

Transfer of Development Potential -
For the Preservation of Heritage Buildings

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In Partial Fulfillment
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for the Degree
Master of City Planning

By

Nolan M. Shapera

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MASTER OF CITY PLANNING

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CHAPTER 1

CHAPTER I

INTRODUCTION

PROBLEM STATEMENT

Current planning controls in Canada, have not deterred the dynamic market pressures that threaten low density landmark buildings. Low density structures of historical or architectural significance are threatened with replacement by high density substitutes that promise greater economic returns. Landmarks are not easily amenable to recognition in the land market since their value is largely non-economic. Behind the conversion of valuable landmarks lies the temptation of money to be made on the exchange of land. Land speculation is an old tradition. The profit motive is a powerful motivational force. The present trends which exploit land and land uses indicate the need for a more flexible concept in meeting market forces.

STATEMENT OF PURPOSE

The purpose of this research is to examine existing government programs and policies related to the preservation of urban land uses and to demonstrate the advantages and shortcomings of these controls. Transfer of development rights will be discussed as a planning tool to provide an equitable solution to heritage preservation. The objective is to evaluate the viability of a development rights proposal.

In order to develop a strong theoretical foundation, a review of the available literature of heritage preservation is documented in chapters two, three and four.

A case study of transfer of development rights in Vancouver and British Columbia will be presented in order to illustrate the effectiveness of transfer development rights as a complement to these policies. Chapter five examines how TDR can be used to implement planning objectives and determine the socio-economic costs and benefits. The hypothesis is that transfer of development rights promises to compensate owners denied capital gains because of preservation restrictions. In order to test this hypothesis, chapter five documents the implementation of the concept in an actual locality which is presently undergoing development pressures.

CONCEPT OF DEVELOPMENT RIGHTS

A development right is defined as the maximum density of building space which may be developed on a property of a given size, given existing zoning regulations. A transferrable development right exists if the development right on one piece of property can be transferred to another piece of property such that the permissible density is not exceeded when the two properties are considered together.

Any thorough discourse on the topic must be prefaced with a discussion on the difference between American and Canadian land law. In the United States development rights are acknowledged. A development right is one of the numerous rights included in the ownership of real estate.

In Canada however, land continues to be vested in the Crown, "as absolute and ultimate owner" and the right to development is not established and has to be earned with regard to many zoning variables. It might be more accurate to describe the right to development in Canada as development potential. Henceforth, any reference to transfer of development rights in the Canadian context will be described as transfer of development potential or TDP.

The following graphical illustrations are intended to be a visual aid to demonstrate the effects of a transfer of development potential ordinance. Figure 1 illustrates the transfer of development potential from the donor (B) site to two recipient sites (C and D). If, by way of example, we assume that B owns a landmark containing 50,000 square feet of floor area on a site allocated 150,000 square feet, then as a rational investor, B will be sorely tempted to tear down his landmark (low density use) and replace it with a building (high density use) containing the full 150,000 square feet allocated to his site. Under the transfer of development rights transfer technique, B will be permitted to transfer his lot's 100,000 square feet of unused development potential to sites C and D. Owners of these sites will pay B the cash value of the development potential because the latter will enable them to build proportionately larger and hence more profitable structures on their

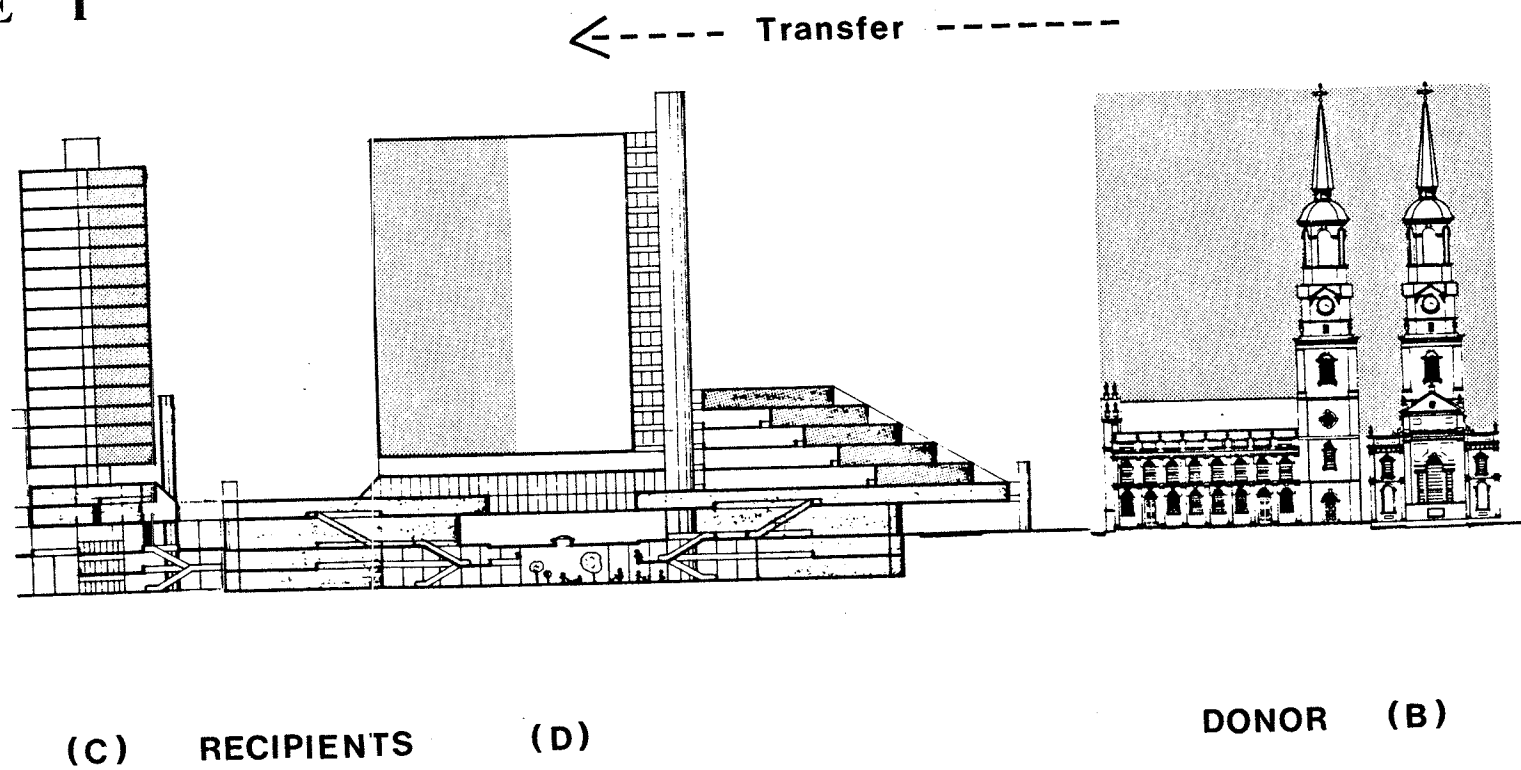
sites. Figure 2 illustrates the transfer of development potential from the donor (B) site to one recipient site (D). Under existing zoning regulations there is a height restriction of 130 feet. If we assume that B owns a landmark containing 100,000 square feet of rentable floor area on a site allocated 200,000 square feet, then B will be permitted to transfer or sell his lot's 100,000 square feet of unused development potential to site D. Owner D will be allowed an increased height allowance of 50 feet to accommodate the additional 100,000 square feet of floor area.

These two illustrations do not account for any net increases in the city's density. Stated another way, "transfer programs do not create new space; they merely redistribute¹ space that has already been authorized."

ECONOMICS AND URBAN PRESERVATION

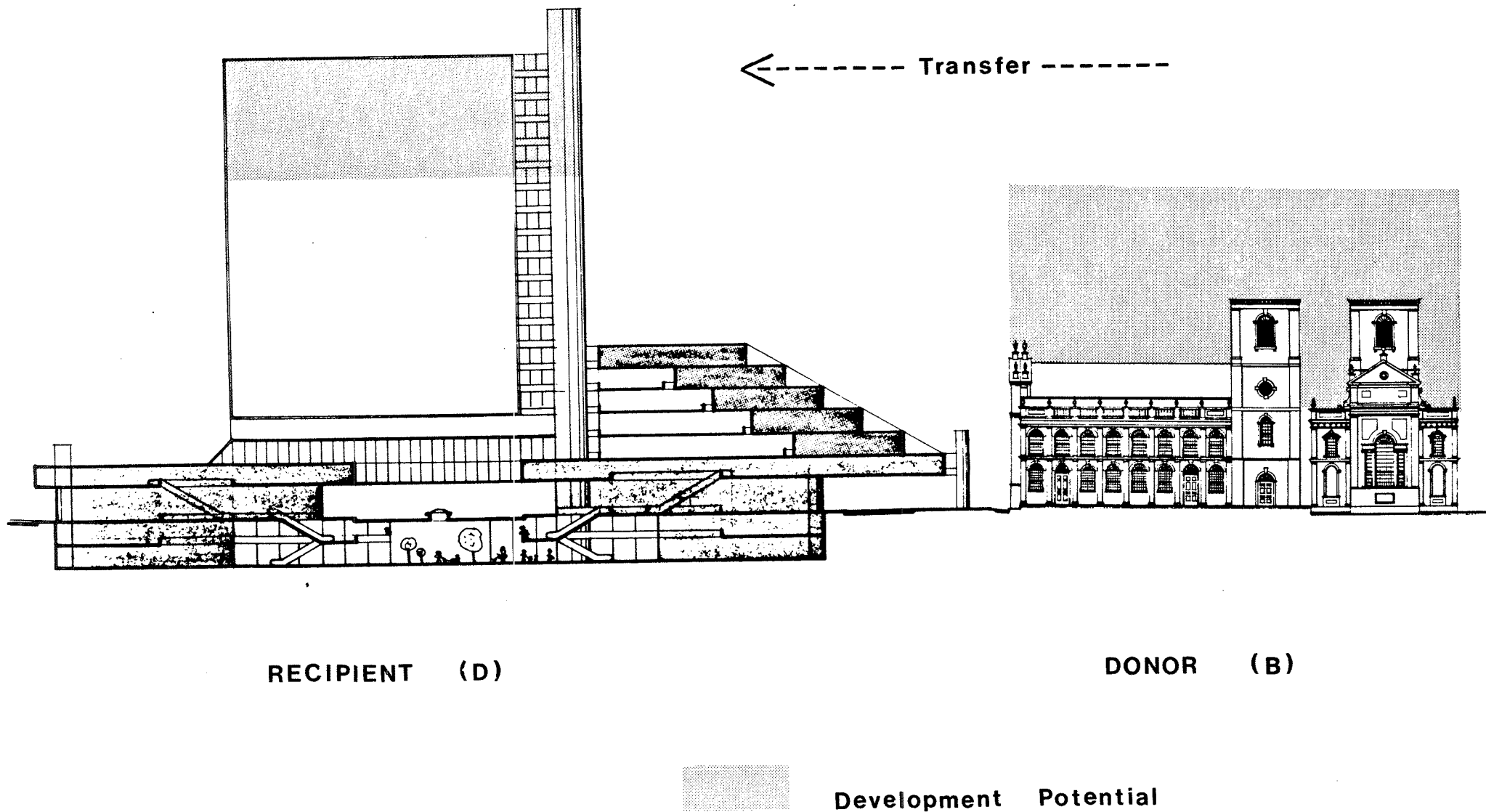
In essence, TDP recognizes that land has a certain development potential that is determined by its ability to accommodate development, the market for that land development, and other similar forces. Further, TDP recognizes the 'right' of the property owner to develop his land in a manner and to a point in keeping with both its maximum potential and, of course, the public interest, as expressed by various land use controls. This potential development of land may be unrealized to any

FIGURE 1



Development Potential

FIGURE 2



measurable degree or may be partially or totally realized, depending upon the existing improvements, the demand to develop the individual parcels and a number of other factors. All land, however, is perceived by TDP, has a certain identifiable development potential.

The principal use of TDP is found where a conflict arises between the right of an individual property owner to develop his parcel to realize its maximum potential and the collective right of the community as presented by public interest. Most commonly, this conflict arises where increasing land values pose a threat to the continued use of land in a certain manner.

In this vane, TDP confronts the inequities inherent in conventional zoning. What can now prevent a municipal government from making a rezoning decision that favors the interests of a few property owners at the expense of the interest of all others? What is there to prevent a particular property owner from being deprived of the effective use of his property as a result of a municipal zoning decision? The answer to both these questions and others yet to be posed is simply "Nothing". What TDP does offer, however, is an opportunity for municipal governing bodies to accomplish a positive public purpose and concurrently give preservation an economic rationale. Transfer of development potential takes into consideration the economic consequences of planning decisions and thereby makes it politically palatable.

CHAPTER 2

CHAPTER II

TRANSFER OF DEVELOPMENT RIGHTS: A LITERATURE REVIEW

While the concept of transferable development rights may initially appear as a rather complex, if not revolutionary, land use regulatory device, it is no more radical or complex than the basic premise of Euclidean zoning. Indeed, TDR is rather traditional in its view of land and as delineated in this chapter quite logical in its approach to its regulation.

Despite the apparent novelty, the principles of TDR relate strongly to precedents derived from American land use law which state that:-

".... (nor) shall private property be taken for public use, without just compensation."

The courts, legal commentators, planners and others concerned with land use have for some time, viewed the ownership of land as simply the possession of a bundle of rights of a particular piece of property. The right to carry out some operation or improvement upon the land, that is, to develop property, is normally one of the rights of ownership. This right may be disposed of by the owner or taken away by the state, but the right always pertains to that specific parcel. The concept of TDR involves making such a

right transferable to other properties on which restrictions on development exist.

THE CASE FOR T D R. AND DEREGULATION

PROBLEMS INHERENT IN ZONING

John W. Reps in reference to zoning has stated:

".....zoning served up well during a period when urban life was simple and less dynamic. We should honor those who were responsible for its birth and early care...But we do these men, and ourselves as well ultimate honor by tending their legislative monuments at the end of the by now well-worn legal road they constructed but by carving new trails toward new frontiers to serve an emerging new urban America."²

Proponents of T D R programs theorize that the failure of our land use system has erroneously been placed upon the planning process rather than the real culprit - the system under which we have attempted to conciliate development forces exerted by the public and private sectors.

The original purpose of zoning as stated in section 3 of the Standard State Zoning Enabling Act of the United States of America (1926) was:

"Such zoning regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate

light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation,³ water, sewage, schools, parks and other public requirements.

Fifty-seven years have passed since the conditions existed which led to early zoning and subdivision controls. Zoning was initiated as a negative regulatory measure to control land use and intensity of development and was intended to "prevent" the occurrence of incompatible land uses from arising.

ZONING AND INEFFICIENCY

By imposing a land use pattern, zoning can create inefficient land use patterns resulting in sub-optimal production and consumption. Neighborhood preservation schemes which prevent multiple family construction and the overzealous use of open space can lead to disequilibria in the urban land market. These conditions can arise⁴ due to planners being misinformed about future demand and supply.

ZONING AND EQUITY

Few dispute that zoning, as an equitable land use control procedure, is subject to abuse. Audrey Moore states:.

"How often have you seen the planner unveil his colorful maps? Red represents high intensity uses, yellow, single-family uses, and green the open space. What the planner doesn't bother to tell you is that when he paints the land

red... \$90,000 an acre is a reasonable asking price; where he paints it yellow, the land depreciates to \$13,000 an acre; and where he paints it green, the real estate assets are relatively cheaper. The name of the game in real estate is maximizing the profits on land - get a little yellow, and a little green and convert it all to red."

Zoning has tended to provide tremendous opportunities for financial gain for individuals owning parcels of land that have been authorized for redevelopment. At the same time zoning may prohibit or delay future development of land for some individuals, thus depriving them of a financial gain. What occurs is that some owners right to develop land are wiped out. On the other hand, some landowners can realize "windfall profits" if the regulations on their land is relaxed. In short, our zoning laws have not always been effective because they have not been fair in their treatment of equity.

CREATING A MARKET FOR DEVELOPMENT RIGHTS

Transfer of Development rights is a scheme whose aim is to effectively and equitably control land in response to public values at minimal public cost and to neatly sidestep the taking issue. The mechanics of the TDR scheme are critical to its success, however, in areas where there is intense pressure to redevelop it has potential for avoiding some of the inequities perpetrated by zoning.

In cases where overzoning exists, TDR can result in over-compensating the restricted landowner. Underzoning, similarly would derive less revenue than they are entitled. Liberal zoning can also eliminate the need or demand for development rights and conversely very restrictive zoning could artificially inflate the value of development rights. The resulting increased costs would be passed on to the consumer in the form of higher rents.

Implementing a TDR program requires a sophisticated understanding of the interrelationships between the various submarkets for housing, commercial floorspace, land, etc. Without this knowledge, TDR's may prove ineffectual or frustrating.

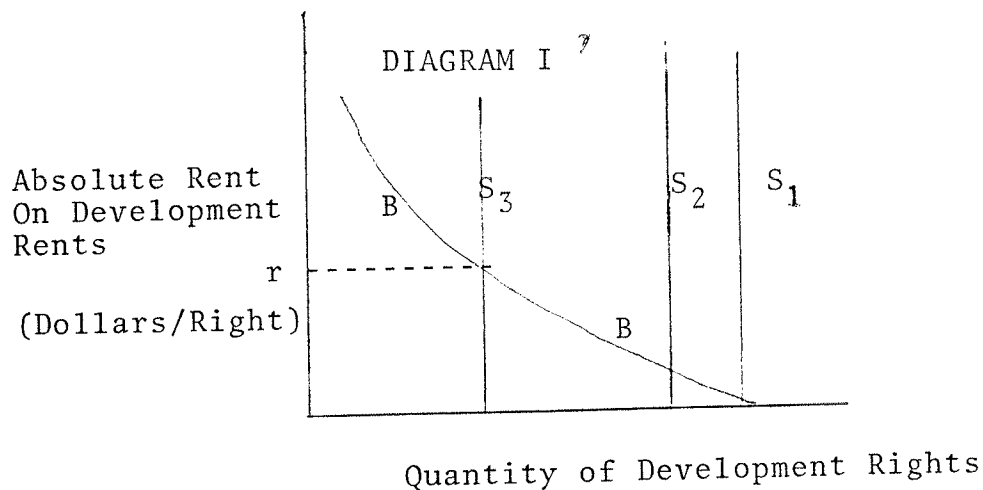
The first step in establishing TDR's is the identification of zones for development and zones for preservation. Each recipient zone or growth zone must have associated with it an upper limit on development density while the donor or no-growth zones are limited to little or no further development. The upper limit in a growth zone may be nothing more than the previous zoning constraint or it may be a new constraint based upon estimates of development in the absence of a TDR scheme. In general, the new upper limit on development should be relatively low so that higher densities, which are necessary to accomodate development excluded from the no-growth zones, are potentially profitable. To build at higher densities, the developers will have to purchase transferable development rights that allow them to legally exceed the upper limit on development.

The second step involves the creation of development rights and their allocation to land owners in the no-growth zone. Development rights can be allocated to land owners in the no-growth zone in a number of ways. For example, they may be assigned in proportion to floorspace, appraised development value, assessed value before the TDR scheme, or estimated development in the growth and no-growth zones before the TDR scheme. The problem with actually assigning development rights in proportion to expected growth before the TDR plan is established is estimating expected growth for each location. General growth patterns can, of course, be forecast, but there are considerations of the effect of land prices, construction costs, and demographic factors. In addition, attempts to make fine distinctions among adjacent parcels of land in order to determine where growth is more likely may prove difficult and assignment of development rights would be most equitable and efficient using a simple formula.

