

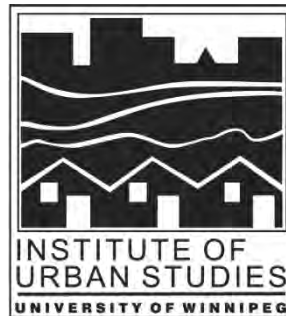
# Land Policy in Canada

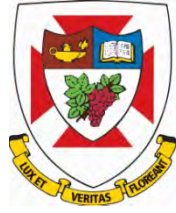
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by **A.J. Greiner**  
1974

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**The Institute of Urban Studies**





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LAND POLICY IN CANADA

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The views expressed in this paper  
are those of the author only.

## LAND POLICY IN CANADA

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## 1. FRAMEWORK

### 1.1 Public Lands Policy in the Past

Canadian land policy started in the second half of the nineteenth century; most of the land was publicly owned at that time. The original provinces of the federation retained control of their public lands, as would British Columbia in 1871, and Prince Edward Island in 1873. But for the three prairie provinces - Alberta, Saskatchewan and Manitoba, as well as the northern lands - a different case was argued. Control of public lands by postage-stamp size provinces might jeopardize national goals; that control would introduce unwanted divided jurisdiction into a key element of National policy, the settlement of the west. Settlement of the west and its integration into the nation's economic life, were fundamental.

There were two major elements to Canadian public lands policy. The first was the giving of substantial grants of land to railway companies to induce them to build the transportation network that would bring settlers to the territory. The second was the adoption of a system of

free homestead grants to settlers that would ease the initial burden of homesteading; prospective settlers were entitled to 160 acres upon payment of ten dollars and with a residence requirement of three years. The settlement of the west with a population of farmers resulted in a policy which concentrated on those lands best suited for agricultural exploitation. When the supply of public lands fit for agriculture was exhausted, the first phase of public lands policy came to an end; control of public lands by the federal government over the prairie provinces was handed over to the provincial governments in the first half of the twentieth century.

In spite of the early Canadian land policy, almost 90% of all lands in Canada is still in public hands today; only 400,000 square miles are privately owned out of the total 3,800,000 square miles of total lands. Although private lands form a small percentage of the total land area, their uses are important. Most of the private lands are in high value urban and agricultural uses; this situation is a natural consequence of the original public lands policy.

## 1.2 Attitudes Towards Land

The above brief historical outline sheds some light on the evolution of the traditional Canadian attitudes towards land. Because of the large amount of easily available land in the past, a general unconcern for the rate at which land is consumed for development has evolved. There appears to be a confidence that the supply of land is virtually unlimited.

Another attitude is a sympathy for growth and new land development. Recently Edmonton elected officials instituted their own population count upon discovering that federal census returns showed a decrease in Edmonton's population. The use of the automobile has further facilitated land-consuming growth. The location of homes and working places are no longer dependent on traditional requirements; anything can locate anywhere, the automobile provides the necessary link. Combined with the desire for single family homes and the sympathy for growth, the use of the automobile has increased the rate of land consumption and has resulted in lower density developments.

One other attitude exercises a major influence on land planning and its control: it is the belief in the private enterprise system. In matters of land planning it is generally assumed that land uses are the most efficiently

organized if land related decisions are made by the market. The objective of control under these circumstances is simply to moderate maladjustments.

### 1.3 Intergovernmental Organization

Canadian land use policy has also been influenced by the division of responsibilities over land use planning and control by the provincial and federal governments. The British North America Act clearly outlines that the general power to plan and control urban development within a specific province belongs to the legislature of that province. This general power is usually manifested in three forms. First, land related law in each province is a matter of "Property Rights"; this body of law establishes the legal rights, privileges and powers of owners of land and buildings, as well as tenants. Second, powers of assessment and taxation of land are shared by both the provincial and federal governments according to the B.N.A., but historically their practice have been left to the provinces and their creations, the municipalities. Third, and most important, are land use and zoning laws, official plans, and problems of compensation and expropriation of land, which rest in the hands of provincial legislatures; the only exceptions are inter-provincial transportation matters and federal lands (indian reserves, national parks, defence areas, etc.).



