

A New Land Use Bylaw for the City of Calgary, Alberta

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Summary

Provincial legislation that enabled Alberta municipalities to enact zoning bylaws was introduced in the 1929 *Town Planning Act*. Over time, the powers of municipalities in Alberta to regulate land use have morphed and evolved and have also included experiments with development control models. With some exceptions, the 'zoning' system today is conceptually similar to the model first proposed in 1929. Alberta's land use regulatory framework was last reviewed in 1977. Since that time Alberta has grown significantly and larger cities, such as Calgary, have experiencing challenges in managing land use in a large city. With its roots in the protection of private property interests, the zoning framework has proven to be difficult with respect to addressing urban problems in large urban areas where a myriad of social, environmental, economic and political matters are linked to land use.

In 2003, The City of Calgary embarked on a major project to review and rewrite Calgary's 1980 land use bylaw. The objective of the project was to accommodate contemporary planning theory by providing a tool to implement fine-grained land use policy in response to the rapid growth in Calgary since 1980. The result was a land use bylaw that pushes the boundary of traditional land use regulation in Alberta by introducing new types of development controls, such as contextual building setback standards and maximum use sizes, in recognition that zoning must now achieve more than simple use classification if it still to be relevant as a land use management tool.

Calgary's experience with drafting a new land use bylaw highlighted the robustness and flexibility of the land use bylaw enabling provisions in Alberta's *Municipal Government Act* (MGA); however, there are limitations in Alberta's 34 year-old planning legislation since the framework focuses primarily on physical development and may not be adequate to confront current and future challenges faced by larger cities. Suggestions are provided to inform the next generation of Alberta planning legislation so that cities are enabled to address modern

issues such as housing affordability, environmental conservation and energy consumption; these are central policies of Calgary's *Municipal Development Plan*. The question now becomes whether the land use bylaw, as the primary planning implementation mechanism, can address the new Calgary reality without altering the planning framework that enables it.

The origins of land use planning in Alberta and the Introduction of Zoning

Alberta's first planning act was adopted in 1913 in response to rapid growth in the Province, particularly in the two main cities of Calgary and Edmonton. At the time there were concerns regarding disorganized development, haphazard street patterns, inefficient subdivisions and the financial strain municipalities were under to provide urban services to this frenzied growth (Hulchanski, 1981). While the Province focused on trying to manage problems related to subdivision, early attempts at regulation by Calgary and Edmonton resulted in both municipalities passing building bylaws in 1904 and 1912 respectively. The goal of these bylaws was to ensure minimum fire and building construction standards for buildings. These bylaws also "began to have the effect of regulating the location of different uses, by excluding uses which were potential threats to public health and safety" (Hulchanski, p. 5), despite the fact that this type of regulation was not specifically enabled by provincial legislation. Ultimately, the Province enacted the *Town Planning Act*, 1913 that essentially gave municipalities the ability to prepare town planning schemes as a way to direct growth. An ensuing recession, however, prevented any municipality from adopting such a scheme

Due to slow growth after 1913, planning did not come back to the public agenda until another period of rapid growth in the late 1920s. This time, environmental conservation and zoning were the main ideas behind the adoption of the 1929 *Town Planning Act*. With respect to the zoning enabling provisions, the 1929 Act borrowed extensively from the American experience and established the familiar features of modern zoning; most of which still appear in Alberta's planning legislation (Laux, 2010, p. 1-25). Specifically the Act established the ability for a municipal council to divide a city into districts and determine where it would be lawful or unlawful to erect, construct or alter certain types of building and businesses. Other familiar tools were also implemented such as ability to regulate building setbacks, design, height, bulk, maximum density and protection of existing non-conforming buildings and uses.

The 1929 Act did allow for a municipality to prepare an official town plan (the town planning scheme), but not a single municipality adopted one. Instead many municipalities adopted zoning bylaws which were "the most widely implemented sections of the act, indicating that the problem of protecting different land use categories from one another was the major problem within the land development process" (Hulchanski, 1981, p. 38). It has also been suggested that the rational real estate industry had actually done a fairly good job with early development in Calgary and separation of most incompatible land uses had actually occurred due to market forces alone; however, it was thought that zoning would be needed eventually to protect the land market from itself (Hulchanski). While zoning seemingly trespasses on perceived private property rights, it can also be viewed as analogous to an insurance policy since it had the effect of protecting private property values through exclusionary means (Stach, 1987).

The fact that many municipalities adopted zoning bylaws without any guiding general plan is evidence of how zoning, as a planning tool, has evolved since 1929. Today, planners view zoning as a planning implementation mechanism. In the past it would seem that the primary consideration was to separate incompatible land uses that perhaps did not rely heavily on future planning aspirations. Whether on purpose or by accident, the separation of incompatible land uses had the effect of protecting private property values, which is how zoning is sometimes thought as protectionist instead of as a planning instrument (Stach, 1987).