Development rights can command an absolute rent when exchanged. Their exchange value depends upon their relative scarcity which in turn is determined by the number of development rights created and the bid rent function for development rights. The supply of these rights is shown as one of the vertical curves designated S_i in Diagram 1. Since the availability of these rights does not depend upon some production process, concepts of marginal cost are irrelevant and so the supply curves are price inelastic. Given a rent on land,

the bid rent for development rights is analogous to a demand curve, and it is shown as a curve. It is the aggregate marginal surplus of developmental rights in the floor space industry in the region and is downward sloping to reflect the assumed decreasing marginal surplus per development right as the number of these rights used in the production of floor space increases.

From the diagram it is quite apparent that the absolute rent of the development rights depends on the number of rights created. If that number is relatively large, such as that represented by curves S1 and S2, the bid rent for all the rights on the market would be at or near zero. If they are relatively scarce, as represented by curve S3, their rent will be bid up to r . Thus, in order to make the market for development rights yield an absolute rent large enough to suffice as compensation for the loss of privilege of conversion, the number of rights created must be carefully contrived with a knowledge of the shape of the bid rent curve. (Berry & Steiker)



One way to help ensure the scarcity of development rights is through an intermediary monopoly holder of development rights, such as a government agency. The withholding action may be by public purchase of development rights at some "parity price". The monopolist would then distribute the development rights to developers in the growth zone. This remedy would require administrative costs and would require a large initial expenditure to acquire the development rights. This action despite these drawbacks does control and eliminate speculation in development rights. If the bid rent curve is expected to shift outward over time because the demand for new construction increases, then development rights holders can engage in speculation. They might refuse to sell their development rights in the early stages of development in the growth zone in anticipation of obtaining larger rents later on. Consequently, the constricted supply in the early years would increase the rent to consumers during this time period and would contribute to inflation.

Density restrictions also affect the market exchange value of TDR's. In particular, they will depress the total rent accruing to development rights holders if they are set so low that not all transferable development rights can be used. To show how an inconsistency between the number of transferable development rights created and the density limitations in a community can arise and to see the effects of this inconsistency turn to Diagram 2. The diagram shows isosurplus curves for floor space construction, a

land constraint (L^*) for the community, and a density constraint (α). Density is interpreted as the ratio of housing units embodied in transferable development rights per unit of land and this appears as a ray emanating from the origin. Combinations of land and TDR's below the ray satisfy the zoning constraint while those above the ray exceed the permitted number of housing units added per acre with TDR's. In the figure a supply of transferable development rights limited to the quantity $T1$ constrains developers to an area below the density limits and the TDR's will command a positive market exchange value. If the number of TDR's issued however, is $T2$ developers will not be able to employ the full supply without exceeding the density constraint. If these density ordinances are enforced, therefore, the TDR's will not be in scarce supply and will have little value.⁸

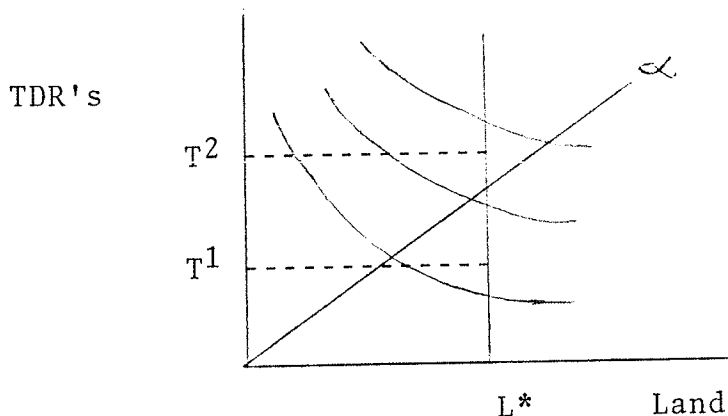


DIAGRAM II⁹

ISO-Surplus Curves And
A Zoning Density Constraint

Implementing a coordinated TDR program over an entire metropolitan area would require a sophisticated understanding of the interrelationships between all the factors involved in urban development.

Elaborate management would be required to ensure scarcity in the aggregate supply of development rights which, in turn, insures their exchange value and marketability. If applied on a limited scale to protect isolated landmarks or historical buildings within a city they would impose relatively little cost on the public and would provide compensation to landowners whose properties are restricted. They would operate essentially as a self-working market operation.

THE ENGLISH EXPERIENCE

The English have been grappling with the problem of the reallocation of land values by restrictions on use since as early as 1990. The prevention of waste of a natural resource beneficial to the community warranted intervention. Although several types of solutions were attempted over the years and the matter wound up in the divergent policies of successive Labour and Conservative administrations, it is instructive to chronologically outline the English approach.

The first legislation dealing with land use planning, The Housing, Town Planning Act of 1909 empowered local authorities to prepare and adopt town planning schemes dealing with the use of land likely to be developed- essentially suburban land. The Act prescribed permitted uses for each zone and set standards for the developments that could take place. The Act addressed the financial problem by allowing for claims for compensation and betterment. An owner whose land was "injuriously affected" by the making of a planning scheme or the execution of public works under the scheme could make

a claim on the local authority for the amount of his loss. The confiscatory nature of severe restrictions on land was therefore recognized. On the other hand, where the value of land was enhanced by a scheme, the local authority can make a claim on the owner for one-half of the increase.

This early British approach was fraught with difficulties. The major one being the necessity of establishing a casual connection between the making of a scheme and resulting changes in land use in order for a claim to be successful. Additionally, with respect to betterment, the local authority had to make its claim within a specified period of time and against an owner who had not actually realized any gain and was not interested in disposing of his holding. Needless to say, the political popularity of city councillors was not enhanced by their actions. The system obviously did not work as planned and in 1940 The Barlow Commission reported that the process of planning was being hindered throughout the country because of the inadequacy of the financial provisions. Local authorities had become reluctant to restrict land uses because of the liability for compensation. The Commission therefore recommended that a committee of experts be constituted to examine the questions of compensation and betterment.

The result was the Uthwatt Committee, whose report was published in 1942. The Committee found that the compensation provision in the 1909 Act was inherently inflationary because of the way the market operated - in an area where development was expected, the values of an individual parcel of land

would rise because of the chance that valuable development would take place on that site.

The Uthwatt Committee believed that betterment could never be made to balance compensation. It recommended that development values be secured for the community by prohibiting private development and by having the state acquire land to be made available for development.

The Town and Country Planning Act of 1947 drew substantially on the work of the Uthwatt Committee. All property in the United Kingdom was downzoned to the point that owners were left only with existing use rights. In effect the right to develop land was nationalized. Compensation was made available for the loss in value and, conversely, in order to develop one had to purchase a development right from the public authorities. While the provisions of this Act began to be repealed by the Conservatives in 1953 development rights remained nationalized until the end of 1975.

In 1975 The Community Land Act was passed. If and when it is completely implemented, this statute will require local authorities to acquire all land likely to be developed within the next succeeding ten years at existing use value.

It would be inaccurate to call the British approach a compensation scheme. Its goals were to enable the community to control the development of land in accordance with its needs and priorities and to restore to the community the

increase in the value of land arising from its efforts. It was nevertheless, a strong attempt by a common law government to deal with these twin issues.

TRANSFER OF DEVELOPMENT RIGHTS- THE AMERICAN VERSION

The late 1950's and the early 1960's saw an active discussion of the concept of development rights in the United States and the evolution of TDR. The Americans sought ways to avoid the drawbacks of the British experiences by injecting greater flexibility into their proposals.

HISTORIC PRESERVATION

North American cities are growing so quickly and land values are increasing so rapidly that it is becoming economical to demolish even new buildings in order to use land more intensively. It is therefore not surprising to see vintage landmark buildings of low density and limited economic return frequently falling victim to these market forces.

Presently, many buildings of historic merit occupying valuable urban space, and having a low functional factor, are never the less structurally sound. The pressure of private self-interest groups coupled with the lack of public funds to acquire and bare the costs of restoring these imperiled buildings, makes public preservation difficult, if not impossible. In most cases, destruction offers the only alternative because two-dimensional zoning only permits larger structures to replace the existing buildings.

Transfer of development rights is viewed as a third dimension to existing zoning by redistributing development rights in response to market demands. The concept of TDR presupposes that the total density under existing control is correct and thus does not aim to increase floor area in the reallocation of these rights. The application of TDR permits the owner of a low density structure to sell the unused development potential to which the structure can not be adapted, to developers who can use the gain to erect larger structures on other sites in the city. In return for the transfer, the owner present and future, is bound by a preservation restriction to maintain the structure in a reasonable standard. "The potential for greater density produces the incentive for the purchase of development rights."

The following will illustrate some early proposals that dealt specifically with historic preservation.

NEW YORK

In 1963, provisions were amended to allow for a transfer of density to a separately owned adjacent property. New York passed its Landmarks Preservation Law in 1965, which worked as follows: where designation was not sought actively by an owner, or even accepted passively, the New York Landmarks Preservation Commission thought twice about designating. The Commission proceeded cautiously as it was extremely concerned about possible legal challenges to the statute.

The Landmarks Commission proposed that the planning

commission change the traditional Euclidean zoning enough to take away residual zoning potential from a landmark lot. This suggestion, made in 1967 had not been tried elsewhere in the United States. The proposal was really an optional procedure as opposed to a mandatory control. The owner of a landmark was to transfer the unrealized potential, that valuable column of air over the landmark which threatened to destroy it, to a contiguous site. As an illustration: Grand Central Terminal in New York City, a designated landmark, has a floor area ratio (FAR) of 2 in a zone which allows a FAR of 18¹⁰. The notion was as follows: if the development potential of 16 (FAR 18-FAR 2) could be transferred from the terminal to one of the other sites in the vicinity of the terminal that was owned by the railroad, then the landmark would be preserved. The "light and air park" over the terminal would remain for the benefit of the surrounding buildings. The terminal itself, with its important transportation function, would also remain. A building of higher bulk than would normally have been permitted on a nearby site would be allowed in exchange for preservation of the terminal.

The two primary impediments to TDR's success in New York were competing bonus zoning programs and an over-built

business district. The development rights of designated buildings needed to be marketable for the plan to function. Since New York had an excess of office space, the development rights had little marketable value. Also, from an urban design point of view, it was questionable as to why a large structure should be constructed next to a landmark property.

CHICAGO

The Chicago Plan (1968) came about through the efforts of the Chicago chapter of the American Institute of Architects and the Metropolitan Housing and Planning Council, a Chicago citizen group, to adopt the New York Plan to Chicago's purposes. John Costonis, a young attorney, was hired by the organizations to evaluate the New York law and its results.

Costonis and John Schlaes in attempting to find a new solution and avoid the drawbacks of New York's approach, abandoned the concept of adjacency, which was the string attached to the New York plan, and instead opened development rights transfers to a larger area.

Under the plan, the city designated a "development rights district" which encompassed the downtown loop area of Chicago, where most landmarks were located. Development rights could be transferred from sites containing architectural landmarks to other locations within this district.

The Chicago Plan worked as follows: when a building was designated a landmark, the owner could sell his excess development rights to owners of non-landmark property within the

district. If a landmark owner chose not to sell his right by this procedure but insisted upon either cash compensation or the right to redevelop his site, the city was empowered to obtain a preservation restriction by purchasing the as yet unused rights. This was to have been funded through a "development rights bank" analagous to the First and Second Banks of the United States. The municipality could sell the development rights it had acquired, as could any landmark owner. The banks start-up funds came from the sale of the unused development rights of some of its publicly owned landmarks.

Non-historic sites were governed by a two-tier density standard: one maximum in zoning terms with a higher maximum if density rights were purchased. In theory the potential for higher density was to provide the incentive for the purchase of development rights.

As indicated previously, the success of TDR depends greatly upon the marketability of the development rights. Under present circumstances, application in Chicago is particularly difficult due to the nature of zoning regulations. Much of Chicago's downtown area is over-zoned, and downzoning would have to be implemented to create a need or demand for development rights.

The Chicago Plan's lack of success can also be blamed on the absence of a receptive political climate. Chicago's city

officials have taken a head-in-the-sand posture regarding preservation, due to the attitude that power and money will be more supportive at election time.¹¹

OPEN SPACE PRESERVATION

Transfer of Development Rights can also be applied to the preservation or enhancement of open space, by redirection of rights from agricultural to urban land in the prevention of uncontrolled spread as well as transfer to other rural areas, to both preserve open space and control surrounding densities. To date, the legislatures of Oregon, New York, New Jersey, Connecticut and several other states are considering legislation providing for the use of TDR for the preservation of property for a variety of purposes.

While the preceding paragraph might lead one to believe that State governments are the units of government most actively interested in TDR, in reality it is the county and municipal government that are pursuing TDR with the greatest zeal.¹²

Localities including Suffolk County, Long Island, Saint Georges, Vermont, and several in New Jersey have adopted or are considering the adoption of TDR ordinances for the preservation of farmland and open space.

The following summary and illustration of the basic provisions of New Jersey's assembly Bill 3192 will serve to explain the purpose and illustrate the operation of TDR.

NEW JERSEY

New Jersey is a highly urbanized state with a diverse economy and a great diversity of natural environments. More than 60 million people live within a 250 mile radius of New Jersey, which is the fifth smallest state in the union. The state experiences an annual growth rate in excess of 100 thousand persons per year, and as a result of this growth, agricultural lands are undergoing intense pressures, as speculators and developers assemble large holdings of land. The increasing pace of land transactions may not be evident on the surface, but over 20 per cent of the state's active farms are already in the ownership of non farmer landowners who benefit from farmland assessments.¹³

The state's early attempts to preserve open space and protect agricultural areas proves to be insufficient. A 1973 report recommended that each municipality designate 70 per cent of its class I-III farmland as Open Space Preserve. This would total 1,000,000 acres. Owners of the designated land could sell their development rights to the state for full compensation. Funds were to come from a 4 mil transfer tax on all real estate transactions. Such a funding would only yield \$22,000,000 per year, and it would take 43 years to acquire rights on the 1,000,000 acres. It was therefore decided to procede with a pilot project using funds from a \$200,000,000. "Green Acres" bond issue already approved for

general acquisition of open space. Two state "Green Acres" bond issues for \$60,000,000 and \$80,000,000 acquired some significant tracts but at an average cost of \$23.00 per acre the total price of using this method to preserve New Jersey's 1,000,000 acres of agricultural land would have been prohibitive.¹⁴ Hence the program was terminated in 1979.

In 1974, the state in its search for alternatives, established a committee composed of personnel from both the Division of State and Regional Planning and a number of departments at Rutgers University, particularly the Division of Environmental Sciences. This committee designed a technique to apply the concept of TDR to the preservation of open space and drafted New Jersey's Bill 3192 for introduction in the New Jersey legislature.

Under TDR, the municipality would establish a preservation zone which would include the farmer's property and determine its development potential. For purposes of discussion, the municipality may determine that the 100 acre tract of our hypothetical farmer has a development potential of 100 dwelling units. Considering the fact that there presently exists 5 units on the tract, the municipality would, in turn, consider such improvements in its computation and allocate 95 development rights to the farmer. The number of development rights issued would be, of course, equal to the unexpended development potential of the land.

In addition to its activities in the preservation zone, as described above, the municipality would simultaneously seek and identify areas of land to be known as the transfer or recipient zone. In essence, this area would be characterized as having the topography, existing density, capital facilities and such other features to not only accomodate development at an increased density, but also to provide a lucrative market for the development rights issued the farmer and other property owners in the preservation zone. Upon the adoption of the TDR ordinance, the system would begin to operate.

The farmer and other property owners in the preservation zone would be allocated development rights in the manner described above. By this action they would be prohibited from further development of their property and provided, in the development right, the mechanism to receive "fair and just compensation" for the taking. In turn, the owners of land in the transfer zone would be permitted to continue to build at the density permitted under the zoning ordinance in effect prior to the adoption of the TDR ordinance as a matter of right. However, through the acquisition of development rights from the farmer or other preservation zone property owners and the execution of same, owners of land in the transfer zone would be permitted to build at a density in excess of that permitted under the zoning ordinance.

Thus, in a 100 acre transfer zone where the zoning permitted 1 dwelling unit per acre, 100 dwelling units could be constructed without development rights. However, by acquiring the development rights, the density of the transfer zone could be increased and, assuming 100 rights were available and were acquired, the resulting density could be doubled to 2 dwelling units per acre. The resulting profit margins and economies of scale from the increased density would, of course, provide an active and viable market for the development rights. The ideal end to this scenario would find the farm preserved from development, the farmer compensated by the private market for the taking of his property and the development, with its increased revenue to the municipality, allowed to occur in the most appropriate portion of the community.

Assembly Bill 3192 failed passage in its first submission to the New Jersey Legislature in 1975 but has been amended and reintroduced. The fate of New Jersey's "Municipal Development Rights Act" is at the present time unknown. The proponents of Assembly Bill 3192 are quietly confident and predict its eventual passage, but for the present, they wait.

SUMMATION

In concluding this chapter the writer will briefly outline some current Canadian thoughts and present status of TDP in Canada.

We in Canada have been unconcerned with resolving the

conflict between private and public interest in the use of land, perhaps because until recently there has not been any firm resolve to enforce proper planning, as opposed zoning to protect property values. In areas under development pressure, zoning has generally followed the market.

The present technique of saving a building of historic or architectural interest is to perform a holding action until some scheme is devised that the owner can accept or the funds are gathered to acquire it.

The provinces of British Columbia and Quebec have enacted stringent land use controls to preserve their agricultural lands. Their approach has been to freeze agricultural land, prohibiting or putting strict controls on any non-agricultural development, including land severances. While appeal mechanisms exist, there are no provisions for direct compensation.

The only statute in Canada which provides for compensation for land use controls is The Aeronautics Act S.C., c.A-3, a federal statute.

Section 6(10) of the Act states:

"Every person whose property is injuriously affected by the operation of a zoning regulation is entitled to recover from Her Majesty, as just compensation, the amount, if any, by which the property was decreased in value by the enactment of the regulation, minus an amount equal to any increase in value of the property that occurred after the claimant became owner thereof and is attributable to the airport."

In the case of Canada Steamship Lines V.R. (1956-60) Ex C.R. 277 the Court determined that the compensation payable would be the difference between what a willing buyer would pay to a willing purchaser immediately before and after the regulation was published. In this particular case Canada Steamship Lines was awarded a claim for land it was using for warehousing adjacent to Montreal's Dorval airport.

Although Canadian provincial statutes have in the past made provision for land injuriously affected by land use controls there have been little, if any, use made of the sections .

American experiments in TDR in recent years have catalyzed a re-examination of current land use controls in Canada. TDR or TDP has demonstrated its effectiveness by addressing the issue of compensation, shifting the costs of resource protection away from the public sector to the development process, the principal author of these costs.

Transfer of development potential is being widely discussed in some parts of Canada. The Annapolis Valley and the Niagara Escarpment are considering using TDP for preservation of agricultural lands and the province of Ontario and the city of Vancouver are employing TDP₁₆ now in limited situations for historic preservation.

In Vancouver, the use of TDP is possible for adjoining property and was used between Christ Church Cathedral and Daon Corporation, the owners of land adjacent to the Cathedral. Daon acquired the rights to the floor space ratio over the Cathedral site for use in their development on the adjoining property. A more detailed analysis of the provisions of this development will be presented in Chapter VI.