In contrast to the virtual monopoly of the provinces in regulatory powers over land use and its control, the federal government has critical powers over the financing of development. These include banking and interest rates and powers to regulate the investment of pension funds. The federal government also has important levers by which to effect urban development through income taxation. Finally, the federal spending power is important. In the regulatory field, therefore, the most significant powers are provincial, while in the financial field, the resources are mostly within federal control. This division in governmental responsibilities has resulted in complex inter-governmental agreements concerning urban land development in Canada.

#### 1.4 Regional Nature of Land Policies

Canadian land policy is regionally specific. Although there are some basic similarities, the package of land related policies in Vancouver is different from that of Toronto and Montreal. There are many reasons for this variety of policies, but probably the one most important factor is that land planning and control are local authority responsibilities, provincial supervision of

local work is more administrative than substantive. So one finds a variety of regional land policy initiatives: Saskatoon has an active land bank program; Toronto has a height limit on building construction; the prairie provinces are investigating the sale of farmland to foreigners and the Province of Prince Edward Island is concerned about the erosion of its extensive and attractive recreational lands.

## 2. CURRENT LAND POLICY TOOLS

### 2.1 Regulation

Major provincial land policy tools include planning and the implementation of plans by by-laws, the most important of which are zoning, subdivision regulations and development control.

In general, planning is a process in Canadian practice consisting of the: (1) identification of long and shorter term objectives; (2) gathering of data and its analysis; (3) preparation and adoption of plans and programs, recently with a substantial amount of citizen participation; (4) implementation via administrative action and (5) periodic review and replanning.

Planning authority has been given to local municipalities in all provinces by provincial legislation, usually in the form of a "Planning Act". Planning is generally carried out at the local level by a group of appointed people, variously called a planning board or the commission. The planning board secures funds from the local elected Council to hire staff, prepares the plan and administers the implementation of the plan. The planning board is purely advisory to the Council, and only recommends the plan to the Council for adoption. The Council is under no obligation in most municipalities to adopt a plan, but may do so by adopting the recommended plan with or without modifications. Upon Council approval, the plan has also to be approved by the appropriate provincial authority before coming into effect. With the exception of the province of Manitoba, a provincially adopted plan for a local jurisdiction has no impact on the jurisdiction unless local by-laws are also approved for its implementation; these could be zoning, subdivision and development control by-laws.

The main purpose of zoning has been to protect established areas from unwanted land uses. Originally, it was based on the law of nuisance, and served a purpose similar to restrictive covenants. The modern zoning by-law is usually a comprehensive document and divides the entire jurisdiction into areas, specifies their possible uses, contains maps showing the various districts, and outlines for each zone standards for yards, bulk, height, coverage, etc. Zoning is essentially negative in character: it can prevent undesirable development by specifying what can and what cannot happen. Zoning cannot, however, achieve the objectives of a plan; it cannot force a large number of individuals to develop their property in accordance with the zoning by-law.

The relationship of the "plan" to the "zoning by-law" is crucial to understanding Canadian land policy. In six provinces the local Council is obliged to enact a zoning by-law in accordance with the plan, where there is an adopted plan. In four provinces, it is mandatory to enact a zoning by-law subsequent to the adoption of a plan. In Quebec, Saskatchewan and Alberta there is no mandatory requirement that the zoning by-law follow the plan. Most

importantly, no province requires that zoning by-laws should be based on a plan. Since the adoption of a plan is permissive in most provinces, zoning may take place without any planning; in fact, planning is a relatively recent phenomenon, zoning by-laws have been in effect in many local jurisdictions long before planning commenced.