Since the adoption of its first planning act in 1913, Alberta has substantially rewritten its planning act four times in the years 1929, 1950, 1963 and 1977 (Gordon & Hulchanski, 1985). A review of the legislation suggests that as municipalities in Alberta grew, the scope of what a zoning bylaw could regulate increased over time. For example, the ability to regulate parking in the 1950s was in response to changes in land use patterns and rising rates of automobile use. This suggests that the legislature was responsive to the needs of municipalities in ensuring they could provide effective regulation commensurate with changes in technology and society. Despite this, zoning in Alberta continues to be centrally focused on physical planning matters and traditional Euclidean use classification.

What is a Land Use Bylaw

The land use bylaw is a planning tool with the purpose of regulating development in a manner that is specifically enabled by the provisions contained in Part 17 of the *Municipal Government Act (MGA)*. The bylaw relies heavily on guiding plans to inform it, which include: Intermunicipal Development Plans; Municipal Development Plans; Area Structure Plans; and Area Redevelopment Plans. The land use bylaw is also expected to be consistent with any regional plans that are administered by the Province. The land use bylaw is not the only mechanism to implement policy, the *MGA* also provides for the imposition of development levies for financing municipal infrastructure (both new development and redevelopment), allocation of land for schools, recreation and parks and other measures as outlined in the Act

The *MGA* requires that every municipality adopt a land use bylaw (*MGA*, s.639) and that the LUB “may prohibit or regulate and control the use and development of land and buildings in a municipality” (s.640). The *MGA* provides for all of the customary provisions one would find in a zoning enabling statute; including the familiar concept of permitted and discretionary (conditional) uses of land or buildings and the ability to prescribe development standards such as building setbacks, yard requirements, landscaping, building height etc... A system of development permits is required and a council is obligated to appoint a development authority to manage the day-to-day administration of the land use bylaw, including making decisions on development permits.

The term ‘land use bylaw’ is used in place of ‘zoning’ due to the unique history Alberta has with both zoning and development control models. The term has its origins in the *Planning Act*, 1977 which introduced the concept of a hybrid regulatory system in which both zoning and development control were permitted in a single bylaw through the use of conventional zoning districts and direct control (DC) districts.

The *MGA* authorizes a council to designate an area of the municipality as a DC district provided the council has adopted a municipal development plan. The DC district forms part of the land use bylaw but is essentially development control through a ‘customized’ regulation that permits development to be regulated in any manner council considers necessary (s.641(2)). The scope of regulation is completely at the discretion of council, but presumably is bound by the scope of development regulation found in Section 640 of the *MGA*. This type of regulation can be similar to ‘Planned Unit Development’ in the United States, but in theory it can be much more flexible and used in a variety of ways to regulate development.

Many jurisdictions that undertake zoning often place administrative limits on zoning variances and have formal processes for requesting variances. In Alberta, the *MGA* theoretically provides no limit on how much discretion a development authority could exercise to vary the requirements of the land use bylaw. The test for this variance is specified in section 640(6) and is based on whether the proposed development would interfere with the amenities of the neighbourhood or affect the use, enjoyment or value of neighbouring parcels of land. Further, the development authority is not permitted to vary ‘use’; that is, the bylaw cannot be varied allow for a use in a district that is not listed a permitted or discretionary use in the applicable district. In Calgary, the development authority has historically enjoyed broad discretion with respect to varying the standards in the land use bylaw with very few limits. This discretion allows for variance power to be handled administratively and efficiently instead of having to refer matters to a ‘board of adjustment’ or ‘variance committee’ that are common in other jurisdictions. This flexibility and degree of discretion is one of the most positive aspects of land use regulation in Alberta.

Decisions made by the development authority may be appealed to a local subdivision and development appeal board (SDAB). The powers and responsibility of the SDAB is enabled specifically in the *MGA*. Generally the SDAB is also permitted to vary the requirements of a land use bylaw subject to the same test as the development authority. The SDAB does not have jurisdiction to hear any type of appeal for a permitted use that meets all of the requirements of the land use bylaw are not subject to appeal.

The City of Calgary’s Land Use Bylaw Review Project

In 2002, The City of Calgary embarked on a major corporate initiative to review and rewrite its land use bylaw. The City’s Land Use Bylaw 2P80 (LUB 2P80), in effect since 1980, had grown increasingly inadequate to respond to new development trends and changes in City Council policy. Also, between 1980 and 2002 Calgary’s population had grown from approximately 560,000 to over 900,000 (Kimber, 2002), resulting in a city with more diverse needs and a population that was more sophisticated and increasingly diverse.