CHAPTER 3

CHAPTER III

HERITAGE LAW IN CANADA: PROTECTING THE STRUCTURAL ENVIRONMENT

INTRODUCTION

"For the overwhelming majority of Canadians, 'environment' is their city. It is the quality of that urban or semi-urban environment that will have the greatest impact upon their everyday perception, and indirectly effect such matters as stress, cultural identity, a sense of historic continuity ¹⁷...." In this context, the conservation of the cultural and aesthetic values which are represented in the buildings which accomodate and surround our population is of great importance to the conservation movement.

It is only with a clear understanding of the strengths and weaknesses of existing laws that strategies can be formulated to enable 'heritage to fight back'.

We, in Canada, have been profoundly reticent with regards to the protection of our landmarks, and it is only recently that a more positive approach is being taken. Legal and financial mechanisms exist to protect

these values and this chapter will outline in general terms heritage law in Canada and describe some selected problems in government legislation.

There are three levels in heritage legislation at which legal instruments may exist- federal, provincial, and municipal. The British North America Act, 1867 (as amended) grants exclusive jurisdiction in this area to the provincial government and the provinces have in many cases delegated some of their powers to the municipalities.

THE FEDERAL LEVEL

Can the federal government designate a site without acquiring? According to The British North America Act, 1867 all matters pertaining to property and civil rights are of exclusive provincial jurisdiction (s.92(13)). Therefore, although the federal Minister of Indian and Northern Affairs can name a site of national significance, under The Historic Sites and Monuments Act, 1952 he can not protect the property. For example, the Rideau Street Convent in Ottawa was demolished shortly after being named a national historic site. The federal government goes through a futile exercise in naming 'national historic sites' it can not protect. The designations have no binding legal effect.

The federal government can, however, protect a historical site by purchasing it. The government has acquired over one hundred historical sites which are now being

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restored, with many being used as museums. These public acquisitions are successful in saving some buildings but it would be impossible for the government to acquire all buildings worthy of preservation as acquisition and restoration of these sites is done at a considerable cost.

THE PROVINCIAL LEVEL

Owing to the vagaries of Canada's constitution, The British North America Act, the provincial governments have been delegated with the primary responsibility for protecting heritage.

Eight of Canada's ten provinces have empowered provincial officials to grant permanent protection to historic sites. The two exceptions are Ontario and Nova Scotia which protect only archaeological excavations. The accompanying charts, extracted from " Heritage Fights Back ", outlines the various provincial legislations and summarizes the contents of the statutes (See Tables 1 and 2).

Despite the fact that provincial governments are specifically empowered to enforce preservation and maintenance of heritage sites most provinces are slow to execute their own laws.

"Until recently, Alberta declared that it would not protect a single building without first acquiring it. Manitoba's statute was in existence for ten years before officials decided to protect the first privately owned

TABLE ISTATUTES FOR PROVINCIAL HERITAGE PROTECTION

ALBERTA: The Alberta Historical Resources Act

BRITISH COLUMBIA: The Heritage Conservation Act

MANITOBA: The Historic Sites and Objects Act

NEW BRUNSWICK: The Historic Sites Protection Act

NEWFOUNDLAND: The Historic Objects, Sites and
Records Act

PRINCE EDWARD ISLAND: The Recreation Development
Act and The Archaeological
Investigation Act

QUEBEC: The Cultural Property Act

SASKATCHEWAN: The Saskatchewan Heritage Act and
The Provincial Parks, Protected
Areas, Recreation Sites and
Antiquities Act

SOURCE: Marc Denkey, Heritage Fights Back, Heritage Canada
and Fitzhenry & Whiteside, 1978, P. 82

TABLE 2

HERITAGE LEGISLATION AT THE PROVINCIAL LEVEL

	Recommended by Unesco	Newfoundland	Prince Edward Island	Nova Scotia	New Brunswick	Quebec	Ontario	Manitoba	Saskatchewan	Alberta	British Columbia
Are clear criteria given for the definition of Heritage Property?	Not discussed	No	No	No	No	No	No	No	No	No	No
Must notice be given of impending demolition of unregistered Heritage Property?	Not discussed	No	No	No	No	No	No	No	Yes	No	Indian archaeological site only
Is Government under any obligation to attempt to protect unregistered Heritage Property?	Yes	Unclear	No	No	No	No	Sometimes	No	Unclear	Archaeological Sites only	No
Can demolition of unclassified building be delayed pending study?	Yes	Yes	No	No	No	Yes	Yes	No	Yes	Yes	Yes
Can definitive protection against demolition be given to a building (short or expropriation)?	Yes	Yes	Yes	No	Yes	Yes	Archaeological Sites Only	Yes	Yes	Yes	Yes
Is radius around monument protected?	Yes	No	No	No	No	Yes	No	No	No	No	No
Can governmental decisions on designation be appealed to higher authority by statute?	Yes	No	No	No	No	No	No	No	No	No	No
Is the definitive preservation of districts specifically foreseen?	Yes	Unclear	Law Protects "Areas"	No	*	Yes	No	*	*	*	*
Can maintenance of Heritage Property be enforced by the Province?	Yes	No	Yes	No	No	Yes	No	No	Unclear	Yes	No
Can Heritage Sites be Inspected?	Yes	Archaeological Sites only	Archaeological Sites Only	No	No	Yes	Yes	During Work Only	Unclear	Yes	Yes
Does government have right of first refusal on sale of Heritage Buildings?	Not Discussed	No	No	No	No	Yes	No	No	"Objects" Only	Yes	No
Can Heritage Properties be exempted from building codes?	Yes	No	No	No	No	No	No	No	No	Yes	No
Can illegally altered Heritage Building be restored at owner's expense?	Yes	No	No	Not applicable	No	Yes	Yes	Subsidized buildings only	Yes	Yes	Yes
What is the maximum penalty for offences?	Not specified	\$1000 plus 3 months	\$1000	Not applicable	\$100 plus 30 days	\$25,000	\$10,000 plus 1 year	\$100	\$5000 plus 6 months plus damages	\$50,000 plus 1 year plus damages	\$2,000 plus 6 months

* The law empowers protection of "sites", which can be as large as a district.

(July 1, 1978)

property in November 1975. In Saskatchewan, the only Canadian province to demand that notice be given of impending demolition of interesting sites, there is no record within the past ten years of such notice ever been given or even requested.²⁰"

Unless implemented, a statute is worthless. Citizens lobbying to persuade governments to enforce heritage laws are stymied by four legal obstacles. Marc Denhez outlines these four problems that stand in the way of effective public participation:

- a) No heritage statute gives citizens any right to compel government to protect a component of our heritage;
- b) Citizens have no right to governmental information concerning implementation of laws (under The Canadian Official Secrets Act, all governmental information in Canada is secret until approved for distribution);
- c) Citizens have no right to deduct expenses from taxable income when those expenses are incurred to protect the 'public interest'; by contrast, all expenses to promote the private interest and profit (including lobbying) are tax-deductible; *
- d) Citizens have no inherent right to legal action even when the

*Under section 20(1)(cc) of The Income Tax Act, all the developers' and speculators' lobbying expenses are tax-deductible. By contrast, lobbying on behalf of the public interest is not tax-deductible; and if a public interest group is accused of lobbying, it is liable to lose its registration as a tax-deductible charity.

public interest is being harmed by blatantly illegal acts (one of the strongest doctrines invoked by our courts states that if an individual is harmed illegally, he can sue; but if all the other members of the community are also harmed equally, they all lose their right to sue.

Under these circumstances conservationists have had difficulty in making their voices loud enough to be heard and persuading public officials to give full effect to the heritage legislation at their disposal.

MANITOBA

There are two provincial mechanisms which can be used to protect a site or district in Manitoba. The two principal methods are operated by two separate ministries under two different statutes, The Historic Sites and Objects Act and The Planning Act.

The Minister of Tourism, Recreation and Cultural Affairs is empowered by The Historic Sites and Objects Act to recommend property for protection. On the recommendation of the Minister, the provincial Cabinet may designate any land to be an historic site. The consequences of this designation are outlined in Section 3 of The Act, which states that no person shall damage, destroy, remove, improve or alter a designated site without a special permit. The Minister is thereby given discretion to accept or reject construction,

alteration or demolition on protected property as he sees fit.

The provincial Cabinet is empowered by The Planning Act to designate 'Special Planning Areas' for the preservation of historic and archaeological structures and sites, and areas adjacent thereto. This can be done in any part of Manitoba except in Winnipeg. An 'area' as specified in The Planning Act can presumably be as large or as small as the Cabinet desires. A 'special planning area' is subject to a system which is called 'development control'. The designation suspends the application of all existing plans and zoning in the area; instead, 'no development shall be undertaken within the area without the written permission of the Minister of Municipal Affairs'. Development includes any 'operations on, over or under land, or the making of any change in the use or intensity of use of any land or buildings or premises'. Since demolition constitutes a radical change in the use of a building, demolition is presumably a form of 'development' and hence would be subject to control; that inference, however, has not yet been tested in Manitoba.

Unlike The Quebec Cultural Property Act, the Manitoba statutes do not give any automatic protection to the surroundings of designated sites. That means that they do not prevent neighboring construction from blocking all

view of the heritage site. As it is desirable to protect views and vistas to historical sites, it is necessary to specifically include these vistas in the designating order.

THE MUNICIPAL LEVEL

There are two primary purposes for any action to conserve structures and streetscapes. The first purpose is obviously to protect certain worthy buildings against demolition and unsympathetic alteration. The second is to maintain the integrity of the scene by discouraging unsympathetic infill construction.

Enabling legislation gives special powers from the provincial level to some municipalities, for the protection of heritage within that municipality. (See Table 3)

A confusing provision in Manitoba's Municipal Act states that municipalities can enact by-laws regulating use, height, materials and character of buildings; however, this provision appears to be superceded by section 310 of the same Act, which states: "where a municipality desires to create, and regulate or control, special zones or districts within the municipality, and the uses and the buildings or other structures therein, it shall proceed as provided in The Planning Act and not otherwise". The effect of this provision is that planning is now a prerequisite to the kinds of land use controls which are necessary for heritage conservation

TABLE 3
HERITAGE LEGISLATION
FOR MUNICIPALITIES
 (July 1, '78)

	NEWFOUNDLAND		PRINCE EDWARD ISLAND			NOVA SCOTIA		NEW BRUNSWICK	QUEBEC	ONTARIO	MANITOBA		SASKATCHEWAN	ALBERTA	BRITISH COLUMBIA
	St John's	Elsewhere	Charlottetown	Elsewhere	Sherbrooke Village		Elsewhere				Winnipeg	Elsewhere			
Is heritage conservation an obligatory part of municipal planning?	No	No	No	No	Yes		No ¹	Yes	No	No	Yes	Yes	No	No	No
Is municipality obliged to file environmental impact assessment on demolition of heritage?	No	No	No	No	No		No	No	No	Not Yet	No	No	No	Not Yet	No
Can municipality give permanent protection to buildings	Yes	Unclear	Yes	No	Yes		No	Yes	No	No	Yes	No	No	Yes	Yes
Can municipality give temporary protection to buildings	Yes	Unlikely	Yes	No	Yes		No	Yes	Yes	Yes	Yes	No	No	Yes	Yes
Can municipality regulate Bulk and Height	Yes	Unclear	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Design	Yes	Unclear	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Use	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Set-back	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Signs	Yes	Yes	Unclear	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Can municipality accept or reject applications for construction on heritage sites on a discretionary basis	Yes	No	Probably	No	Yes		No ¹	Yes	No	Yes	Yes	No	No	Yes	Yes
Can municipality enforce maintenance															
a) of dwelling interiors	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
b) of dwelling exteriors	Yes	Unclear	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
c) of non-residential interiors	No	Unclear	Unclear	Yes	Yes		Yes	No	Yes ²	Yes	No	No	Unclear	Yes	Yes
d) of non-residential exteriors	No	Unclear	Yes	Yes	Yes		Yes	No	Yes ²	Yes	No	No	Unclear	Yes	Yes
Can municipality compel															
a) protection of trees	Yes	Yes	Unclear	Unclear	Unclear		Unclear	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
b) landscaping	No	No	No	No	No		No	Yes	Yes ⁴	No ³	No	No	No	No	No
Can illegally altered building be restored at owner's expense?	Yes	Yes	No	No	Unclear		No	Yes	No	Yes	Yes	Yes	Yes	No	Unclear
Usual maximum penalty for offences	\$100	\$100-\$200	\$90 + 90 days	\$500 + 90 days	\$500		\$100	\$100	Variable	Variable	\$1000 + 6 Mths.	\$1000 + 6 Mths.	\$1000 + 1 Mth.	\$500	\$2000 + 6 Mths.

¹ Except in Peggy's Cove

² Except in municipalities regulated by the Cities & Towns Act

³ Except under development control schemes

⁴ Except in Montreal, Quebec, and rural municipalities

at the municipal level.

The Planning Act of Manitoba unlike its counterparts in Quebec, Ontario, and British Columbia refers to 'development' control and does not refer specifically to the control of demolition. Consequently, the courts have disregarded attempts by municipalities to control demolition of heritage.

The Municipal Act and The Planning Act do not apply to the City of Winnipeg. Instead, the City has its own enabling legislation entitled The City of Winnipeg Act. If a structure is located in the City of Winnipeg, the municipal power to control alteration and demolition is clearly enunciated in The City of Winnipeg Act. City Council may designate heritage properties by placing them on the 'Buildings Conservation List'; once designated, they can not be altered or demolished without the City's consent.

The 'Greater Winnipeg Development Plan', represents a statement of the city's policy and general proposals with respect to the development or use of land in the city. Under a recent amendment to The City of Winnipeg Act, the Greater Winnipeg Development Plan is now legally obliged to discuss heritage sites and areas.

A recent amendment to Vancouver's Charter gives Vancouver City Council the authority to:

"designate any buildings, structures, or lands, in whole or in part, as heritage buildings, structures, or lands for the purpose of preserving evidences of the city's history, culture, and heritage for the education and enjoyment of present and future generations."²¹

In order to implement the provisions of the Charter Amendment, Vancouver City Council has appointed the Vancouver Heritage Advisory Committee to recommend buildings and sites for heritage designation.

After a building, structure, or land has been designated it:

"shall not be demolished or built upon as the case may be; nor shall the facade or exterior of the building or structure be altered, except with the approval of the Council."²²

Canada's present failure to protect historical sites is mainly due to inexperience. Canada does not have a background of legislative precedents on which to build new legislation for heritage conservation.

Effective legislation in Canada is either non-existent or where legislation exists, implementation remains a problem. Policies and legislation must be developed which will support and promote the preservation of heritage sites.

Federal legislation, which has a strong influence on the future of heritage buildings, has not supported preservation. Under The Income Tax Act, the Department of National Revenue checks whether a person has over-

depreciated his building for tax purposes when he 'disposes' of it. Demolition, however, is not considered disposing of a building, so the Department can not check whether a person has avoided taxable income by over-depreciating the building. Furthermore, although he has not 'disposed' of the property, it has disappeared; for tax purposes it is 'lost', and thus a loss can be claimed for the book value of the building with concurrent reduction in taxable income. Are the taxpayers of Canada not in effect subsidizing the destruction of their heritage? The consequence of this legislation is obviously out with the old and in with new or a downtown composed of parking lots.

What has The Income Tax Act done to promote renovation? Nothing. Without reviewing The Income Tax Act in great detail it is nevertheless important to identify the problem of the government's support of new construction. Developers can claim tax-deductible losses on new construction even though profits are realized. Multiple Unit Residential Building's (MURB's) permit a developer to claim a tax-deductible depreciation in excess of the revenue on the project. The revenue not only becomes tax free, but the excess in depreciation permits the developer to claim a tax-deductible loss which he can use to render other income tax free. Renovation fails to receive any comparable tax incentives. Under the Act, revenue

producing property can be the object of business expenditures (which are entirely tax-deductible) or capital expenditures (which are not tax-deductible). Capital expenditure is defined as being made 'once and for all', i.e. the economic life of the building, and the Department of National Revenue tends to treat renovations (even on designated heritage property) as a capital expense rather than a business expense. This policy creates difficulties with provincial heritage legislation: for the legislative intent of the latter is for designated structures to last 'once and for all'. The Department of National Revenue must pursue revising sections of the Income Tax Act. Current tax laws are inconsistent with provincial and federal heritage policies. Federal departments must be more consistent with federal policy to assure that all projects and programs respect heritage. It is antithetical for the federal government to continue its support of an organization such as Heritage Canada *

*The largest non-government organization concerned with heritage property in Canada is Heritage Canada. Heritage Canada funded by \$12 million dollars deposited in a trust by the federal government in 1973, as well as membership fees and donations, primarily acts as the focus and the voice of conservationists across Canada. Heritage Canada promotes the protection and renovation of heritage neighborhoods by providing loans to member groups conducting non-profit renovation projects. Publications of Heritage Canada promote the message of heritage conservation, and research carried on at the Ottawa office in the areas of law, economics, finance, and planning lead to legislative recommendations.

and at the same time allow the demolition of historical buildings as an instrument of tax avoidance.

Other policies that might create a more favorable climate for historical preservation is increased flexibility of fire and building codes in cases of buildings of heritage merit. This is done in the United States and is justified as long as human safety is assured. As well, waiving the 5% federal tax on building materials when heritage buildings are upgraded would provide some monetary relief for owners of buildings being renovated.

The provincial governments have also been guilty of inconsistent policies and programs. The theory of property appraised in most provinces is 'highest and best use'. This does not help the owner of a heritage property which is typically underdeveloped. Properties are evaluated in the perspective of their market value, and then a certain percentage of that assessment becomes payable in municipal taxes.

The more an owner improves and renovates his property, the more he is taxed. It is quite conceivable that his evaluation for tax purposes might increase at an even higher rate than the value of his improvements. This does not provide any incentive for renovation.

Tax relief through assessment of the present use of

a property would help to ease the financial pressures experienced by owners of heritage properties. If heritage buildings were to receive an exemption from provincial building materials sales tax owners considering upgrading or renovating their property would receive some benefit.

To encourage the retention, maintenance and upgrading of buildings of historical merit in Canadian cities requires the clear support of politicians and city staff. If city officials adopt a 'green door' policy heritage buildings could be made more viable.

Local building by-laws frequently frustrate heritage developers. Where stringent fire regulations and strict parking and open space requirements inhibit conservation, the ordinance should be waived. Many municipal building codes were originally written and enforced with no awareness of their implications for heritage structures. By permitting uses not normally permitted by the zoning or building by-laws heritage buildings could be viable. For example, concessions in requirements for parking, floor space ratio, setbacks, light angles, etc. could allow professional offices, retail space, or restaurants in residential heritage buildings and conversions to multiple family use from single family use.

Non-monetary methods to promote heritage conservation are the adoption and implementation of techniques such as transfer of development potential, which will be discussed in Chapter V, and heritage preferential leasing policies. These leasing policies would encourage the use of heritage buildings for municipal offices.

Amenities, provided by the city, such as brick paving, tree planting and street furniture help to foster civic awareness of heritage and encourage civic beautification.

In a case of hardship, where the owner of a heritage building does not have the financial resources to properly maintain his structure the purchase of a facade easement by the city could provide these resources. The purchase of a right in the property (easement) would allow the city to aid the owner of a heritage building in a way that it could not through its power to make grants of money.