In order to provide an orderly pattern of development with the tremendous population growth of urban areas in the last three decades, provincial legislatures granted powers to local authorities to establish subdivision control. The purpose of such control is to regulate the size of building lots, road widths and patterns, the allocation of land for public purposes, and in general the division and sale of land. The purpose behind subdivision control was not only to ensure properly serviced and adequate building sites, but also to control the tax burden on local authorities for servicing new development. Although the subdivision control by-law is prepared and approved locally, usually provincial approval is also required previous to its taking effect.

Since 1945, the federal government has indirectly influenced the quality of subdivisions. Although the regulation of property is within the jurisdiction of the provinces, Central Mortgage and Housing Corporation, a federal agency, has influenced subdivisions through the administration of National Housing Act programs. Federal policy guides for lending and mortgage insurance purposes were based on federally prepared standards, which were often higher than local standards; the upgrading of local standards were no doubt influenced by CMHC policies.

Most local authorities have power by their subdivision control by-law to impose obligations on the subdivider to provide land for roads, parks, and public facilities serving the subdivision and to extract payment for capital improvements which may not be needed for the subdivision alone, but may be needed as a result of increased population. In addition, many municipalities also require the subdivider to install services such as sewer and water lines on the land he is proposing to subdivide. Subdividers usually pass on the increased costs to the ultimate consumers, the home buyers.

One final land use control tool which has recently gained popularity among planners is development control; it is the regulation of land use on a permit basis for each proposed use of land, and is similar in this regard to the British system of development permits. It is different from zoning in that if the zoning by-law is complied with, development can proceed without any government intervention with the exception of a building permit which is required more for the structure than for the use of land. In a development control zone each proposal is evaluated on its own merit and in relation to an adopted plan if one exists.

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## 2.2 Expropriation

Expropriation of land for public purposes is another means by which land policy can be implemented. Expropriation of land by the federal government is used only after negotiations for acquisition failed. The federal expropriation act is detailed and specific in substantive and procedural requirements, and land acquisition via expropriation is usually costlier than the acquisition of land through a voluntary transaction. Provincial expropriation acts vary in substantive and procedural requirements, but as the case is with federal expropriations of land, their use is not popular.

### 2.3 Taxation

The property tax, levied locally in Canada, is used for fiscal and not urban purposes. For a long time, the property tax has been almost the sole source of revenue of municipalities; it is a tax on the "highest and best use" value of the property plus the value of improvements upon it. In calculating the tax "rate", municipalities divide the amount of the required revenues by the total full market value assessment in the municipality. Although the theory is simple, practice shows a large number of exceptions in terms of differential assessments and exemptions from paying tax, such as church and school lands. What is important in these departures from theory is that the departures are inspired in most cases by other than urban land policy considerations.

Land policy can be influenced by the property tax by an emphasis on the revenue producing capacity of various land uses. Land uses have a direct relationship to the tax rate since property use determines the needed municipal services and property assessment determines the tax base. Many municipalities find that it is prudent land policy to encourage land uses with high value development, but which do not require much in the way of municipal services. Manufacturing plants are of this variety, and high-rise residential development and costly single-family



subdivisions are preferred to medium density low-cost housing. "Fiscal zoning" is an expression applied to the practice of a municipality to zone land for those high revenue generating land uses which require relatively small expenditures for services.

There are also some major side effects of the property tax resulting from the composite nature of the tax, i.e. both land and improvements are taxed, and that the assessment is based on the highest and best use of the property. While in the urbanizing fringe farmers may be squeezed out by assessments at suburban land values, in downtown or core areas, speculators may leave land in an underdeveloped condition because of the relatively low tax rate. In both cases land is used inefficiently.

Federal and provincial income taxation also has an influence on land policy. Two areas of income taxation should be mentioned: (1) there is a capital gains tax on land price appreciation and (2) holding costs of land - property taxes, interest payments, etc. - can be written off by corporate bodies. Since the capital gains tax is relatively low and primary residences are excluded from it, capital gains taxation has not in a major way influenced land policy.