Due to the inability of LUB 2P80 to manage the complex nature of the planning problems Calgary faced, there was an ever-increasing use of direct control districts to accommodate customization of the conventional districts found in LUB 2P80. In the period between 1996 and 2000, City Council approved 454 direct control district redesignations versus 191 conventional district redesignations (Kimber, 2002).

The goals of the land use bylaw review project were to: create the ability to implement existing approved Council policy; provide tools to implement sound planning and smart growth principles; reflect current development trends; anticipate future trends or be well positioned to accommodate change; and to promote consistent and equitable decision making to foster better relationships with stakeholders (Kimber, 2002).

The role of Calgary's land use bylaw in The City of Calgary's planning framework is well understood by the various stakeholders in Calgary's planning process. Despite the lack of clear legislative provisions in the *MGA* regarding the relationship between the land use bylaw and other statutory plans, Calgary's land use bylaw (past and present) has been formulated as an implementation tool for the various policy plans and other instruments that are part of the planning process. The land use bylaw regulates the use of land at a detailed level. It is not a plan in and of itself, but rather it is a means of carrying out a plan (Kimber, 2002). Since plans change over time, the land use bylaw also needs to change. Throughout the land use bylaw review project The City communicated it would be committed to ensuring that the land use bylaw was a living document and that it would morph and evolve as the City grew and new planning policy was adopted. Calgary's new Land Use Bylaw 1P2007 (LUB 1P2007) was approved on July 23, 2007 and came into force on June 1, 2008.

Innovations in Land Use Bylaw 1P2007

One of the major undertakings of the review project was trying to determine which planning policies could be translated into objective standards to be included in a land use bylaw. Many planning policies are aspirational in nature and not meant to guide individual development applications; while some policy is general (often intentionally) and meant to be applied through the application of discretion for development applications.

A significant challenge for the land use bylaw team was to move beyond simple use classification as the main focus of the land use bylaw. New planning theories such as form-based code, new urbanism and SmartGrowth started to influence various policy plans and the vision for new and redeveloping communities. Additionally, at the time the project was occurring Calgary was experiencing tremendous reinvestment and redevelopment in its inner-city areas resulting in planning policy that was much more complex in that different types of planning interventions were being called for that were well beyond the traditional zoning goals of separating incompatible uses; in fact contemporary planning has become more concerned with making 'places'. The land use bylaw team responded to these challenges and some examples of some of the innovative aspects of LUB 1P2007 are provided below.

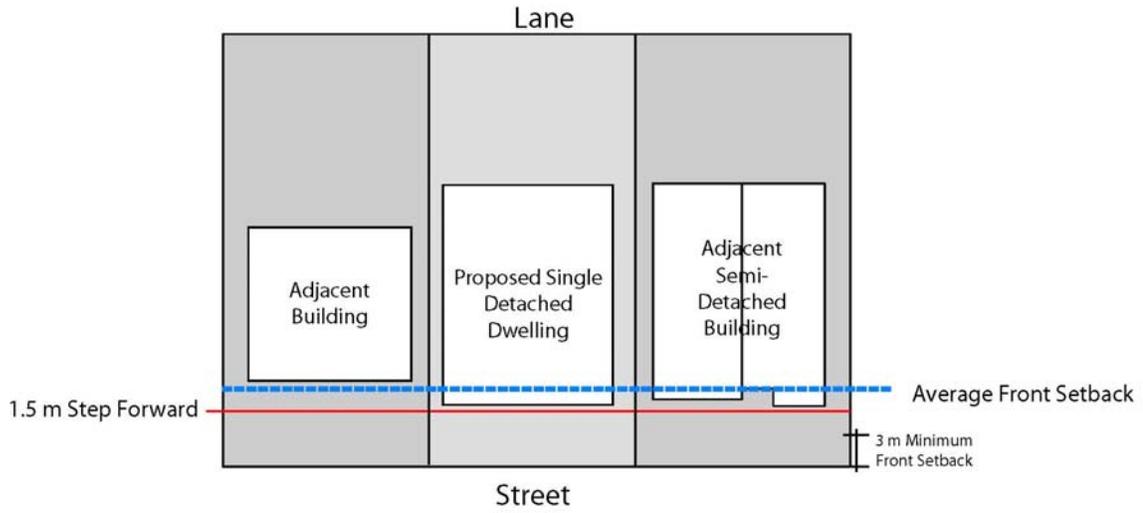
Contextual Standards

The introduction of contextual standards in the bylaw recognizes that there is an inherent difference between new development and redevelopment, and that one standard should not be used for both circumstances. The main contextual standards include:

- Dividing the City into a Developed and Developing Area and creating districts to guide residential development unique to those areas.