Another case where facade easements could be of use is where the building does not meet the standards for designation but where the facade does provide a link with the past and visual relief in the urban environment, such as the Empire Hotel Building in Winnipeg. The gift of a facade easement by an owner who may wish to renovate the

structure may have income tax advantages to the owner.

Facade easements should be used as a complement to designation to allow the city to share in the costs of maintenance. Ontario and Prince Edward Island are the only two provinces where facade easements are legally possible.

In closing, to plan for our structural heritage is extremely complex. There are no simple solutions. The proper protection of heritage demands a variety of techniques at all levels of government. These programs and policies must be incorporated in legislation and implemented. A good law is not worth the paper it's written on unless it is enforced.

Lastly, it is essential that future legislation enacted at all levels of government be consistent with one another and compliment each other. Conflicts need to be eliminated by establishing heritage agencies to monitor and coordinate policies from the three levels of government.

CHAPTER 4

CHAPTER IV

INVESTING IN OUR HERITAGE

INTRODUCTION

"There is no doubt that some obsolete buildings cry out for razing. They may be structurally unsound or they may be unsightly, but it is also true that there is also a hidden logic which argues for the conservation and recycling of used real estate, a logic which is derived from economics as well as aesthetics."²⁴

To unearth this logic this chapter will provide examples of a number of profitable recycling projects in Canada as well as outline some of the problems which inhibit conservation. It should be noted that due to the availability of data some of the costs and figures in the examples which will be documented will be out of date. Although operating expenses are considerably more today, the total revenue generated by these projects are significantly higher as well. Therefore, the results of these examples will still be of value to this study.

"Whether we save the past or whether we bulldoze it and lose it forever is a choice which weighs as much on the community as on the individual property owner."²⁵ According to research sponsored by the American Behavior Science Corporation, tourist spending, a rich source of both public and private revenue is strongly influenced by environment. This finding has been borne out by numerous independent surveys. A tourist study in Nova Scotia found that one third of all travellers visited provincial museums and historic buildings. Historic sites or buildings are a sightseeing draw, and it follows that the better developed these heritage resources are, the more the local tourist industry will prosper.²⁶

Vancouver's Gastown is an appropriate example. During the period from 1965-1971, when the area was converted into a well publicized 'heritage area', tax revenue increased 81%. The City of Vancouver reported that 'gastown-compatible' retail/restaurant sales amounted to approximately \$17.7 million in 1974. Total expenditure by an estimated 1.8-2 million tourists entering Gastown amounted to \$9 million. It has been estimated that today, up to 25,000 people enter the historic area on a warm sunny day in the summer months.²⁷

Each project has its own merits and pitfalls and this study does not claim a sure formula for financial success

for every development. There are a number of powerful variables with which a developer must contend. The cost of land, the cost of building, the cost and availability of financing, the prevailing rental market, municipal by-laws and zoning regulations, and a building's adjacent geography are all components in a complex equation which dictates what is possible and profitable in each case.

Even with the dynamics of physical situation, suitability, building costs, and marketability all plotted there remains the problem of acquisition and financing. "Traditionally, financial institutions have been cautious²⁸ in their responses to renovation proposals." Real estate appraisers who work for financial institutions tend to lower their assessment of old buildings because of the uncertainty of renovation and restoration. Their attitude appears to be: "Why should we take a chance on these untested and uncertain rehabilitation's schemes, when there are more than enough demands on our money from conventional or orthodox developers?"²⁹

The attitude of financial institutions to older structures being categorized as 'designated heritage structures' compounds the problems. The loss of redevelopment value all but eliminates the value of the property for loan purposes in the eyes of most lenders. (From

a strict legal standpoint, heritage designation is a registered encumbrance upon the rights of the proprietor. A proprietor who signs such an agreement is in law conveying an interest in his property. This interest does have a value). Chapter VI will discuss in detail the issue of whether or not a proprietor should be compensated for this loss in value. Before designation, the lender attributed almost no value to the old building and some value to the land; designation almost eliminates the value of the land for redevelopment purposes, leaving only a fraction of the original appraised value of the total property.

Municipal appraisers themselves, have not responded sympathetically to designation. The loss of redevelopment value has not been reflected in a significant decline in evaluation for tax purposes.³⁰ Land which has been designated because it has a heritage building on it should be appraised as if its highest and best use is the use to which it is currently being put, despite the fact that the zoning in the area permits an even higher intensity use. The Ontario County Court reached an interesting decision in the case of Re Phillips Electronics and the Regional Assessment Commissioner 4 M.P.L.R. 142. In the case, vacant land had been frozen under The Ontario Parkway Belt Act and had to be appraised at farm value despite alternative recourses. By application of this

rezoning, one can argue that land which has been designated, because it has a heritage building on it, should be appraised according to that use. This could conceivably provide substantial tax relief for owners of heritage buildings.

In addition to an older building's aesthetic attractiveness there are other factors which make it desirable to a developer. A valuable asset is the project's shrunken time frame. A recycled building, by definition, is partly built at the outset. The foundation has been poured and the walls constructed. The high prices paid for materials and labour in today's construction industry render this building frame an invaluable headstart. New projects take longer to complete and therefore their holding costs are higher. Renovation cuts down these costs. Apart from a valuable reduction in holding costs, the reward for cutting a project's turnaround time is a cut in its risks. Market trends can be forecast with some accuracy for a six month renovation period; but the same predictions are difficult to make for the year or more that a new development requires.

Rents, interest rates, building costs and the volatility of the labour market are crucial to any real estate undertaking. Delays in construction or increases in the cost of borrowing can seriously alter a developer's profit projections. The savings in time and money can be translated as a competitive advantage. A renovated building can come on to the market below the prevailing rents for new space.

Fort Victoria Properties have renovated two landmark heritage buildings in Victoria, British Columbia: the old Law Chambers in Bastion Square and the old Counting House. Both buildings are presently fully rented and generating positive cash flows. The Law Chambers, the Counting House, and a project by Diamond and Myers, Architects and Planners, in Toronto, 322 King Street West will be examined here in detail.

RENOVATION: PRACTICAL APPLICATIONS

The Counting House was built in 1882 as a factory and showroom and was purchased and refurbished in 1971 for a total cost of \$405,000., of which \$80,500. was paid down. Renovating costs amounted to \$16.25 per square foot and total costs were \$21.90. These costs compared favorably to an equivalent new construction project. The net cash flow projected for 1974 of \$12,522 meant that the owners realized a 15% return on equity. The Counting House is situated between Eaton's and several parking facilities and enjoys a much travelled and lucrative shopping location. The building is fully rented with a theatre, retail, office, and restaurant space.

OPERATING STATEMENT:The Counting House

Acquisition cost	\$ 105,000
Renovations	300,000
1974 Gross revenue	68,306
Square footage (leaseable)	18,496
Repayment of mortgage*	42,000
Janitorial	5,000
Management and maintenance	3,750
Light and heat	2,400
Insurance	2,250
Elevator	384
Total 1974 expenses	<u>\$ 55,784</u>
Net cash flow	<u>\$ 12,522</u>

*includes property taxes

The Law Chambers Building was built in 1901 and was acquired and restored in 1969-1970 for \$235,000. The company underwrote \$60,000 of this and took a mortgage of \$175,000. Renovation costs totalled \$14.10 per square foot and the final cost, including the initial property cost, was \$22.85 per square foot. At a net cash flow of \$16,360 in 1975, the firm made over 25% on equity.

The Law Chambers Building houses two floors of fashionable retail space and a third floor of offices.

It should be noted that the architects accomplished more than just the basics of renovation. The exterior facade and interior spaces were not sacrificed but were restored to the building's original design.

OPERATING STATEMENT:

The Law Chambers

Acquisition cost	\$ 90,000
Renovations	144,506
1975 Gross revenue	60,360
Square footage (leaseable)	10,250
Repayment of mortgages	26,000
Light and heat	5,000
Management and maintenance	4,300
Property taxes *	7,600
Insurance	<u>1,100</u>
Total 1975 expenses	\$ 44,000
Net cash flow	<u>\$ 16,360</u>

*Tenants pay excess over 1974 base.

Another interesting example is 322 King Street West in Toronto, Ontario. The building was a four storey brick and timber warehouse built around 1910. The facade was sandblasted and the interior was replumbed and rewired. The exterior walls and the floors were sound and salvageable. Renovation costs/square foot were \$8.50. Total costs were \$15.50; this compared well with new construction costs for downtown Toronto in 1970, when the building was converted.

The building now contains a semi-basement used for printing and furniture display, a ground floor restaurant and three floors of office space. Diamond and Myers occupy the top level. A skylight was cut in the roof and covers an interior garden room around which their architectural offices sit.

At an annual net profit of \$22,584, the owners are receiving better than 35% on their equity.

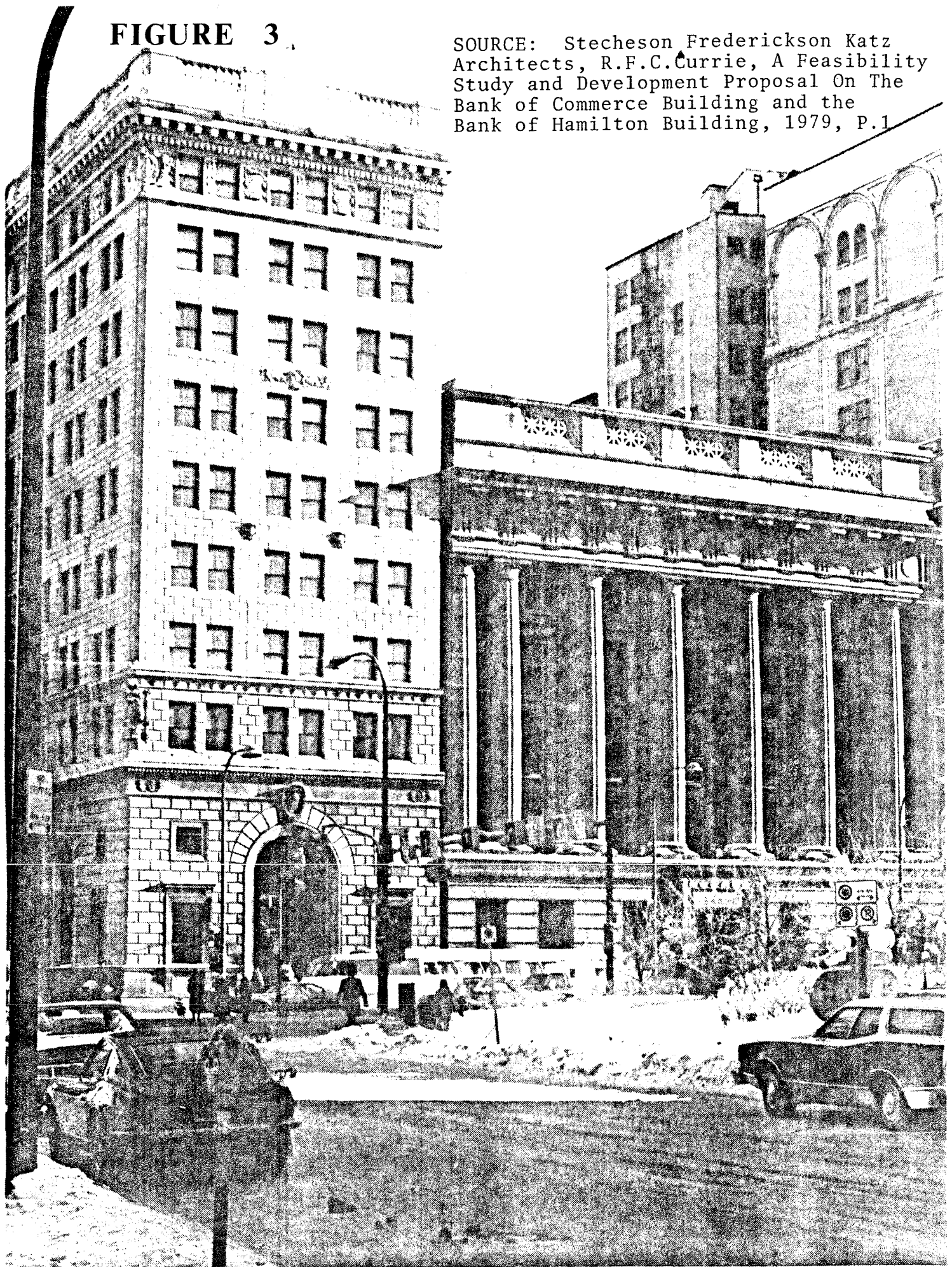
OPERATING STATEMENT:

322 King Street West, Toronto

Acquisition cost	\$ 295,000
Renovations	370,000
Gross annual revenue	158,071
Interest payments on mortgages	63,140
Property taxes	11,295
Bank charges and interest	3,870
Rental costs	4,103
Wages and employment	3,934
Insurance	1,626
Legal and accounting	1,942
Heating	6,197
Hydro	6,645
Maintenance-elevator	2,663
Maintenance-heating system	3,581
Maintenance-plumbing	931
Miscellaneous expenses	7,807
Office supplies, stationery, etc.	<u>2,843</u>
Total expenses	\$ 120,577
Net cash flow	37,494
Depreciation-building and equipment	14,910
Net profit	\$ 22,584

FIGURE 3.

SOURCE: Stecheson Frederickson Katz Architects, R.F.C. Currie, A Feasibility Study and Development Proposal On The Bank of Commerce Building and the Bank of Hamilton Building, 1979, P.1



MCDERMOT AV

It should be added that apart from its cash flow income, these projects have enjoyed other financial benefits, one being sizeable capital appreciations.

RENOVATION: A PROPOSAL FOR RENOVATION IN CONJUNCTION WITH
REDEVELOPMENT

Located one short block immediately north of the heart of Winnipeg's financial district and most prestigious intersection-Portage and Main-stands the Bank of Commerce Building and the Bank of Hamilton Building. They are included among a total of six premises on an irregular block of land comprising approximately 66,634 square feet bounded by Main Street to the west, McDermot Avenue to the north, Rorie Street to the east and Lombard Avenue to the south.

Historical Background

One hundred and thirteen branches of the Canadian Imperial Bank of Commerce were built in the three prairie provinces in little more than a decade at the turn of the century. The bank instituted a policy of bank extensions to aid in western Canadian development. This policy was adopted to keep pace with the rapid growth of Winnipeg and the west caused by immigration and railroad construction. The building at 389 Main Street in Winnipeg was the regional headquarters for this vast region, and befitting this status, was built in the grandest manner. This columned bank building was designed by Frank Darling and John Pearson of Toronto,

one of the most prestigious of Canadian firms, with Peter Lyall and Sons of Montreal as general contractors. Construction began in 1910 and was completed in two years. The Imperial Roman grandeur of the building is marked by the four storey Doric columns of the facade built of granite from eastern Quebec. It is more fully appreciated on entering the interior through the huge bronze doors decorated with symbols of this temple of commerce. The interior space is of literally cathedral dimensions and is lavishly furnished in the finest hardwood and beautiful Italian marble and is spectacular in its sculptural decoration. The space is illuminated from a 44 foot diameter coloured glass dome. The original cost of this massive structure was estimated at \$800,000 and this suggests that very little expense was spared. In sum, this building is one of the finest banking structures ever built in Western Canada.

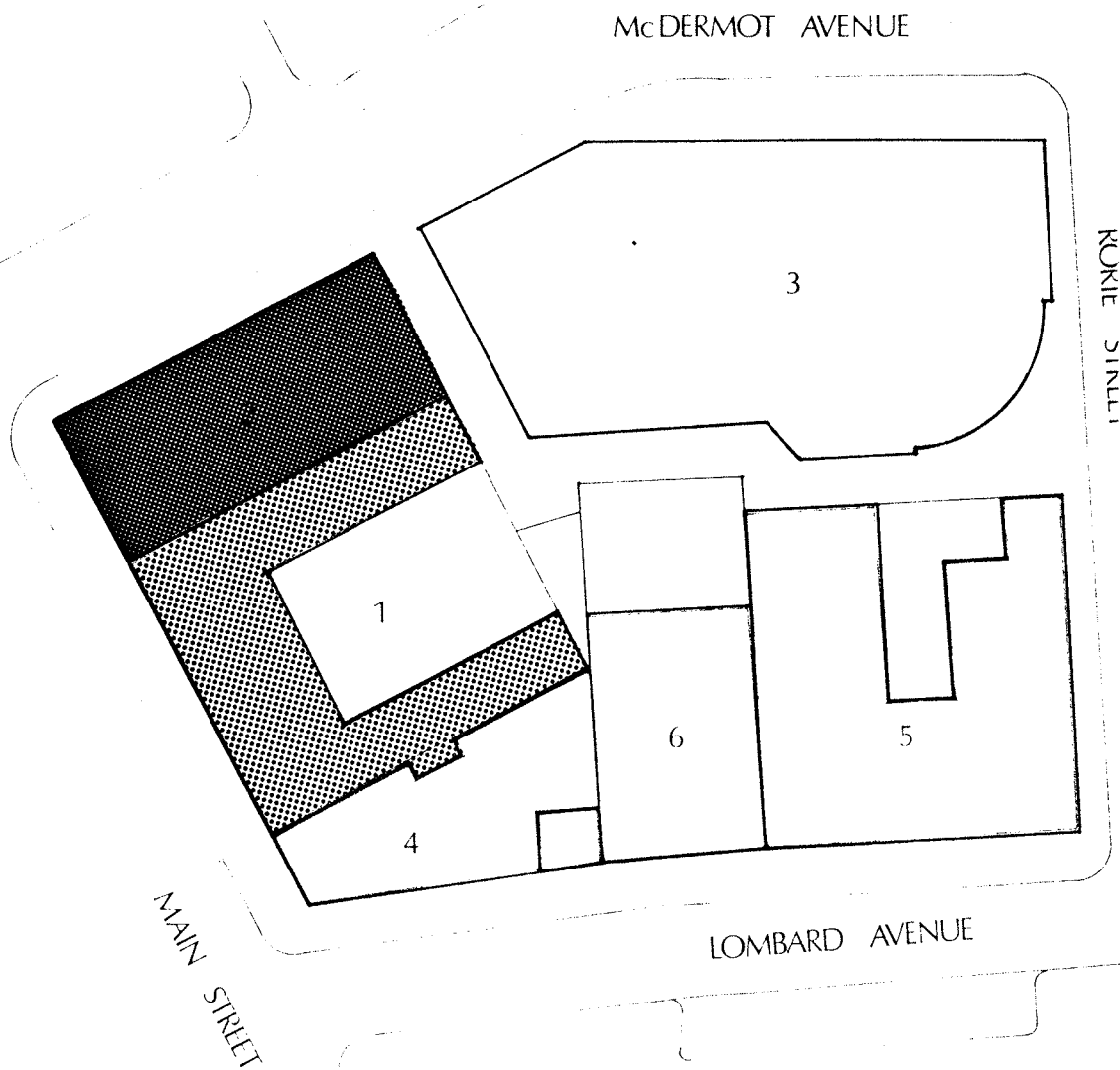
Standing directly to the north at 395 Main Street is the Bank of Hamilton Building. The Winnipeg branch was founded on 1896 and the present structure designed by J. S. Atchison and Company was completed in 1918 at a cost of approximately \$400,000. The artistic design of the exterior walls was simple, very little ornamentation occurred of the facades, except for the Bank's emblem at various locations. Its facade shows a

planarity and rectangularity suggesting the structural frame behind but the organization of detail clearly mark it in a Renaissance revival style. Construction is of a very high level throughout and once inside the edifice there are three very fine architectural features. The foyer and the main floor banking hall are lined with a Botticino marble, with a ceiling of antique gold. An elliptical stair to the second floor is composed of bronze executed in a light handrail with delicately turned spindles. The exterior theme of simplicity was extended to the interior of the building.