However, the incentive for hoarding of land available to corporations via the writing off of holding costs has resulted in numerous privately owned land banks around some Canadian urban areas.

#### 2.4 Public Purse

The federal government is also involved in land policy through its numerous subsidy programs. The two potentially most important programs are "Land Assembly" and "New Communities", both administered by the Central Mortgage and Housing Corporation. Under "Land Assembly", CMHC provides financial assistance to the provinces and municipalities wishing to assemble and develop land for residential and associated purposes or to establish land banks for future development of a predominantly residential nature. The objectives of the program are: (1) to improve the supply of land consistent with need; (2) to reduce the rate of increase in the cost of serviced land and (3) to assist with the implementation of municipal, regional and provincial growth policies.

Under "New Communities", CMHC provides financial assistance to the provinces for new community building in terms of land acquisition, planning and servicing. The objectives of the program are: (1) to promote means of urban growth other than by the continued expansion of existing major centres; (2) to provide a mechanism for the establishment of new regional centres and (3) to facilitate the balanced development of resource-based new communities.

Federal attention has also focused recently on three other areas which potentially may have far reaching implications for future urban land use. First, extensive core areas will be freed up by a new "rail-road relocation" program in many major Canadian cities. Second, financial assistance for sewage treatment facilities by CMHC will have an urban development orientation. Third, the extensive land holdings of the federal government will be used to promote local land and other objectives in addition to satisfying the operational requirements of the federal government.

### 3. ISSUES AND TRENDS

#### 3.1 Cost and Availability of Land for Urban Expansion

Land has recently become an issue of critical dimensions in urban Canada. The supply of urban serviced land has not kept pace with demand, and, as a result, land prices have spiralled.

There is no simple explanation for the trend in urban land prices; a number of factors contributed to it. Among these, a heightened environmental awareness has led to more and continually stricter controls and resulted in limiting the supply of developable land. It has also led to increasingly higher development standards, further elevating the price of land. More on this will be said in section 3.2.

Another contributing factor is the steadily improving provincial and local planning procedures and regulations. In a private enterprise economy, the price of land is held down to an extent by the lack of imposition of controls. The social costs of such a system are not accepted today and attempts to guide the flow of development in terms of its timing, extent and location are made. Controls are

introduced to help achieve higher standards and lower the costs to the community. By definition, controls impose restrictions on the supply of land and result in higher land prices.

Furthermore, land use controls and regulations encourage the concentration of ownership of land in a few hands, because small developers are often shut out by their inability to hold land until plans call for its development. Thus the supply is likely to be further restricted, since it may be good strategy on behalf of large developers to ration their output.

Increased community participation has frequently slowed down and limited land development to uses which do not overburden the community in fiscal terms, and has also exhibited an "anti-growth" attitude. The increased public involvement has occurred in the major metropolitan areas, the exact areas which provide great attraction for Canadians and where the gap between supply and demand has critically widened.

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Spiralling land costs have been further exacerbated by a fragmentation and multiplication of agencies which have to routinely get involved in the development process, by speculation (including foreign investors) and also by panic buying. Coupled with restrictions on supply, the servicing of land has also experienced increases in the costs of labour, materials and financing.

At the same time, the income of Canadians has been rising, and there has also been an increase in family formation resulting from the post-war baby boom. Both of these trends have led to more aggregate money than ever before that Canadians have been willing to spend for residential land. As a consequence, the increasing amount of money that Canadians have been willing to spend on housing has had to be spread on a supply of land that has been increasing at a much slower rate - hence the rapid increase in land prices.

The land problem is a crisis today essentially because current technology of high density development is a poor substitute for single family housing in a lower-density community environment, and also because the baby-boom families, with their traditional attitudes favouring single family housing, have massively entered the child-rearing

age of their life cycle. Both of these trends are occurring at the exact time when land prices are elevating because of our increasing concerns with improving the pattern and quality of land development and also because of our concerns with attempting to avoid urban sprawl, transportation congestion, and pollution by limiting the size of our large and/or fast-growing metropolitan areas.