- Introduced the concept of a contextual building setback and building height to manage low-density residential redevelopment in the inner-city context to ensure that new development was sensitive to adjacent development (Figure 1).
- Specified maximum building setbacks and parking area restrictions in some commercial districts to ensure that storefront commercial areas continued to maintain a convivial atmosphere for pedestrians.

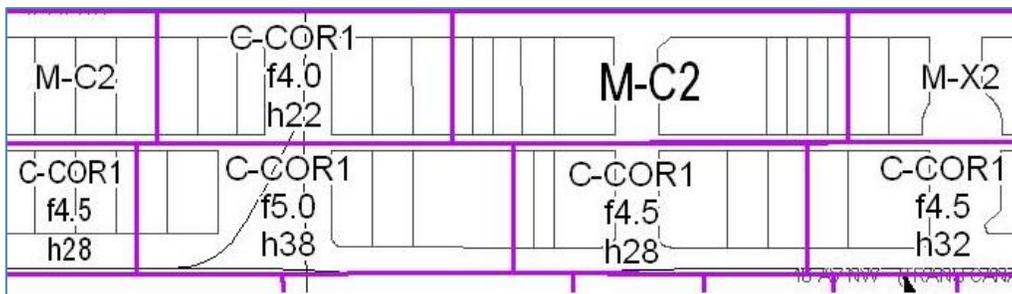
Figure 1 - Contextual Front Setback Illustration



Building Height, Density and Floor Area Ratio Modifiers

The use of development ‘modifiers’ combats the ‘one size fits all’ mentality of zoning by providing a mechanism in which standard land use districts could be used in a manner that would allow the fine-grained application of districts on the ground with varying intensities specified directly on the land use district maps. For example, the Commercial-Corridor 1 District (C-COR1) uses modifiers to express floor area ratio and height. In the example shown in Figure 2 below, the same ‘C-COR1’ district has been applied to several parcels of land, with varying development standards specified by the use of the letters ‘f’ and ‘h’, illustrating maximum floor area ratio and maximum building height respectively. Allowing these standards to be dynamic and set strategically during a rezoning exercise ensures that the land use bylaw can better achieve the goals of a guiding plan.

Figure 2 - Example of District Modifiers



Motor Vehicle Parking

Often zoning bylaws are criticized for excessive parking requirements that either stifle redevelopment or result in a development that is not contextually appropriate (e.g. a suburban style shopping plaza in a pedestrian-friendly urban corridor). Parking requirements and associated traffic impacts are some of the top concerns development planners hear about when evaluating development applications. LUB 1P2007 addresses parking in the following ways:

- Reductions in parking when a development is close to a light rail transit station or frequent bus service - recognizes that parking demand for a development is likely affected by some types of transit service.
- Tiered parking requirements for multi-residential uses – the closer a development is to the inner-city, the less parking is required due to better transit service.
- Shared parking requirements for the most common commercial uses in shopping centres.
- Requirement that developments providing excessive parking must locate those in underground or structured parking – attempt to limit amounts of surface parking.
- Parking maximums for multi-residential development when the site is located close to a light rail transit station.
- Large parking areas require landscaping to ensure pedestrian connections and permeability
- No parking requirement for ground floor retail and restaurant uses in older storefront commercial locations – recognizes that off-site parking is often not possible in these areas, but that these areas continue to thrive and existing or new redevelopment should not provide surface parking that is out of character with the area.

Commercial Use Scale/Intensity

One of the major flaws of Euclidean zoning is that it often does not recognize that the scale of the use is often more important than the specific use itself (Elliott, 2008). This was something that the LUB team understood from experience with LUB 2P80. In order to better implement planning policy, the concept of '*use area*' was created (Figure 3). Essentially the *use area* restrictions ensure that the scale of an activity is in keeping with the intended purpose of the commercial district with respect to whether it serves local, community or regional needs. For example, in the C-COR1 district in LUB 1P2007, most uses located on the ground floor are limited in size to ensure that the use operates at an appropriate scale for the area it is located in. Use area is measured based on the entire interior space that a business occupies. As far as the LUB team was aware the concept of use area was the first of its kind to be used in Alberta.

Figure 3 - Use Area Concept



Vertical Use Regulations

While regulating uses on a vertical plane is usually part of form-based codes it is a new concept for Calgary. Various planning policies suggest that the types of uses located at the street-level should create active edges and generally support a high quality pedestrian environment. For example, uses such as ‘offices’ tend not to create interest for pedestrians and may not positively contribute to streetscape activity. In those districts in which the activity at the street level is important LUB 1P2007 prohibits certain uses from locating on the ground floor. This is another element that is influenced by form-based codes.