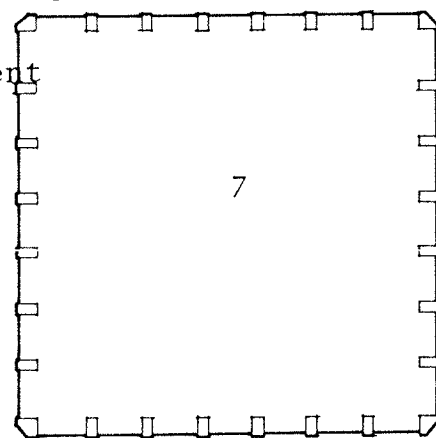
Since its construction the Bank of Hamilton Building contained the offices of the United Grain Growers' Company, the principal private wheat marketing agency in Canada, and since 1919 it served as offices for one of Winnipeg's most prestigious law firms, Pitblado, Hoskins et al. Professor John Graham, from the Faculty of Architecture, has called this "the best local example of the Renaissance Italian palace stretched vertically to clothe the tall office building."

Although these two buildings have significant architectural qualities, their uses today in their present forms are said to be not economically viable. The Bank of Commerce has been vacant for twelve years, a victim of changing tastes in office accommodation,

FIGURE 4



SOURCE: Stecheson Frederickson Katz Architects,
R.F.C. Currie, A Feasibility Study and Development
Proposal On The Bank of Commerce Building and
the Bank of Hamilton Building, 1979 PP. 19, 23,
24, 25.



- 1. BANK OF COMMERCE
- 2. HAMILTON BUILDING
- 3. PARCADE
- 4. SCOTIA BANK
- 5. CHAMBER OF COMMERCE
- 6. OLIVER'S
- 7. RICHARDSON BUILDING



EXISTING SITE



PORTAGE AVENUE

while the Hamilton Building which enjoyed a high degree of occupancy has been vacant for four years when the United Grain Growers abandoned it for new quarters.

It has often been stated that the three keys to the success of any real estate venture are location, location, and location. The highest and best use of site is that which results in the return to any owner of the maximum rental or its equivalent. In recent years there has been a considerable amount of development activity at or about the Portage and Main intersection, thus increasing the value and importance of the subject location. These developments include the Richardson Building, Winnipeg Inn, Lombard Garage, The Bank of Canada Building, the renovated Bank of Montreal Building, the underground concourse, Bestlands Building, United Grain Growers' Building, Bank of Nova Scotia, Winnipeg Square and Trizec.

Redevelopment of the two sites is not economically feasible at the present³⁴* owing to the city's depressed economic climate but the Imperial Bank of Commerce anticipates that market forces would ultimately dictate the desirability of such an undertaking.

In the interim the Bank continues losing money on these 'white elephants'.³⁵ In 1980 both buildings cost about \$160,000 to maintain, which might appear to be a lot of money but, it was only a fraction of the bank's revenue

*See Appendix "A"

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of \$305,525,399 the same year.

The Bank contends that the two buildings would have to be redeveloped to attract new prestigious tenants (or rather prestigious and wealthy tenants). The Royal Winnipeg Ballet, applied to rent the Bank of Commerce building as its headquarters, but was rebuffed by the Bank.

The Bank realizes it is cheaper to tear down the buildings and get somebody to mow the grass every summer. If Bank official William Grimble had read the Winnipeg Development Plan Public Attitude Survey, published in July 1979, he would have seen that 85 % of people answering a random survey agreed strongly that "Many historical buildings in Winnipeg's downtown area are worth preserving".³⁷

After a long and sometimes bitter battle, a citizen's group spearheaded by the Manitoba Historical Society succeeded in placing the two buildings on the City's Buildings Conservation List.

On October 15, 1979, Winnipeg's Environment Committee unanimously upheld the designation of both buildings as Grade 1 structures under the bylaws protecting historic structures. Less than one month later on November 7, 1979 Council had to respond to an appeal by the Bank.³⁸

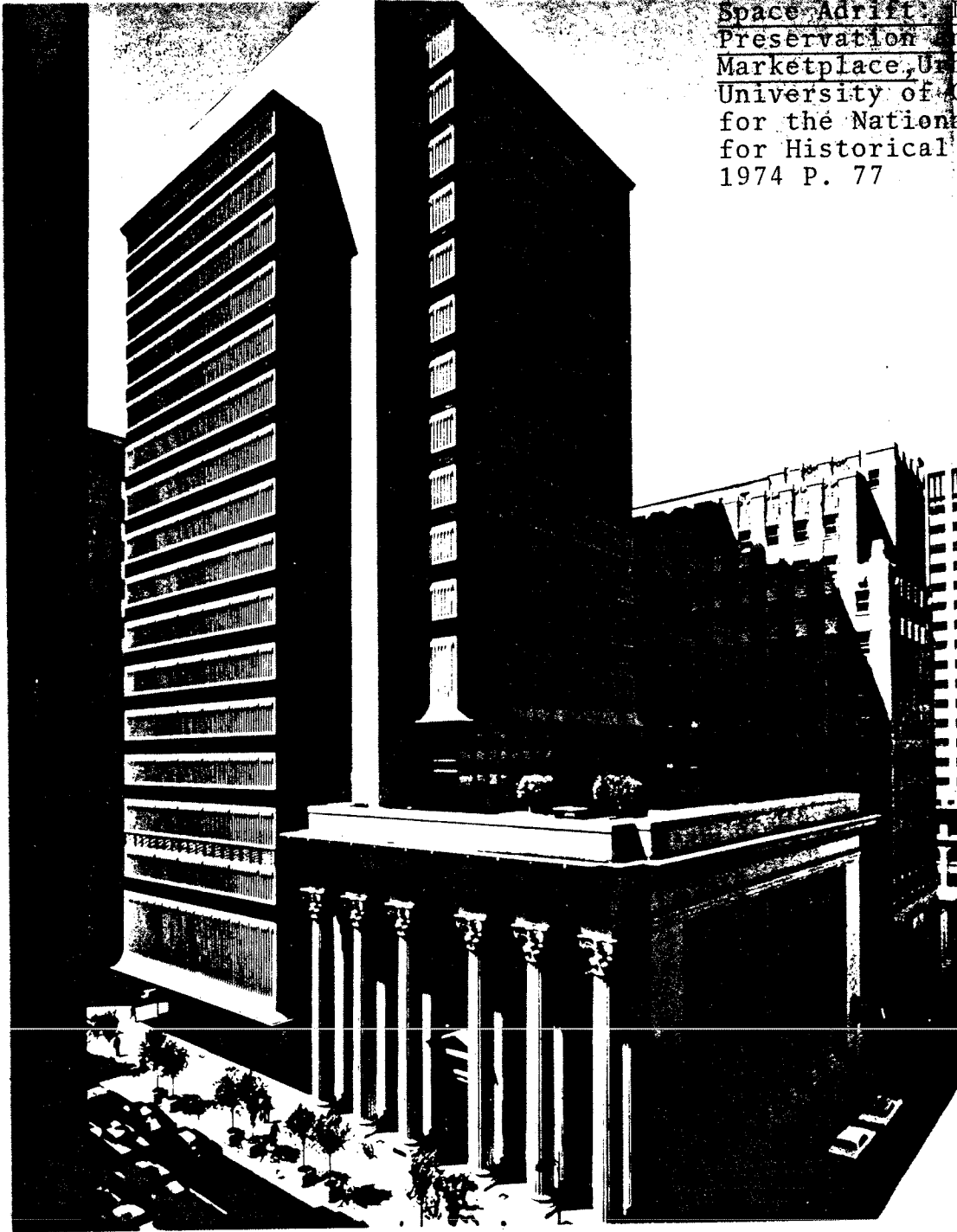
Council had to choose between angering the Canadian Imperial Bank of Commerce, a major financial institution, or the heritage movement that lobbied for preservation. City Hall upheld the Environment Committee decision. This decision gave the heritage movement in Winnipeg credibility.

It is interesting to note that a study in 1976 by real estate consultant R.F.C. Currie states that both buildings are indeed viable. In 1979, three years later, the same R.F.C. Currie was commissioned with architect Les Stetcheson to prepare another feasibility study. In this report the authors disagreed on whether the buildings could be preserved. It was Les Stecheson's contention that the Hamilton Building and the Bank of Commerce Building were architecturally valuable and could be retained and incorporated into a major office development.* Les Stecheson³⁹ envisioned a new office/commercial complex comprising the entire block of a sufficient scale to carry the economically inefficient buildings. The Bank of Commerce Building could be integrated into the new development as the main entry space and presence on Main Street and the Hamilton Building would also be incorporated into the development to visually enhance the project's appearance (See Figures 6 and 7). A similar project was undertaken in San Francisco a decade ago (See Figure 5).

*See Appendix "B"

FIGURE 5

SOURCE: John J. Costonis,
Space Adrift: Landmark
Preservation and the
Marketplace, Urbana:
University of Chicago Press
for the National Trust
for Historical Preservation
1974 P. 77



Integration of the old and the new on a single site: another preservation solution- San Francisco.

The Bank of California erected a new 21 story structure tower by use of a cantilever over the 1908 Bank of California building and a combination of the floor area ratio of both portions of the site. The 1908 building, which is still in active use, was declared a San Francisco landmark in 1968.

FIGURE 6

SOURCE: Stecheson Frederickson Katz
Architects, R.F.C. Currie, A Feasibility
Study and Development Proposal On The
Bank of Commerce Building And The
Bank of Hamilton Building, 1979 P. 56

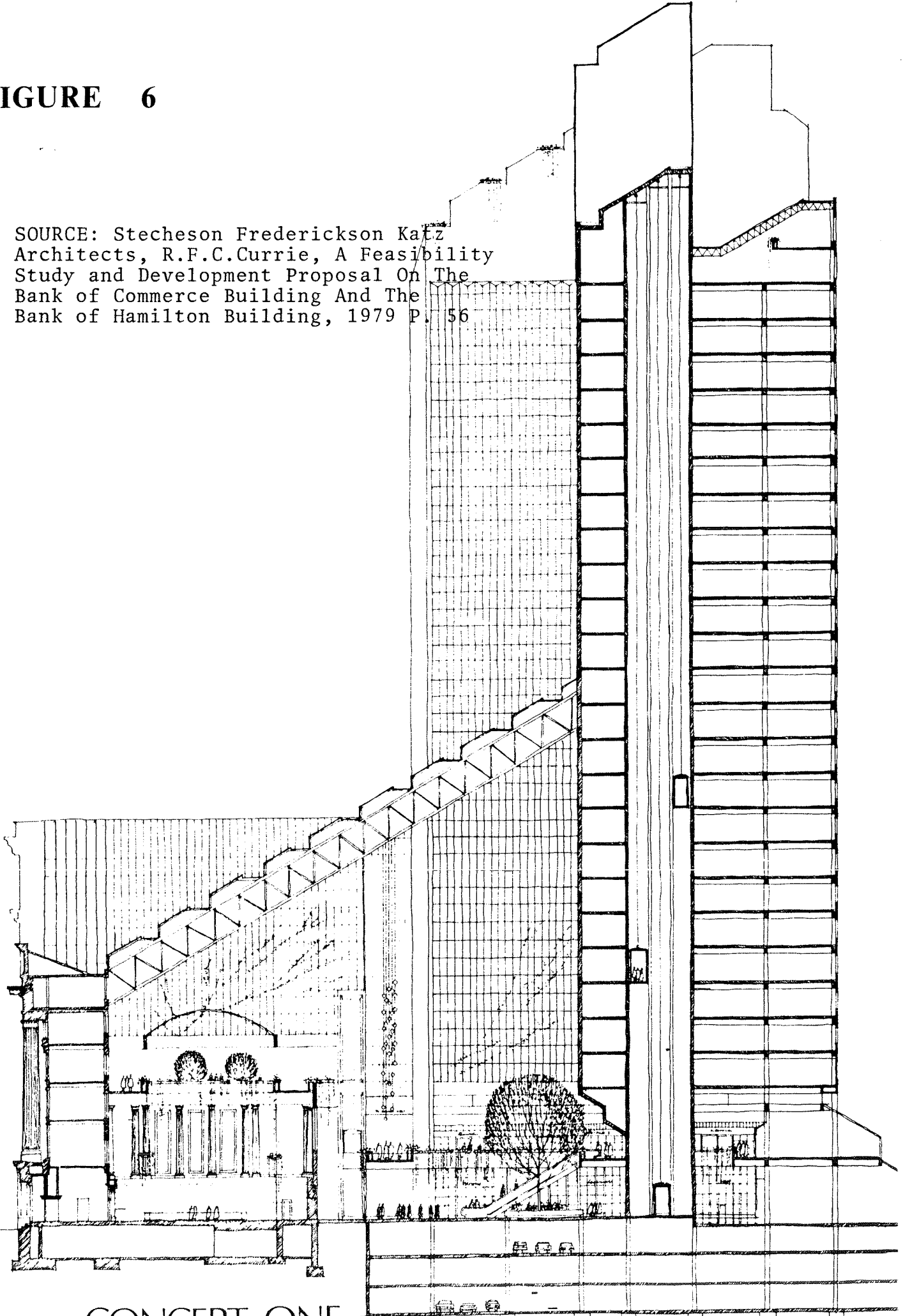
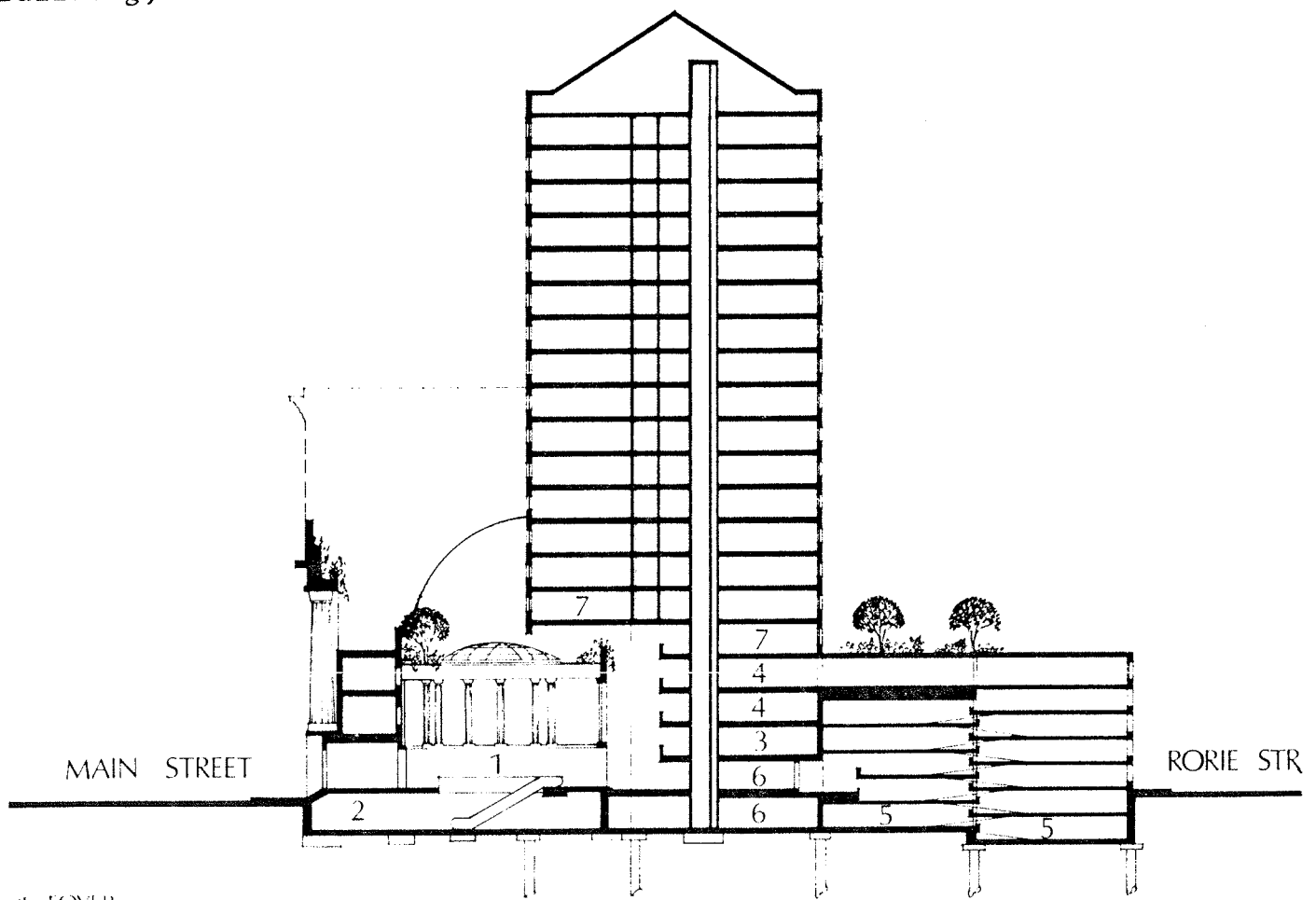
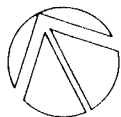


FIGURE 7

SOURCE: Stecheson Frederickson Katz Architects,
R.F.C. Currie, A Feasibility Study and Development Proposal
On The Bank of Commerce Building and The Bank of Hamilton
Building, 1979 P. 56



- 1. FOYER
- 2. COMMERCIAL
- 3. OLIVER'S
- 4. COMPUTER
- 5. PARKING
- 6. SERVICE
- 7. OFFICE



SECTION



All land contiguous to the above mentioned property on the block is owned by Allarco Developments Ltd. of Edmonton. At this time the bank has not made any proposals to Allarco for the assembly or joint development of the block. It is reasonable to assume that when the economic climate warrants such an ambitious project, this proposal should receive serious consideration as it clearly reflects the highest and best use of the property.

Realizing that the two buildings could not remain empty and still be viable, the city negotiated a 10 year lease at \$1 a year and reduced taxes on the buildings to \$35,000 a year - the same taxation as if the buildings had been demolished and the land remained vacant.

At the same time, the City's Department of Environmental Planning was outgrowing its office space at 100 Main Street. Facing a \$600,000 bill for renovations which still would not have solved the space problem for civic departments, it was recommended that the funds be used to renovate the Hamilton Building for use as the Environmental Planning Department's new home. City employees, once jammed three and four to an office, now have an abundance of space.

This, then, is a bird's eye view of the problems and possible gains confronting heritage conservation. Many older buildings have a potential for profitability which is sometimes ignored. Some of the above examples illustrate how imagination and enterprise

can transform a failing dysfunctional building into a useful modern space, while preserving its most visible antique elements.

Initiatives from all levels of government are increasing at a fast rate as cities become more active in promoting heritage conservation. This degree of awareness will hopefully be translated into a strong demand for the private sector to take a new look at the valuation of older buildings in the light of changing circumstances.

CHAPTER 5

CHAPTER V

TRANSFER OF DEVELOPMENT POTENTIAL: A CASE STUDY

INTRODUCTION

The previous chapter has documented that the renovation of urban landmarks located on high-density downtown sites can be extremely costly and uneconomical as compared to redevelopment. This chapter examines whether the development potential transfer mechanism can meet financial challenges of the magnitude that are likely to be encountered in this undertaking. This inquiry is divided into two basic questions. First, what is development potential worth? Second, how is this value influenced by liberal zoning laws?

