owners of the lands appurtenant to which the same exist shall keep all such areas in good and sufficient repair satisfactory to the Engineer; and in the event of the owner failing or neglecting, in the opinion of the Engineer, to keep the said area or covering thereof in a safe and satisfactory state of repair, the Engineer may notify such owner to immediately execute the necessary repairs.

Indemnifying the City against damages

12. The owner and every person so excavating, constructing, maintaining or permitting the existence of or using any such area under the provisions hereof or otherwise, shall at all times be deemed to be liable for and shall indemnify the City against any and every claim, loss, expenses, or damage, and any suit or demands which may be occasioned by or incidental to the construction, existence, use or maintenance thereof, and the amount of any loss or damage occasioned to the City thereby except as otherwise herein provided, shall be a first lien or charge on all lands to which such area is appurtenant.
Joint and several liability

13. The liability of owners or other persons under the foregoing provisions for indemnity, or under any provisions of this by-law where there are more than one such owner or other person involved, shall be deemed to be, and shall be, for all purposes joint and several.

Violation of by-law

14. Every person who offends against any of the provisions of this by-law, or who suffers or permits any act or thing to be done in contravention or in violation of any of the provisions of this by-law, or who neglects to do or refrains from doing anything required to be done by any of the provisions of this by-law, or who does any act or thing which violates any of the provisions of this by-law, shall be deemed to be guilty of an infraction of this by-law, and shall be liable to the penalties hereby imposed. (By-law No. 3778, July 14th, 1959).

Penalty

15. (1) Every person who commits an offence against this by-law is liable to a fine and penalty not exceeding One Hundred ($100.00) Dollars and costs, or in default of payment thereof, or in the alternative, to imprisonment with or without hard labour for any period not exceeding two months.

(2) Where an offence against this by-law is of a continuing nature, it shall be lawful for the convicting magistrate, in his discretion, to impose a fine against the offender, not exceeding fifty dollars for each day such offence is continued by him. (By-law No. 3778, July 14th, 1959)
(1) For any area other than a crossing or footing:

(a) Where the superficial extent of the space occupied on any street, lane, or other public place does not exceed five square feet........ $1.00

(b) Where the superficial extent of the space occupied on any street, lane, or other public place exceeds five square feet, but does not exceed one hundred square feet....................... $5.00

(c) Where the superficial extent of the space occupied on any street, lane, or other public place exceeds one hundred square feet, for each square foot occupied..... $ .05

(d) For the purpose of computing the annual charges, two or more such areas appurtenant to the same lands or premises shall be treated as one, and may be included in one agreement. (By-law No. 2383, September 30, 1935)

(2) For an area comprising commercial crossings:

(a) Where a site is served with sidewalk crossings not exceeding 36 feet in width each, as measured at the curb, and not more than two sidewalk crossings on any one street where the frontage is 250 feet or less, and not more than one additional crossing for each additional 125 feet of frontage or portion thereof, the flat fee in lieu of all annual charges shall be................................. $10.00

(By-law No. 3974, March 1, 1962)
(b) Where a site is served with sidewalk crossings of a greater width than 36 feet as measured at the curb, or with more than the number of sidewalk crossings on any one street mentioned in the preceding sub-clause (a), then for such excess widths and such further crossings an annual fee of $2.00 per foot shall be charged in addition to the fee provided for in sub-clause (a) hereof. (By-law No. 3974, March 1, 1962)

(c) Repealed. By-law No. 3974.

(3) For an area comprising any crossing other than a commercial crossing Nil

(By-law No. 2383)

(4) For an area comprising a footing or footings:

(a) Where the superficial extent of the space occupied on any street, lane, or other public place does not exceed ten square feet $10.00

(b) Where the superficial extent of the space occupied on any street, lane or other public place exceeds ten square feet, for each square foot occupied $1.00

(c) For the purpose of computing the annual charge, two or more such areas appurtenant to the same lands or premises shall be treated as one, and may be included in one agreement. (By-law No. 2383, September 30, 1935)

(5) For an area comprising a building encroachment other than such as may result from the dedication or taking of any lands for highway purposes:

(By-law No. 2998, July 21, 1947)

(a) Subject to the minimum charge for same as hereinafter provided, the annual charge shall be twenty per cent (20%) or, in case such encroachment was in existence prior
to the first day of July, 1947, fifteen per cent (15%) of the value of the area of the street occupied by or situate beneath the encroachment; the said value shall be computed at five-year intervals and shall be based upon the assessed value of the adjoining land as it may appear on the Assessment Roll of the City at the time such computation is made. (By-law No. 3231, March 27, 1951)

(b) Minimum Charge ...................... $15.00
(By-law No. 2998, July 21, 1947)

(c) Where a building permit has been issued for any building, or addition to any building, any portion of which building or addition, after completion, is a building encroachment, the date of such permit shall, for the purposes of this by-law, be deemed to be the date when such building encroachment came into existence. (By-law No. 2998, July 21, 1947)

(6) For an area comprising a building encroachment resulting from the dedication or taking of any lands for highway purposes, where the former owner is permitted to continue in occupation thereof:

(a) Minimum charge ...................... $ 1.00

(b) In addition to the above minimum charge such amount as may be fixed by the resolution of Council permitting occupation thereof as aforesaid. (By-law No. 2998, July 21, 1947)