Minimum Densities

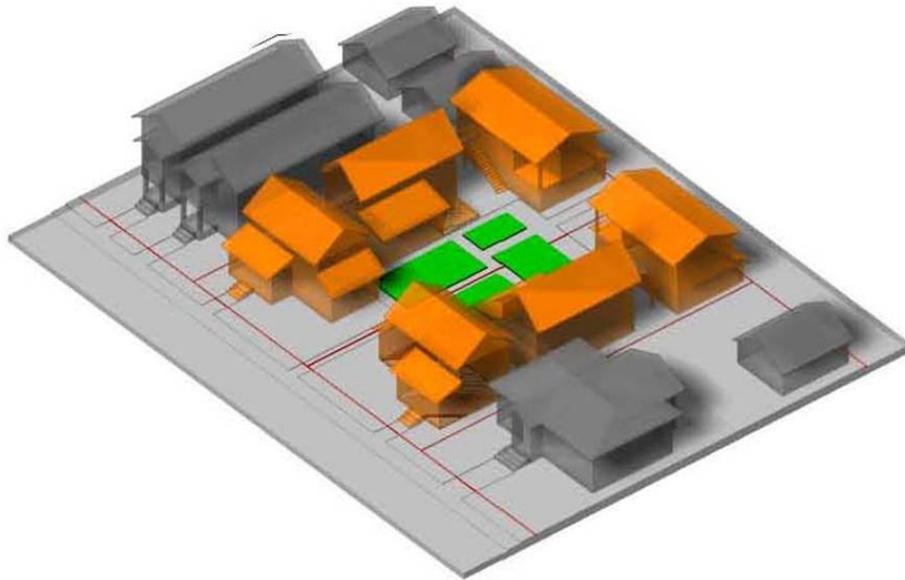
In most of the multi-residential districts that occur in the *Developing Area*, a minimum density is required for new development. Traditionally, density has always been expressed as a maximum value; which is consistent with the philosophic origins of zoning as an exclusionary and protectionist tool (Stach, 1987). The requirement for a minimum dwelling unit density in the *Developing Area* ensures that the servicing infrastructure (e.g. roads, wastewater, schools, protective services etc...) planned are commensurate given the expected population of the new area. In addition to regulating minimum densities, LUB 1P2007 does not allow for low intensity development such as single or semi-detached dwellings in multi-residential districts in the *Developing Area*.

Cottage Housing District

The Residential Cottage Housing district is a new district that is intended to be used in either the *Developing* or *Developed Areas* of the City. This district would allow for cottage housing clusters consisting of single-detached, semi-detached and triplexes with a common courtyard amenity area (Figure 4). In keeping with the idea that land use bylaw should be used to implement planning policy, the district was developed as a market alternative to traditional multi-residential development and is designed to increase housing choice and affordability – central policies of Calgary’s *Municipal Development Plan*. The regulation is designed to achieve

higher density than conventional infill development in a manner that is sensitive in a low-density residential context. It can also be used as a buffer between low-density housing and other forms of multi-unit housing. To date, the district has not been assigned to any area of the City and interest has generally been low. The land use bylaw team is currently drafting refinements to the district, with the assistance of the building industry, in the hopes that revised development standards will generate interest in developing this type of housing.

Figure 4 - Conceptual Cottage Housing Development



Understanding Alberta’s Land Use Bylaw Enabling Provisions – Limitations and Framework for the Future

The experience of writing a new land use bylaw was illuminating for many of the planners and lawyers that worked on the project. Generally, the work was extremely challenging since there were so many competing interests and complex planning policy to consider during the drafting of the bylaw. The process provided an awareness of just how robust the land use bylaw (zoning) enabling provisions in the *MGA* are since contemporary physical planning theories could be easily accommodated in a land use bylaw despite that they call for different types of planning intervention that were not likely contemplated by the legislature in 1929 when zoning was introduced to Alberta or 1977 when the provincial planning framework was last reviewed. Many of the ideas the land use bylaw team had were easily implemented and most of the constraints the team faced were cultural and not legislative since some of the ideas were too progressive and had very little buy-in from affected stakeholders.