This chapter also considers the fiscal implications of the scheme for cities that adopt it. The specific question addressed, is whether the combination of increased property tax yields that will be realized on transferee sites will be sufficient to balance any net costs that cities may incur in implementing the scheme.

The effective implementation of a TDP system depends on how market forces operate. In order to study how such a scheme best operates and how any

necessary adjustments can be made, it is instructive to do a case study based on an actual locality or site which is undergoing development pressures in a downtown area. Such a demonstration can determine how TDP can be used to implement perceived planning objectives, what the economic effects of TDP will be, and whether the market in TDP's will function as it is meant to.

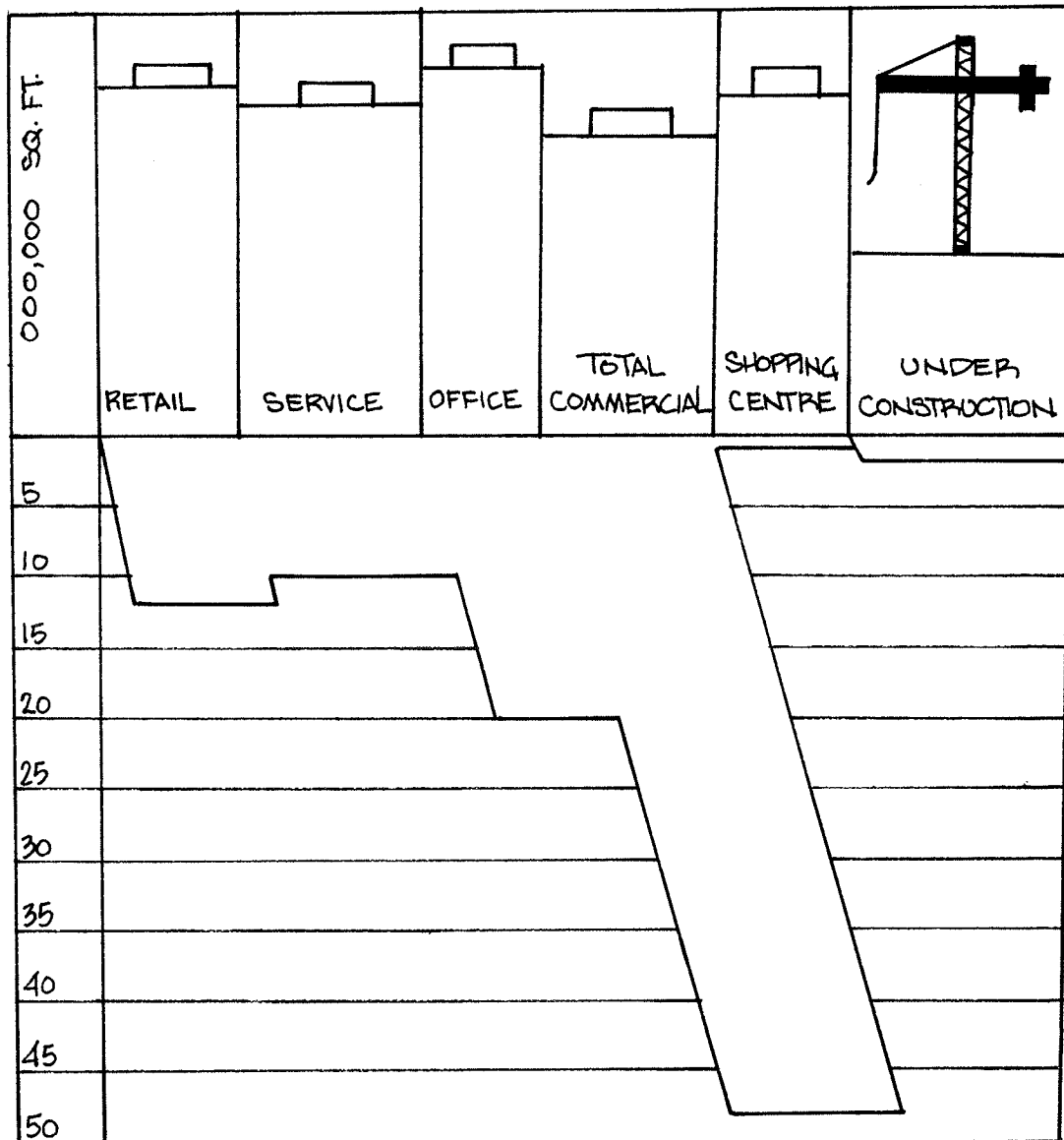
The following chapter documents a TDP scenario in Vancouver, a city currently undergoing intense development pressures. This case study is a unique example in Canadian planning and warrants a complete discussion beginning with Vancouver's history in land development.

VANCOUVER

Today Vancouver is Canada's third largest urban area, although its history has been a succession of real estate booms and busts. During the 1950's downtown Vancouver was in a dormant period, while the suburbs experienced rapid growth and the establishment of regional shopping centres. In the 1960's the downtown area was able to reassert itself. Large multi-national corporations and the international banks have increasingly recognized Vancouver as the administrative centre for Pacific Basin Trade. This has led to rapid downtown growth and further solidified the downtown's position as the primary power in the region.

Office space is by far the dominant type of com-

FIGURE 8



1981 COMMERCIAL FLOORSPACE; VANCOUVER, '000,000 SQ. FT.

SOURCE: The City of Vancouver Planning Department

mercial space in the Downtown peninsula. The Downtown Vancouver office market has been characterized by high demand, shortage of supply, rapidly rising land values and increasing lease rates since the summer of 1980.

With 2.14 million square feet of commercial space added to Vancouver's inventory during 1980-81, the total amount of space stood at approximately 47.6 million square feet as of May 1981. A further 2.2 million square feet of space were under construction as of May 1981 and several large office projects are being processed by the city of Vancouver Planning Department.⁴¹ (See Figure 8 and Table 4)

The largest single additions to the commercial inventory is accounted for by five major downtown office buildings; Pacific Centre III, 1166 Alberni, the Daon Building, Sun Life Plaza, and the Fidelity Life Building.

The most significant changes in the Downtown office market has been in land values and lease rates. Land values for prime downtown locations have reached \$500.00 per square foot during the past year and lease rates for recently leased space in prime Downtown Vancouver locations have ranged from \$14 to \$16 per square foot on a triple net basis.⁴²

This is a result of a growing demand for prestigious office space to house those companies engaged in Pacific Basin trade. Related organizations such as bankers, trust

TABLE 4

COMPLETED	BUILDING	LOCATION	NO. OF FLOORS	TOTAL COMMERCIAL RENTABLE AREA (SQ. FT.)*
1977	1682 West 7th Av.	1682 West 7th Av.	2	22,000
1977	177 West 7th Av.	177 West 7th Av.	2	23,000
1977	Cambie & 10th Av.	Cambie & 10th Av.	4	72,000
1977	800 West 8th Av.	800 West 8th Av.	2	28,000
1977	Broadway & Burrard	Broadway & Burrard	4	60,000
1977	600 Block West Broadway	600 Block W. Broadway	2	23,000
1977	Royal Bank Computing Centre	111 East 5th Av.	3	150,000
1977	Standard Life Assurance	625 Howe St.	14	123,000
1977	Oceanic Plaza	1055 West Pender St.	25	319,000
1977	Crown Life Place	1500 West Georgia St.	23	189,000
1977	Good Earth Building	595 Howe Street	13	81,000
1977	Law Society of B.C.	1150 Hornby St.	5	24,000
1978	Hammerson	800 West Pender St.	15	87,000
1978	B.C. Central Credit Union	1441 Creekside	9	132,000
1978	C.I.B.C. Computer Centre	Pine & West 8th Av.	5	220,000
1978	Offices	5909 West Boulevard	3	31,000
1978	Kerrisdale Square	5375 West Boulevard	2	24,000
1979	1200 Burrard Building	1200 Burrard St.	10	59,000
1980	C.P. Station (renovation)	Foot of Granville St.	2	76,000
1980	Friends Provident Life	1130 West Pender St.	15	141,500
1980	Georgia Place	1176 West Georgia St.	20	225,000
1980	Northwest Trust	815 Hornby St.	6	62,000
1980	Sigurdson Building	1300 West 6th Av.	3	63,000
1980	Ledingham Construction	3665 Kingsway	3	40,000
1980	Office/Retail	1290 Hornby	3	20,000
1980	Retail/Office	2150 W. Broadway	4	63,000
1980	Evergreen Building	1285 W. Pender	10	119,500
1980	Daon Building	999 W. Hastings	19	213,000
1980	Cascade Development	1166 Alberni	11	192,300
1980	Burrard Medical	1160 Burrard	9	62,700
1980	Office Building	600 West 7th Av.	2	24,000
1980	Office/Retail	1039 Robson	2	25,500
1980	South Granville Centre	2650 Granville	5	76,400
1980	Forte Investments	601 W. Broadway	10	205,724
1981	Sun Life	1100 Melville St.	16	172,000
1981	Pacific Centre III	609 Granville St.	24	290,000
1981	Office/Retail	1212 West Broadway	5	47,000
1981	Office/Retail	1470 West Broadway	3	34,500
1981	Office/Retail	2855 Arbutus St.	3	24,000
1981	2380 West 41st Av.	2380 West 41st Av.	3	20,000
u/c	Bentall IV	1055 Melville St.	35	633,000
u/c	The Atrium	808 West Hastings St.	10	94,700
u/c	Office/Retail	1177 Hornby St.	10	102,900
u/c	Nelson Place	1020 Hornby St.	25	256,200
u/c	Office/Retail	800 Burrard St.	18	249,200
u/c	Office/Retail	615 West Hastings	11	41,700
u/c	Kilborn Building	1380 Burrard St.	7	133,000
u/c	Chancery Place	865 Hornby St.	13	154,000
u/c	Office Building	1727 West Broadway	4	19,500
u/c	Office/Retail	1385 West 8th Av.	6	80,000
u/c	Office Building	1184 West 6th Av.	6	45,000
u/c	Office/Retail	1867 West Broadway	3	35,000
u/c	Office/Retail	210 West Broadway	6	25,000
u/c	Office Building	943 West Broadway	9	52,700

u/c: under construction as of May 1981.

*: Total includes office, retail and service space, unless specified.

SOURCE: The City of Vancouver Planning Department

and insurance companies, investment dealers, law firms, chartered accountants, engineering and architectural firms also demand central locations. Due to the geographical constraints of the Downtown peninsula (bounded on three sides by False Creek, Burrard Inlet, and English Bay) land is a precious commodity and land values extremely susceptible to the laws of supply and demand.

THE OLD CHURCH

Within these hallowed walls of mellowed stone
 Where silence reigns, enhanced by echoed sounds
 Of footsteps, whispered voice and creak of door
 Our forbears down the centuries praised their Lord.
 The House of God they called it- Sacred, Holy,
 A refuge from the toil and strife of life.
 Here a place they found when troubled or distressed
 And reassurance too in times of doubt.
 Changeless in times of change. Secure-
 A quiet oasis in this fretful, noisy world.
 Let those who come to see and to admire
 In passing spare a prayer that come what may
 This Holy place a sanctuary will remain
 Untouched. Untarnished and unspoiled by all
 Tomorrows thrusting progress and reform.

....Sidney W. Budd,
 Taken from "This England"

CHRIST CHURCH CATHEDRAL

Christ Church Cathedral, located at Georgia and Burrard Street, is the oldest surviving church in Vancouver. The 93 year old early Gothic cathedral was conceived in 1888, two years after the city was incorporated, and has undergone several facelifts over the years.

The church is no architectural gem; it can not compare with such venerable masterpieces as Charters, Rheims, and

Canterbury. Yet it has its footing deep in the history of the community and on one of the most valuable and prestigious sites available in the downtown peninsula.

It was the reaction and response to these values that created a politically hot and contentious issue.

Christ Church Cathedral became the subject of controversy in February, 1971 when plans were announced to demolish the building and replace it with a \$10.8 million office tower. The 18-storey highrise, dubbed the "tower of light" by a Vancouver newsman, was designed by architect Arthur Erickson to incorporate plans for expanded church facilities.

One important aspect of the redevelopment was not the building but the expanded ministry it made possible. Dean Herbert O'Driscoll, the rector, put it clearly in a letter published in The Province. He said: "The Church as an institution in the contemporary world is torn by ambiguity and a choice of life-styles... Today's church is torn between being a creative contributing community in the turmoil of the age and being a refuge or a kind of time machine⁴³ for inexpensive travel into a mellower and simpler past."

The other equally important aspect of redevelopment was the poor financial position of the church. Church officials claimed that a deficit on operating expenses

had grown to \$51,725 from 1968-1970.⁴⁴ According to the agreement between Oliver, the developer, and the Church, the Anglican parish would have received a guaranteed \$75,000 per year when the proposed 18-storey development was completed and \$112,000 annually when it was fully occupied. It was projected that the Church would receive \$160,000 annually by the mid 1980's and by the year 2000 the Church would realize around \$300,000 a year.⁴⁵ This agreement would have provided the financial security the Church directors felt was necessary for its future.

Christ Church Cathedral gave the impression that its financial situation was desperate. In 1971, the Anglican Church of Canada's national executive council was instructed to review the Church's \$23,744,000 portfolio of stocks, bonds and mortgages.⁴⁶ It is impossible to estimate what other investments the Anglican church held through the 28 dioceses, its various institutions, or any of the 2500 individual parishes. The great part of the financial resources of the church was and is real estate. In addition to real estate many congregations have trust funds which they administer themselves. Allan Fotheringham argues that Christ Church Cathedral was not an impoverished institution bereft of financing if really pressed. Could the Anglican church have lent its financial support?

The old church also was without friends and supporters. Opposition to redevelopment was extremely vocal. The decision by the congregation of Christ Church Cathedral to go ahead with studies of the redevelopment was not taken without some doubt. The fact that 42% of the parishioners voted against the proposal testified to the misgivings of a large section of the congregation. In March, 1971 the congregation, by a vote of 196 to 124, approved a fund-raising drive for an endowment fund but this plan was rejected by the diocesan council. Non-sectarian groups dedicated to saving Christ Church Cathedral launched a public fund aimed at staying demolition. The proposal was to raise a minimum of \$500,000 for an endowment fund to maintain the church. This fund would provide about \$30,000 a year to pay the costs of operating the building.⁴⁷

Another alternative was put forward in November of 1971, by David Marshall, then a philosophy student at the University of British Columbia.⁴⁸ Marshall's proposal was an entirely new perspective that attempted to ameliorate the controversy over preservation of Christ Church Cathedral. His solution was a three-pronged arrangement involving the congregation, the city and a group of South East Asia developers, represented by Sherman Dong, who owned the land north of the Church on Burrard down to Dunsmuir.

Marshall suggested that the city could offer the developers a 'comprehensive development zoning'- which would allow greater density than the present commercial zoning- if the Church and the developers consolidated their properties. In return for the greater earning potential of the land they would own, the developers would be required by the city to:

- ensure that the church would remain structurally intact on its present site.
- give the church a \$2,000,000 equity in their development, thus providing it with a good source of income.
- and provide space in the future development for the church if they decided to relocate.

This proposal did not receive favorable response for several reasons. Firstly, the concept appeared as a rather complex if not revolutionary land use regulatory device. The city, unfamiliar with this concept of preservation, did not seize the opportunity to promote its strengths, nor did it initiate research to explore its costs and benefits. Secondly, the Church's commitment to the 'tower of light' increased in direct proportion to the opposition that grew. It appears that certain Church officials became detached from their moral responsibilities placed their visions ahead of the majority of their congregation and the citizens of Vancouver.

At about this time Vancouver was experiencing a dormant period of commercial development. Ark Developments Ltd., the Hong Kong developers previously mentioned, reversed their earlier interest to invest in this large scale project and David Marshall's scheme lost its appeal and interest.

Some members of the Church felt they were being misled by Herbert O'Driscoll and other church leaders who wanted to demolish the building. Parishoners were subjected to a very concerted campaign promoting the proposed new building⁵⁰ but there was no real effort to save the old one.

A package of glossy literature was distributed to the congregation that redevelopment was necessary because of the poor financial position of the present structure. Church officials did not promote the three alternatives proposed to overcome the financial problems without razing the Church.

Another controversial issue was raised at this time by many concerned citizens. Christ Church Cathedral, and all churches in Vancouver, had been exempt from taxes since 1929. In May of 1972, Jack Clarke of the Vancouver Province calculated that the city forgave taxes of \$1,424,259 over the years.⁵¹ Taxpayers, by consensus of community thinking, had foregone the returns from that property because it was occupied by a religious institution. Many individuals who had advocated preserving the Church felt that the Church was not justified in realizing a profit on a piece of land the taxpayers had been subsidizing.

In May 1972 the provincial government added its voice to those already decrying the proposed development. Premier Bennett agreed to place \$160,000 in a trust fund if the city and private individuals contributed the remaining two-thirds of the fund.⁵² Despite this move, the diocesan council voted in favor of redevelopment. Then in an action to officially advise the city's Technical Planning Board that it did not approve of the proposed development, city council voted against Christ Church Cathedral's proposal. The Technical Planning Board, composed of city administrators, had the final say on the development because the proposed project conformed to existing zoning in the area and therefore did not require special permission from council. This now became a question of professional integrity. On July 11, 1973 the Technical Planning Board denied Christ Church Cathedral a development permit and for almost a year, the issue became dormant. Then, on April 18, 1974, John T. Gibson, a Hammerson Property Corporation executive, met with Ray Spaxman, Andrew Malczewski, and John Winsor of the city's planning department to announce that Grander Developments Ltd., a subsidiary of Hammerson, had acquired from Ark Developments the site⁵³ contiguous to the Church.

Mr. Gibson noted that his company had no wish to engage in a new controversy over the preservation of the Cathedral. His main desire was to consolidate his site with the Christ

Church Cathedral property by a long-term leasehold arrangement insuring the future of the south end of his development. A design would be developed that would respect the continued presence of the Cathedral and would apply the unused floor space ratio on the Christ Church portion of the site to the balance of the site. In responding to this scheme, Ray Spaxman, the director of planning for the City of Vancouver, expressed enthusiasm and it was agreed that the next step was to talk to the church to establish the feasibility of the proposal.

On November 30, 1974 the Christ Church Cathedral won a century-long lease on life. The sale of the Christ Church development rights to Grander Developments Ltd. , was agreed upon by both parties, with the city's encouragement.

City council now formally declared Christ Church Cathedral an historic site and Mayor Art Phillips and the other aldermen voted to authorize its director of legal services to prepare a development agreement with Church officials and Grander Developments Ltd.

For purposes of zoning the Church lands and Hammerson lands were treated as one site and were consolidated into one legal parcel. The Church, a conditional use, zoned CM-2 was rezoned to CD-1 to reflect the lower floor space ratio and a corresponding rezoning on the recipient site to reflect the higher floor space ratio was established. In addition, a restrictive covenant was placed on the Church lands for the term of the 105 year agreement

to preserve the historical and present use of Church and prohibit any future development from taking place.

SALE OF CHRIST CHURCH CATHEDRAL DEVELOPMENT POTENTIAL

An estimation has been made of the net present value at November 30, 1974 of the various annual payments referred to in the agreement between Grander and Christ Church. An interest rate of 10% was used and the writer has assumed the following payments as discussed in the 1974 agreement.⁵⁵

November 30, 1974	Closing Date	\$50,000
1975	Year 1	50,000
1976	Year 2	60,000
1977	Year 3	60,000
1978	Year 4	60,000
1979	Year 5	400,000 (assumed
		commencement of construction)
1980-2081	Year 6 - Year 107	As per agreement, assuming annual payments of \$300,000 for years 48-107

Using these assumptions and the net present value equation,

$$\text{Net Present Value} = \frac{\text{Future Value}}{1 + \text{Interest Rate}}$$

the equivalent capital value paid for the development potential is \$1,796,845.