Figures abound attesting to the unacceptably rapid rate at which the cost of urban land is rising. In the last few years, the rate of increase has been 8% on the national average, while it has been 12% in metropolitan areas. Some cities, such as Toronto, Vancouver and Sudbury, have experienced even higher rates of increase, and the rises are much faster than price rises in other areas. Between 1961 and 1971 the consumer price index rose by 33%; the construction cost index by 46%; but land costs rose by 88%. The implications of land cost inflation are particularly grave for housing. For example, the land price component of dwelling costs in Sudbury have risen from 11% in 1961 to 24% in 1971. Land costs, in some cities, have been the principle cause of increasing the purchase and monthly occupancy costs of housing in the past decade.

### 3.2 Environmental Awareness

In addition to the issues associated with spiralling land costs, there has been an increased environmental awareness in public attitudes towards land use. Not long ago private land owners could do whatever they saw fit with their land so long as their lands were not affected by zoning. Public lands could be bought or leased by anyone. Now, however, public and private land managers are asked to justify their decisions publicly; public lands are seldom sold and disposition to non-citizens and non-residents is prohibited in many jurisdictions.

The trend is away from the local control of land use via zoning, and towards province-wide land use planning. There is increasing public concern that local land use control has not always produced a desirable physical environment and that it has often permitted the loss of good agricultural and recreational lands for urban development. Public opinion is shifting from the traditional growth ethic towards a no-growth ethic, with serious implications for land policy. Two examples of the new trend will suffice.

In 1973, the Province of British Columbia enacted the Land Commission Act. The Act is designed to protect land in use for agricultural, forestry, green belt and recreational



purposes from sprawling urban development and land speculation. It also sets aside funds for the acquisition of land for these purposes. Particular emphasis is placed on the protection of agricultural land; the Act does not deal with land use in urban areas so the cities and towns are left with the problems of planning their development as before.

The Act does not attempt to enunciate a spatial development policy, but presents a first element which might eventually constitute such a policy. The direction taken by this first step is to place certain restraints on urban development; the next step may have to do with the designation of areas for urban development and the design of a spatial development concept for the Province.

Ontario has recently passed legislation that may represent a more complete approach to provincial land use planning. The Ontario Planning and Development Act, 1973, allows the Minister of Economic and Intergovernmental Affairs to designate any area of land in Ontario as a development planning area. Once an area is designated, a survey of its environmental, physical, social and economic conditions must be undertaken and a development plan must be prepared

within two years. The Minister must appoint two advisory committees and must consult with the municipalities within the area affected. Following completion of the plan the public, the advisory committees, and the municipalities are all given at least three months in which to comment. Then formal hearings are held by hearing officers. The plan is subsequently referred to the Cabinet along with the Minister's recommendations - which must be made public - and the Cabinet may approve it with or without modification. Once a plan is established no municipality may undertake any action or pass any by-law that is inconsistent with the plan.

Unfortunately, the legislation is entirely discretionary. If the Government of Ontario wishes, it could use the legislation to plan for land use through-out the Province. However, no development areas need ever be established and development can take place without any reference to this legislation or the application of any of the safeguards under it.

### 3.3 The Future

What will be some of the consequences of the trend towards the full consideration of environmental variables in land use decisions? It would appear that there will be much

more provincial involvement in land use planning and its control than in the past. Especially hard reviews will be made of environmentally fragile lands and of developments of more regional than local impact. It is also likely that public ownership of land will increase, and that private development will be further controlled as well as submitted to public scrutiny and involvement. In practical terms, the cost of development will probably rise and property values will be aligned in accordance with our environmental preferences.

In conclusion, we are moving towards the concept of land as a public resource rather than a privately held good or commodity, as in the past. The trends reflect a desire of local communities and environmental pressure groups to shift the initiative for growth from developers to public regulators. Instead of just reacting to developer proposals more public authorities will establish ground rules and then participate directly in developers' proposals.