Technical Limitations of the Land Use Bylaw Enabling Provisions in the MGA

There are a number of limitations of the land use bylaw enabling provisions in the *MGA* that are worth noting:

- Permitted Use Conditions – there is a lack of clarity regarding the types of conditions that can be placed on permitted uses. This has resulted in an over-reliance on discretionary use classifications since the scope for conditions is much broader. Laux (2010) suggests that the type of conditions placed on permitted use development permits should be kept to a minimum and not confer excessive discretion to the development authority. This has resulted, for the most part, in only minor developments being classified as permitted uses in LUB 1P2007. This results in less certainty and predictability, which is an expectation that landowners have come to expect from zoning legislation. There has been tremendous pressure in Calgary to move to more objective design standards so that more development can be classified as a permitted use.
- Inflexible Use Interpretation - The ‘use’ of land or buildings is an integral part of the land use bylaw regulatory scheme. The development authority or the subdivision and development appeal board cannot vary ‘use’ as part of its decision making ability; only Council can vary it through textual changes to the bylaw. Prior to the 1977 *Planning Act*, previous legislation allowed for ‘similar use’ clauses that allowed a development authority to determine if a proposed use was similar to a use listed in the district. This allowed for a degree of flexibility for a development authority. The absence of this specific authority presumably means this ability is no longer contemplated by the *MGA*, at least in a broad way, since some land use bylaws in Alberta still include some type of similar use provisions for activities such as home based businesses (Laux, 2010), including Calgary’s LUB 1P2007. Calgary experienced this difficulty immediately after LUB 1P2007 came into effect since some of the use definitions were too precise and inadvertently excluded a number of businesses and activities. The only remedy was a textual change to the land use bylaw.
- Non-conformities - The *MGA*, and all planning legislation dating back to 1929, provides for the protection of non-conforming uses and buildings. Despite some updating to the terminology and drafting styles, today these provisions are substantially similar to what existed in 1929. The premise of non-conforming buildings and uses is that eventually they will go away upon redevelopment or another use will occupy a space that previously occupied by a use no longer allowed in the district. Elliott (2008) provides an excellent account of why these assumptions may not be valid. The provisions that protect and prohibit non-conforming buildings and uses from expanding or structurally altering a building are provided in section 643 of the *MGA*, and cannot be varied by a municipality. While this ensures basic statutory protections for property owners it actually places a burden on municipalities that may actually want to enhance these protections by allowing for even more opportunity to rebuild or expand than what is contemplated in the *MGA*. Calgary has often been confronted with situations where a use was made non-conforming, many times unintentionally, causing a burden to a property owner that could be alleviated through administrative discretion instead of a formal rezoning application.
- Application Timelines - When an application for a development permit is made, the *MGA* provides that the permit is deemed to be refused if the decision of a development authority is not made within 40 days after receipt of the application unless the applicant has entered into time extension agreement (s.684). The effect of this provision is to ensure that an applicant receives a timely decision for the application, and if not, they are

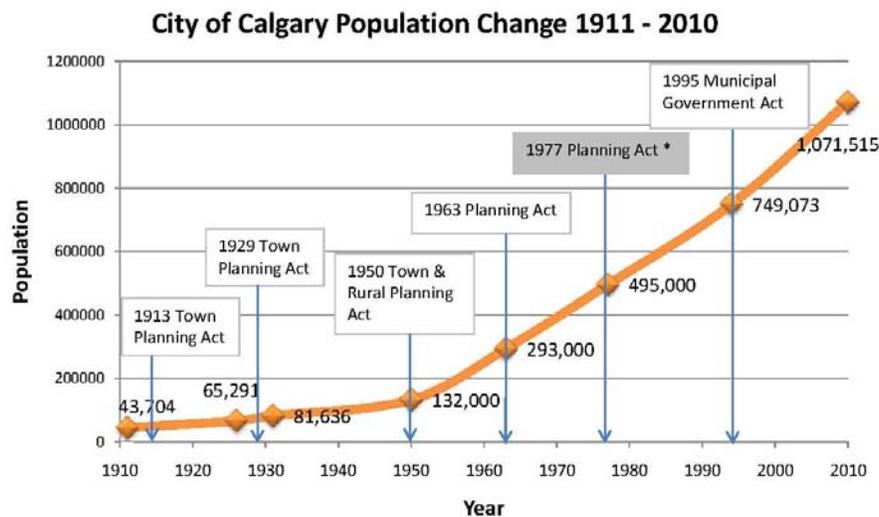
entitled to file an appeal to the SDAB for their application as a ‘deemed refusal’. Certainly it is understood why the provision appeared in planning legislation in 1977. The timeliness of development and subdivision decisions was a major consideration when the *Planning Act*, 1977 was being drafted (Laux, 2010). Philosophically the provision itself is not objectionable, but it rarely reflects reality of development approvals in a large city. The scope of a development permit can vary widely from simple single-family residences to approval of a 50-storey commercial office tower. Further, the development may trigger compliance with other municipal requirements that may delay a decision for the development permit. In Calgary, very few significant developments would meet the 40 day requirement in the *MGA*.

Managing Land Use In a Large City – The Need for New Tools

Despite the strength of the *MGA* with respect to enabling physical planning regulation, Alberta has grown tremendously since the last time the planning framework was reviewed in 1977. Using Calgary as an example, Figure 5 illustrates the growth of Calgary during the same periods in which the Province enacted substantive changes to planning legislation. Since 1977, Calgary’s population more than doubled when compared to 2010.