For this sum Grander Developments Ltd., received the right to develop the Church lands (20,280 Sq.Ft.) to a density of FSR 7.5 (Maximum permitted density of FSR 9.0 minus the FSR of the existing Church- FSR 1.5). This is equivalent to almost \$89 per square foot of site area and \$11.81 per square foot of building floorspace.

A qualification which must be made about this type of calculation is the selection of the interest rate, which greatly affects the net present value. For example, using an 8% rate would result in a net present value of about \$3.3 million or conversely using an interest rate of 15% would significantly lower the equivalent capital value. Thus the value of the development rights would vary according to the interest rate that was assumed.

Nonetheless, this would seem to show that Grander paid Christ Church about half the equivalent value of unencumbered land in this area. It is axiomatic that a developer will pay a price for development rights which is proportionate to the value that they add to his site. It would appear in this case that the developer paid

considerably less than the market value of the development rights.

Between 1975 and 1980 the demand for office space declined and Grander's plans to construct an office tower was shelved. In 1980 Daon Development Corporation purchased the property on Burrard and Dunsmuir from Grander and began negotiations with Church officials to proceed with the 1974 agreement. Both parties agreed to proceed but with some revisions to the 1974 financial arrangements. Daon agreed to pay Christ Church Cathedral \$60,000 on February 7, 1980 and \$60,000 on each February 7 occurring thereafter until the year construction commenced. The year construction begins Daon will pay the Church \$400,000 minus \$60,000 plus \$165.00 times the days occurring between February 7 and day construction begins. On each of the first two anniversary dates the payment will be \$100,000 and will increase to \$225,000 from the third through to the twenty-third years. A payment of \$300,000 on the twenty-third and on each succeeding date including the forty-third to the one-hundred and second years the amount will be equal to 8% of the then market value of the Church lands on the basis that the Church lands were vacant and as if no improvements had been erected.

Using these revised figures the writer has again calculated the net present value for the development

potential. An interest rate of 10% and annual payments of \$450,000 for years 43-102 has been assumed.

$$\begin{aligned}
 \text{Net Present Value} &= \frac{\text{Future Value}}{1 + \text{Interest Rate}} \\
 &= 60 + \frac{315}{1+k} + \frac{100}{(1+k)^2} + \frac{100}{(1+k)^3} + \\
 &\quad 225 \left(1 + \frac{1}{(1+k)^{20}} \right) \frac{1}{k} \left(\frac{1}{(1+k)^3} \right) + \\
 &\quad 300 \left(1 + \frac{1}{(1+k)^{20}} \right) \frac{1}{k} \left(\frac{1}{(1+k)^{22}} \right) + \\
 &\quad 450 \left(1 + \frac{1}{(1+k)^{60}} \right) \frac{1}{k} \left(\frac{1}{(1+k)^{42}} \right) \\
 &= \$2,338,980
 \end{aligned}$$

This is equivalent to about \$115.00 per square foot of site area and \$15.40 per square foot of building floor-space. Although this is somewhat higher than the 1974 agreement it is still considerably less than the equivalent value of unencumbered land in the downtown peninsula which sells for more than \$200.00 per square foot. Although Daon 'fattened the kitty', the value the increased density will add to this development far outweighs its costs.

To ensure the political support of the Church, Daon advanced \$250,000 to the Parish in April 1980 to defray the costs to repair the roof and steeple of the church. On July 16, 1980 the Church expressed support

for Daon's development proposal and in April, 1981 Daon received approval from the Development Permit Board. Construction of Cathedral Square began in June, 1981 and is expected to be completed by 1984.

CATHEDRAL SQUARE

Cathedral Square projected a large and effusive image in the downtown core of Vancouver. The vertical elements of the site add dynamics to the skyline while the ground level square provides a sense of human scale to the development. The tall elements of the structure give the site a visual sense of place in the downtown peninsula and are articulated to provide interest and to break down the masses.

The main entrance is enhanced by the open space of Discovery Park across the street and the creation of a ground level plaza which promotes good pedestrian circulation and visually enhances the vista or view to the building. Cathedral Square is a multi-level infrastructure that incorporates two levels of pedestrian movement; and vehicular movement has been carefully channelled away from the pedestrian system to minimize any conflict (See Figures 9 to 16).

Musson Cattell and partners designed Cathedral Square which is expected to cost in excess of \$110,000,000 upon completion.*

*See Appendix "C"

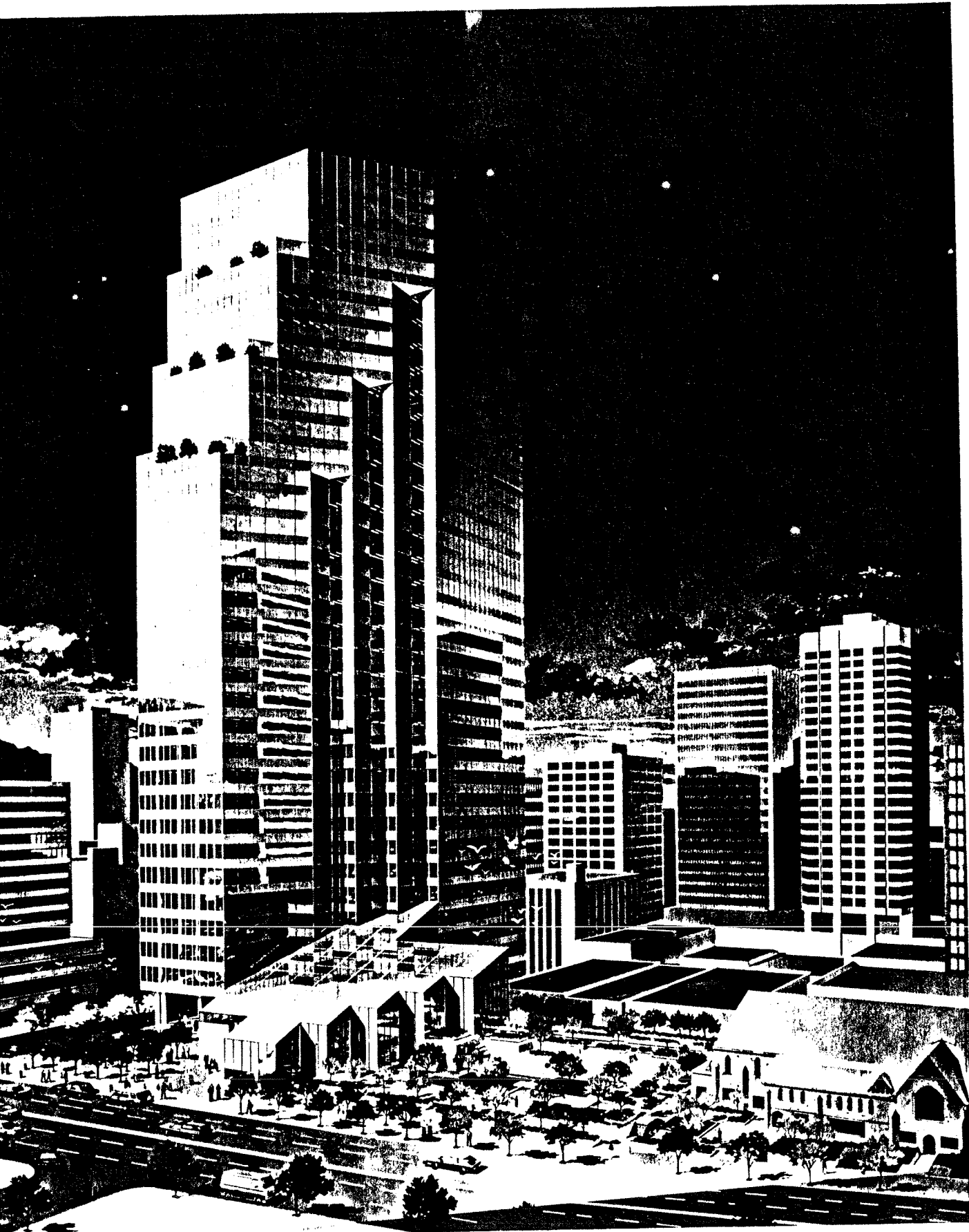
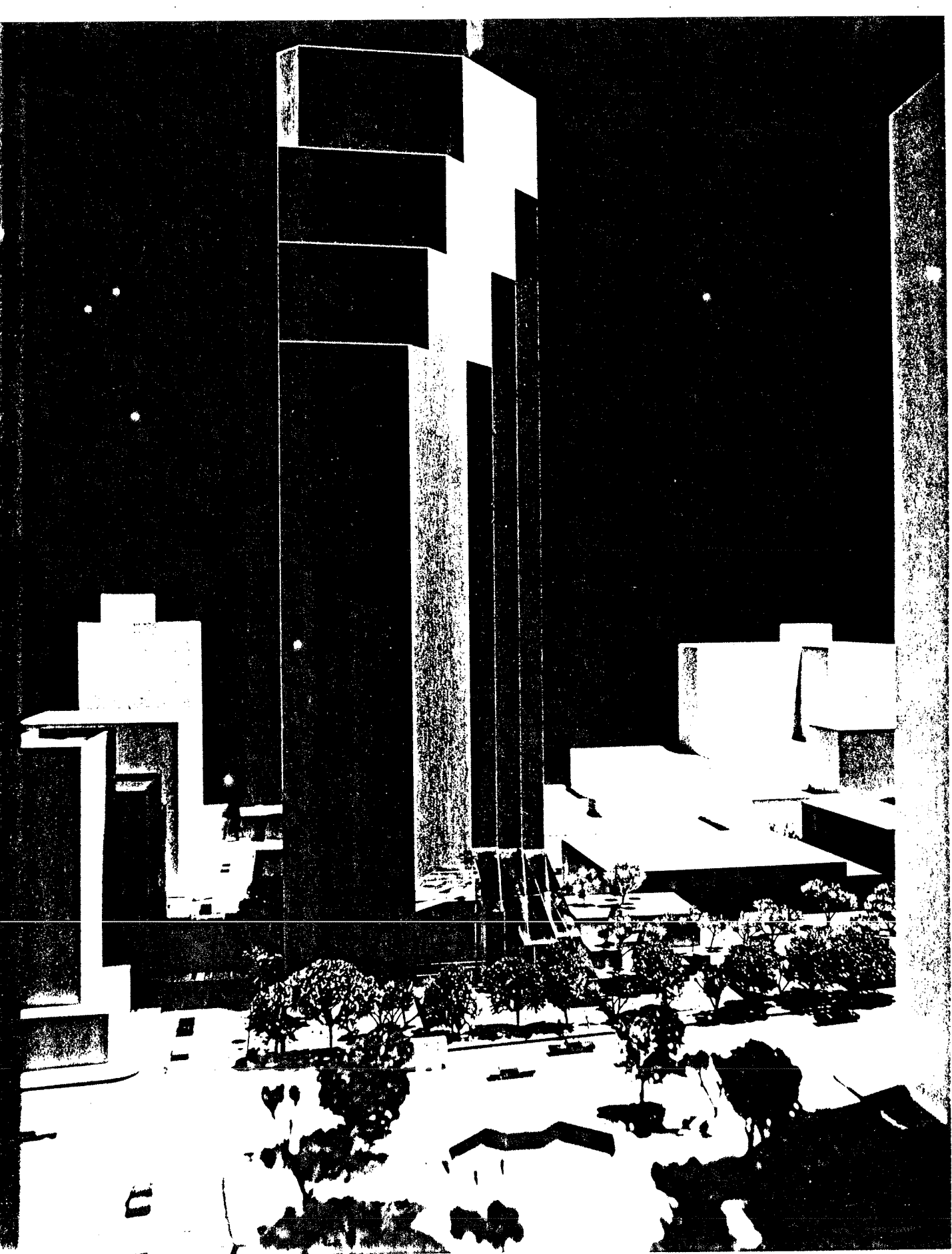


FIGURE 9

SOURCE: Daon Corporation
promotional literature



SOURCE: Daon Corporation
promotional literature

FIGURE 10

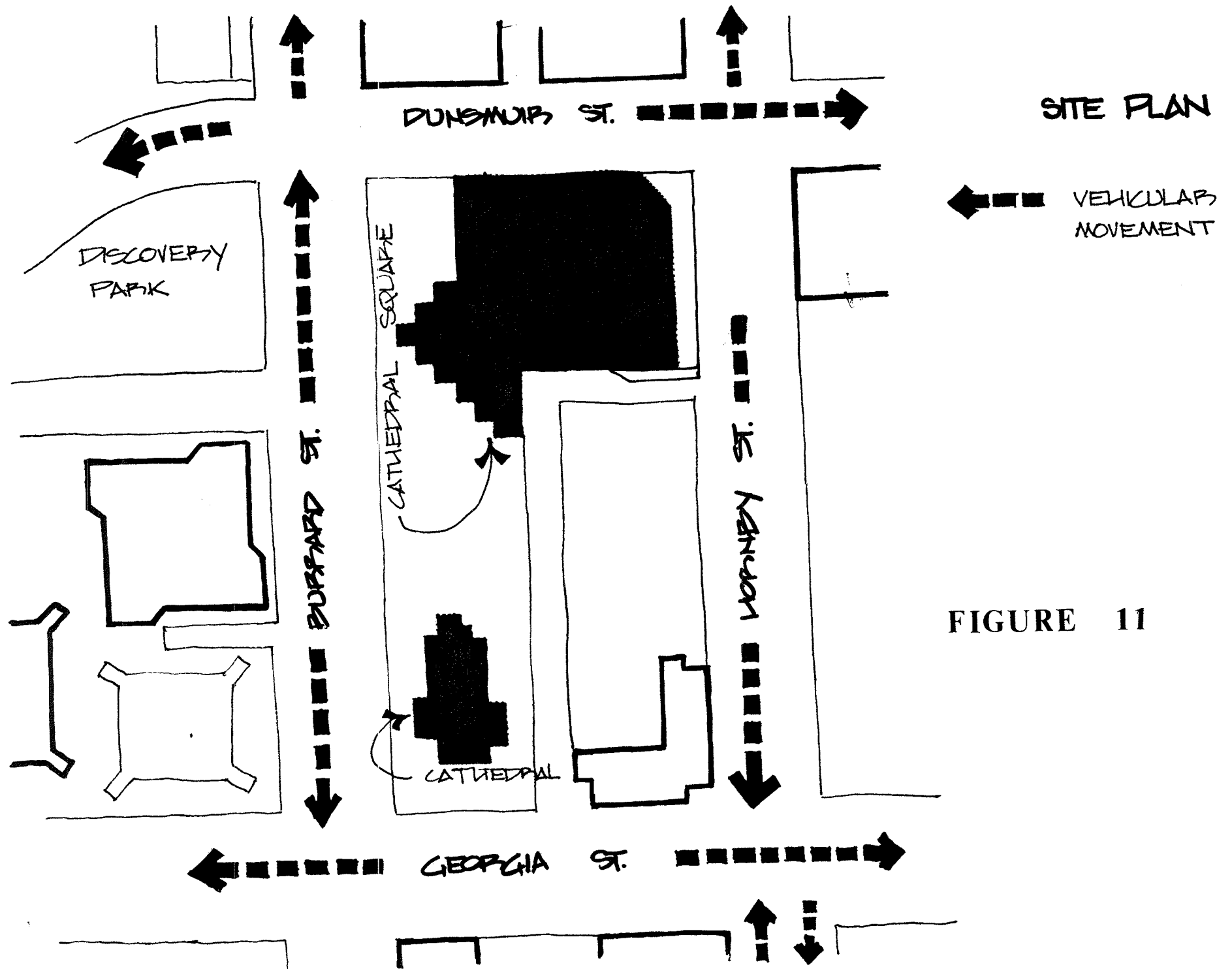
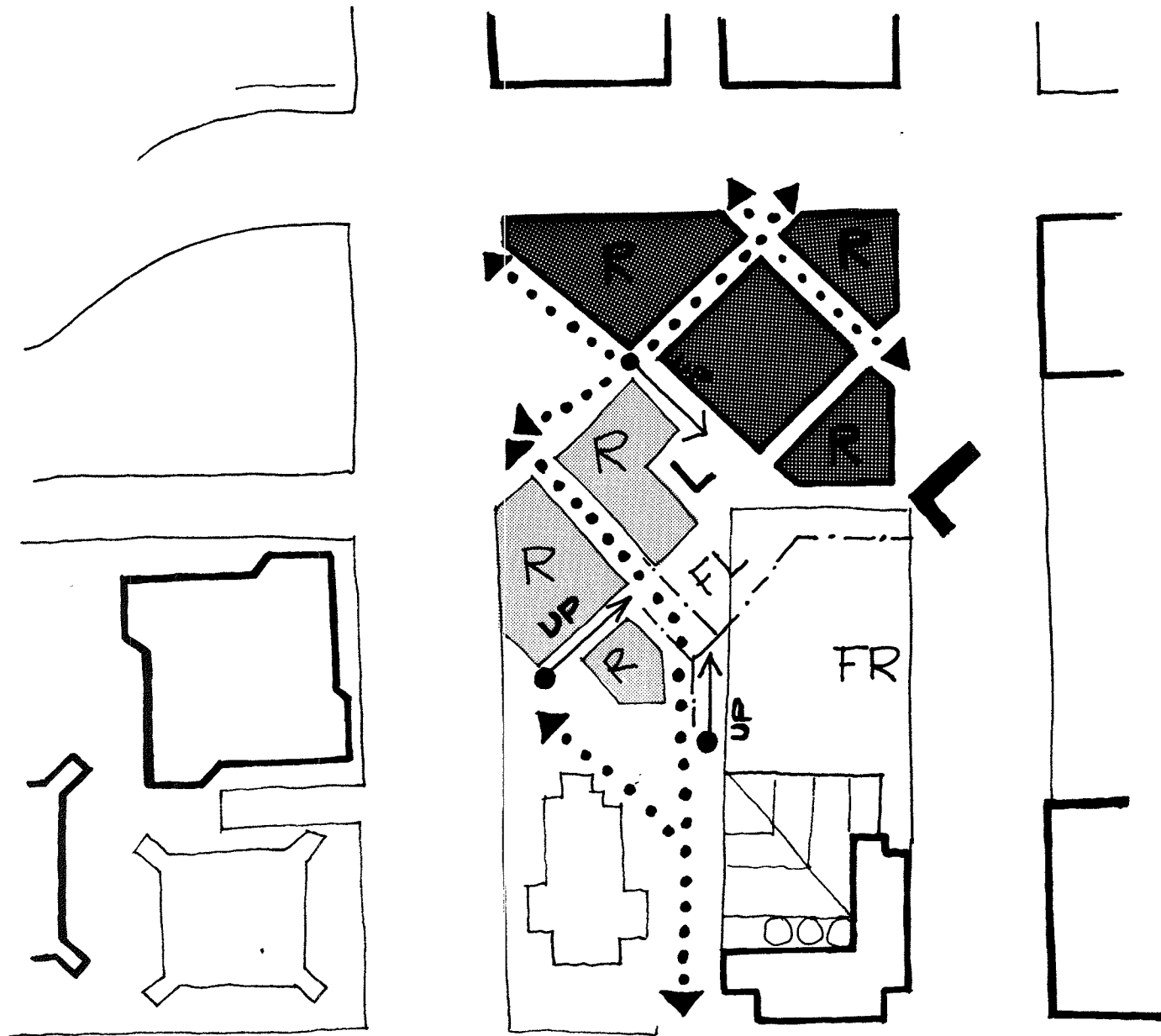