The 1977 *Planning Act* did not propose “significant changes to the basic nature of statutory planning” (Gordon & Hulchanski, 1985, p. 27) in Alberta. Since then, not much has changed with respect to statutory planning so large cities still find themselves using 1977 tools to manage 2011 urban planning issues which “often involve complex functional interdependencies, conflicting values and cultural clashes among stakeholders” (Stromberg, 2001, p. 61).

Figure 5 - Population Change Versus Enactment of Planning Legislation



*Indicates last substantive review of planning legislation
 Source: City of Calgary: Civic Census, Planning Development & Assessment-Land Use Planning & Policy

Calgary's Planning Aspirations – The Municipal Development Plan 2009

Calgary's most recent MDP better recognizes the implications of the way we grow with respect to social, environmental and economic matters and how these are intertwined with physical planning. The plan suggests that municipal capital investment and infrastructure should place the highest priority on supporting intensification of developed areas of Calgary and not greenfield areas (MDP, 2009, p. 5-7). This represents quite a shift in the way that Calgary has grown in the past.

The goals promoted in the MDP require a new way to conceptualize the way we regulate land use, since planning in Alberta historically was legitimized as a way to “rationalize local expenditure [and] coordinate municipal physical infrastructure ... mainly in suburban areas, to prevent wasteful development patterns and inefficient use of municipal services” (Gordon & Hulchanski, 1985, p. 4). The existing planning framework has been wary to impose restrictions on private property rights and instead has focused on enabling land use controls so that the development of municipal infrastructure accommodated private land development; which in the past was the central concern of municipalities (Gordon & Hulchanski, 1985).

The MDP provides a snapshot of the issues facing Calgary today. These issues often go beyond the traditional methods of managing physical development. The MDP also includes significant policy such as: addressing segregation in housing markets including affordable housing; environmental strategies concerning the use of green infrastructure; encouraging the development eco-industrial networks; reducing energy consumption in the City; and providing targets for employment and density intensity thresholds to better address the location of jobs relative to housing. In many ways the MDP has placed a spotlight on “[q]uestions that before could be seen as externalities or as secondary effects of planning” (Stromberg, 2001, p. 61), and recognizes they are now matters of central concerns. These matters are challenging to address with planning implementation tools, such as a land use bylaw, that are a product of a provincial planning framework that was not conceived to manage the externalities of physical planning interventions.

Thoughts for a new Planning Framework

The regulatory tools available for municipalities to implement progressive urban planning policies are limited since development is largely undertaken in an ad-hoc fashion motivated typically by private property interests. This reality suggests that more direct intervention may be needed to address some of the modern planning outcomes desired by larger cities, such as those illustrated in Calgary's MDP. Hulchanski (1981) suggests that historically there has been “a large gap between what planners and advocates of planning recommend and what is actually implemented” (p. 46). This has largely been the result of Alberta's planning framework trying to maintain much of the urban development process in the private sector (Hulchanski). There is no indication that the Province is actively pursuing changes to the existing planning framework; however, it is suggested that the time has now come for a review since Alberta is a very different place today than in 1977.

Any review of the existing provincial planning framework should consider the following:

1. Is omnibus planning legislation that applies equally to municipalities (both rural and urban) still appropriate given the differences in the scope of the planning issues they encounter? A customized charter that provides for different powers and authority for larger cities may be a better mechanism.
2. Providing the ability for municipalities to employ inclusionary zoning techniques that require affordable housing in exchange for increases in density. The City of Calgary has not pursued mandatory inclusionary zoning since the prevailing legal opinion is that it needs to be expressly enabled in the *MGA*.
3. Specifically allowing land use bylaws to regulate building design and green building standards to reduce energy consumption at the building-scale. It is believed that the land use bylaw cannot regulate the environmental performance of buildings since this treads into building construction techniques which falls under the *Alberta Building Code* and cannot be regulated by municipalities (*Safety Codes Act*, s.66(1)).
4. Reconcile planning objectives with other provincial legislation that may undermine it. For example, housing affordability relies extensively on having adequate supplies of rental housing. The *Alberta Condominium Property Act*, 2000 mandates that a municipality cannot refuse a condominium conversion permit for a building that was constructed after 1966. This has resulted in Calgary experiencing a decline of rental housing units at a time when very little rental housing has been added to the market.
5. Other more radical ideas for discussion would be:
 - Potential to explore growth boundaries to manage urban growth and environmental protection.
 - To explore the possibility of allowing collaborative forms of decision-making with communities and applicants and reduce some of adversary that is part of the current regulatory system.

Conclusions

The ideas for planning and city-building are constantly evolving and the time has come for us to rethink the planning framework in Alberta. Since its inception in 1913, planning legislation in Alberta has focused primarily on accommodating physical growth and has not really addressed the social implications of growth that occurs in large cities. Laux (2010) comments that the enabling provisions in the *MGA* that allow a municipality to enact a land use (zoning) bylaw today are conceptually similar to what was proposed in the 1929 *Planning Act*.

Calgary's land use bylaw introduced new and innovative tools to manage growth and development. LUB 1P2007 provides evidence that a zoning bylaw can actually be used as a planning tool, and not solely for exclusionary purposes. It also illustrates how sophisticated

zoning and use classification have become since zoning was introduced in the 1929 *Planning Act*.

The experience of drafting a new land use bylaw highlighted the strengths, as well as some of the limitations of Alberta's current planning legislation due to the challenges and planning aspirations of larger cities; therefore, it is suggested that in order to confront these realities the planning legislation needs to be reviewed to consider expanding the scope of the current framework to address, among other things, contemporary urban issues such as housing affordability, environmental conservation and energy consumption.

The objectives of land use planning in Alberta largely still remain the "rationalization of land market forces to accommodate growth" (Gordon and Hulchanski, 1985, p. 23). These objectives make it extremely difficult to balance the long-term public interest with the rights of individual property owners that may be operating in the short-term. Given these objectives, the limitations of land use bylaws as long range planning tools is evident since, historically, zoning was never conceived to balance this diverse range of private and public interests.

It has been nearly 35 years since Alberta's planning legislation was comprehensively reviewed. Since 1977, planning matters in Calgary have become more complex and questions have been raised as to the effectiveness of the current framework. In fact, even when the 1977 *Planning Act* was enacted it was criticized for its "failure to provide direction, to encourage or even require innovation in a variety of serious urban problems" (Elder, 1979, p.434).

Cities are complex entities, every planning solution ever implemented is consequential; decisions that were made years ago will leave traces on a city that cannot be undone (Rittel & Webber, 1973). These decisions from the past make it more difficult to achieve the goals of today. In this respect, as well as for cultural reasons, the idea of 'zoning' will exist in Calgary and many other North American cities for years to come and this paper is not advocating for its abolition. Alberta's planning framework will likely never completely deviate from the current model since it has become politically and culturally ingrained in the citizenry and the planning profession. It is hoped that the framers of Alberta's next planning legislation will consider the complexity of planning and managing land use in larger cities and respond appropriately with a new framework that allows municipalities to better achieve their planning aspirations.

References

- Condominium Property Act*, R.S.A. 2000, c.22.
- Elder, P.S. (1979). The New Alberta Planning Act, 1977. *Alberta Law Review*, 17(3), 433-466.
- Elliott, D. (2008). *A Better Way to Zone: Ten Principles to Create More Livable Cities*. Washington, DC: Island Press.
- Gordon, M., & Hulchanski, J.D. (1985). *The Evolution of the Land Use Planning Process in Alberta 1945-1984* (Research Paper No. 156). Toronto: Centre for Urban and Community Studies, University of Toronto.
- Hulchanski, J.D. (1985). *The Evolution of the Land Use Planning Process in Alberta 1945-1984* (Research Paper No. 119). Toronto: Centre for Urban and Community Studies, University of Toronto.
- Kimber, L. (2002). *Land Use Bylaw Review* (OE2002-48). Planning and Transportation Report to the S.P.C on Operations and Environment. Calgary, AB: City of Calgary, Office of the City Clerk.
- Laux, F.A., 1971. The Zoning Game – Alberta Style. *Alberta Law Review*, 9, 268-309.
- Laux, F.A., 1972. The Zoning Game – Alberta Style, Part II: Development Control. *Alberta Law Review*, 10, 1-37.
- Laux, F.A. (2010). *Planning Law and Practice in Alberta*. Edmonton, AB: Juriliber
- Municipal Government Act*, S.A. 1995. c.24
- Municipal Government Act*, R.S.A. 2000. c. M-26.
- Planning Act*, S.A. 1963, c. 43.
- Planning Act*, S.A. 1977, c. 89.
- Rittel, H.W.J., & Webber, M.M. (1973). Dilemmas in a General Theory of Planning. *Policy Sciences*, 4, 155-169.
- Stach, P.B. (1987). Zoning – To Plan or to Protect. *Journal of Planning Literature*, 2, 472-481.
- The City of Calgary. (2009). *Municipal Development Plan*. Calgary: Author.
- Town Planning Act*, S.A. 1913, c. 13.
- Town Planning Act*, S.A. 1929, c. 49
- Town Planning Act*, S.A. 1950, c.71.