FIGURE 11



◀..... LOWER LEVEL
 PEDESTRIAN
 MOVEMENT

 ◀..... ACCESS TO
 HIGHER LEVEL
 MOVEMENT

 R RETAIL
 FR FUTURE RETAIL
 L LOADING
 FL FUTURE LOADING

FIGURE 12

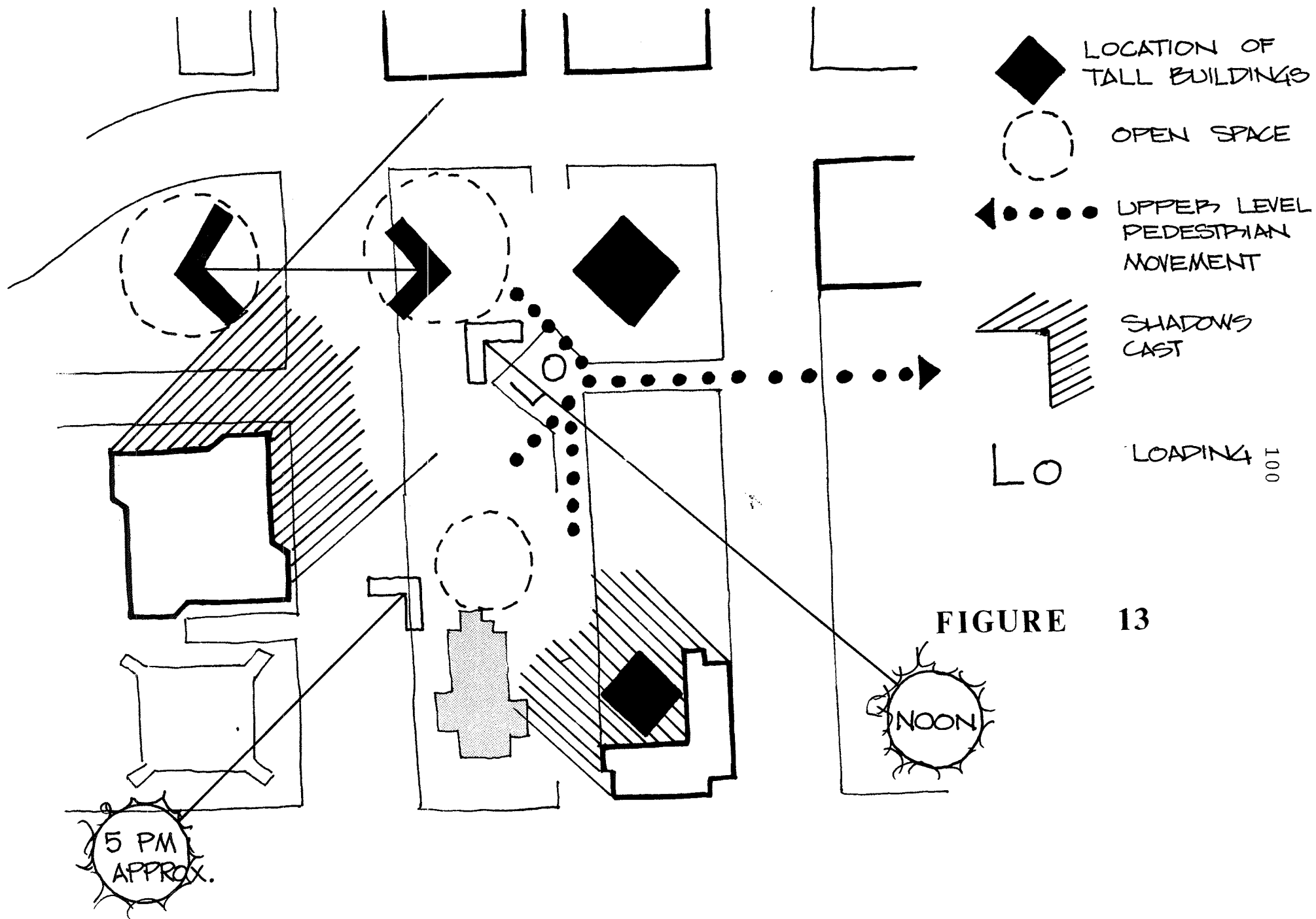


FIGURE 13

DUNSMUIR ST.

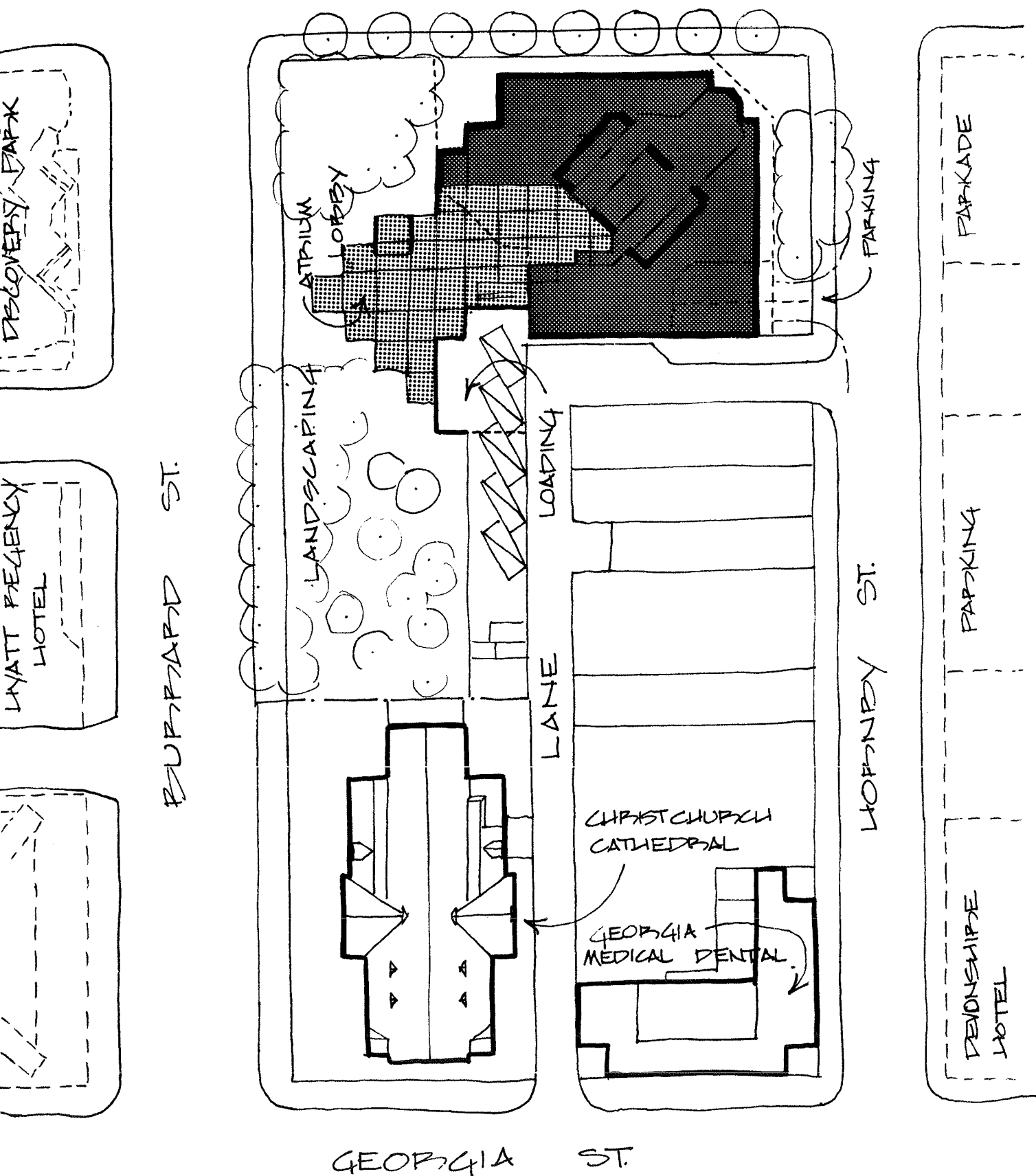


FIGURE 15

BURPARD ST. ELEVATION

CROSS SECTION

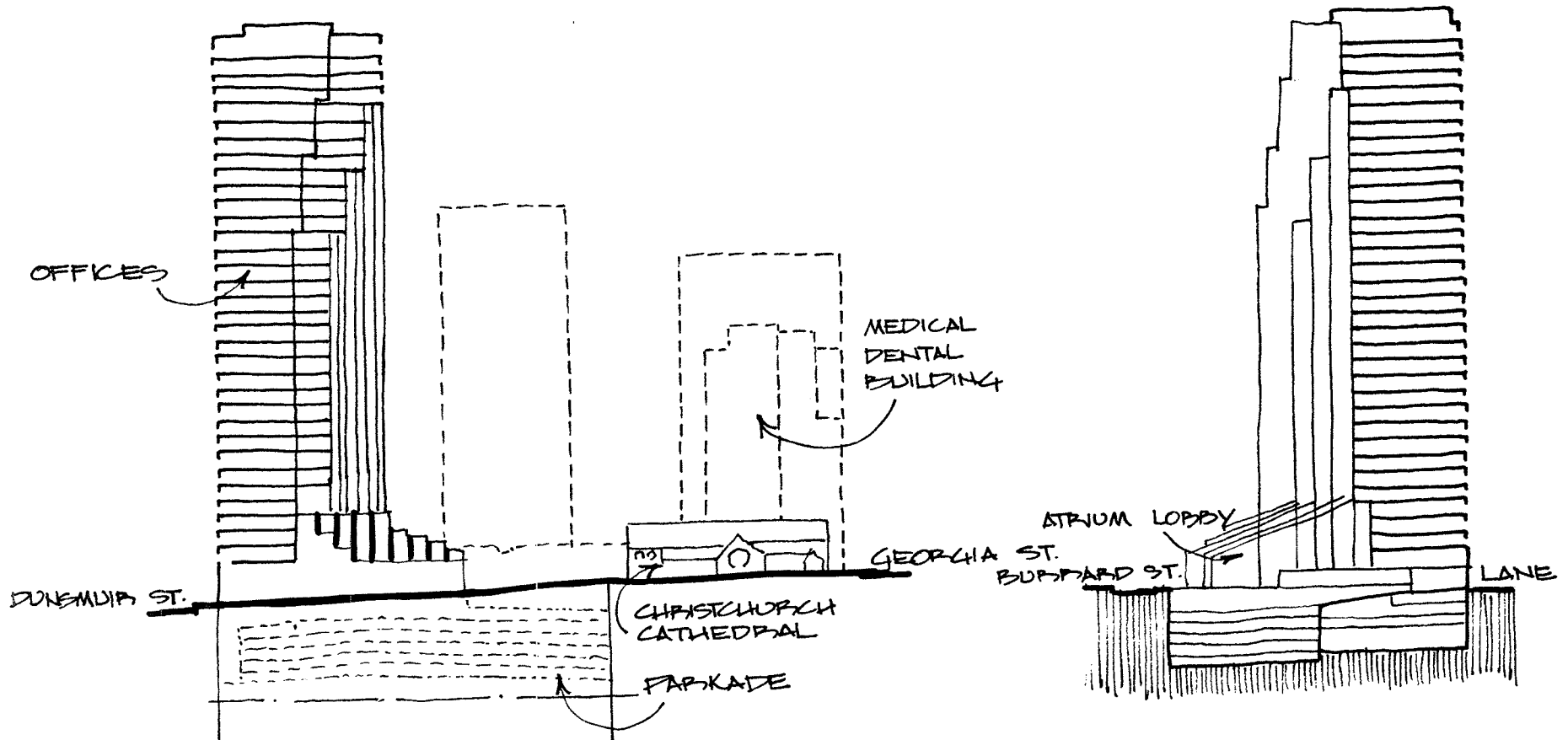
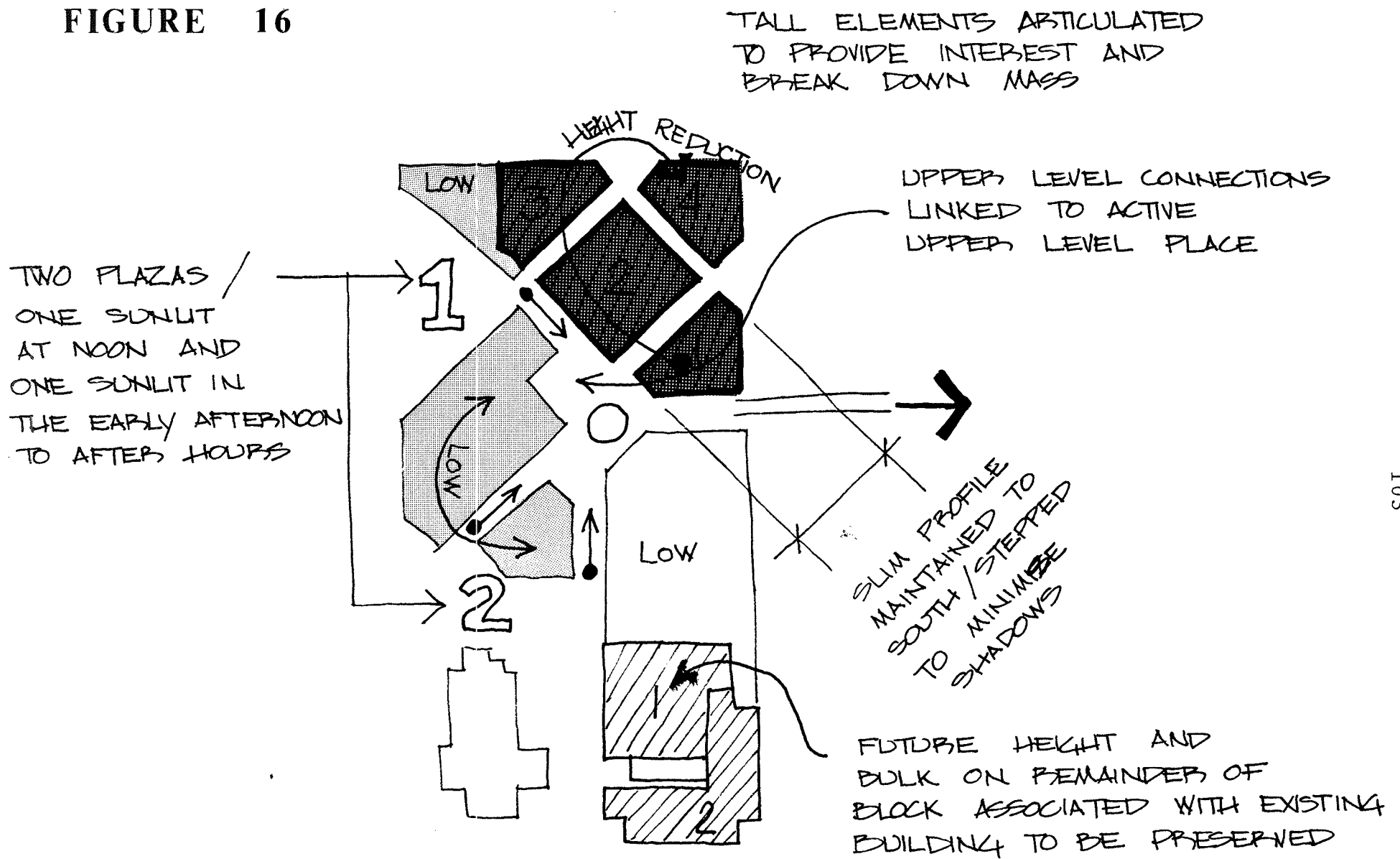


FIGURE 16



Site Analysis

Parcel A 500'x120' = 60,000 Sq.Ft.

Parcel B 169'x120' = 20,280 Sq.Ft.

Total = 80,280 Sq.Ft.

The total floor area allowable (FSR) would be
 80,280 ⁹ = 722,520 Sq.Ft. minus the area of Christ Church
 Cathedral (38,250) ^{*} = 684,270 Sq.Ft.

When completed Cathedral Square will have 615,750
 Sq.Ft. of offices; 16,500 Sq.Ft. for restaurant services,
 and 20,000 Sq.Ft. for retail and commercial space.

It is reasonable to assume that if the same economic
 climate exists when the project is completed as existed
 when construction began the location and presence of
 Cathedral Square will make it economically successful.
 It will be a node or place that people will gravitate to
 in the downtown area.

As mentioned previously a developer will pay a price
 for development rights which is proportionate to the value
 they add to his site. As land in downtown Vancouver
 presently sells for \$250.00 a Sq.Ft. the value of 20,280 Sq.Ft.
 60
 would be \$5,070,000.

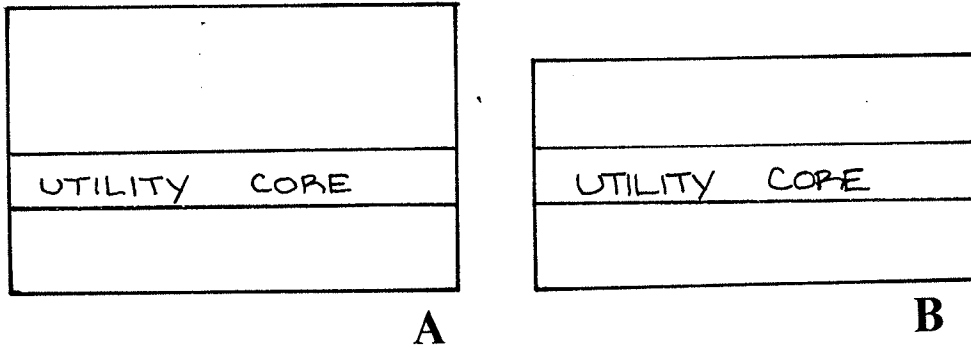
* This has since been amended due to a discovery that the
 area of Christ Church Cathedral was 24,037 Sq.Ft.. This will
 allow Daon an additional 14,213 Sq.Ft. of floor area and
 increase the total floor area allowable to 698,483 Sq.Ft.
 The figures used in the development cost pro forma summary
 are based on 684,000 Sq.Ft. The last revision would generate
 higher revenues and should increase the project's overall
 rate of return. As rent levels increase the value of transfer
 of development potential will become even more profound.

Since it was demonstrated that Daon paid an equivalent net value of about \$2,300,000.00, the development rights clearly increased the value of this project. It is also safe to assume that due to economies of scale, the unit cost of construction decreases as the size of the project increases. This logic would then suggest that the cost of construction using the Church's unused potential would be somewhat less while revenues generated from those additional 158,483 Sq.Ft. would remain constant. High building efficiency is something developers strive for and is achieved by minimizing non-revenue producing space. Buildings containing small floor areas tend to be inefficient because a relatively higher proportion of their total gross square footage must be devoted to nonrentable uses. Developments that have incorporated development potential permits the construction of buildings that are both large and efficient. Buildings with large floor areas cost less to construct. Tables 5 and 6 demonstrate how construction costs per square foot decline as floor size increases. The values attributable to the added density clearly shows that the benefits outweigh the costs incurred.

The price that development potential will bring in any particular case depends principally upon two factors: market demand for new construction and applicable zoning. In the absence of market demand for new construction

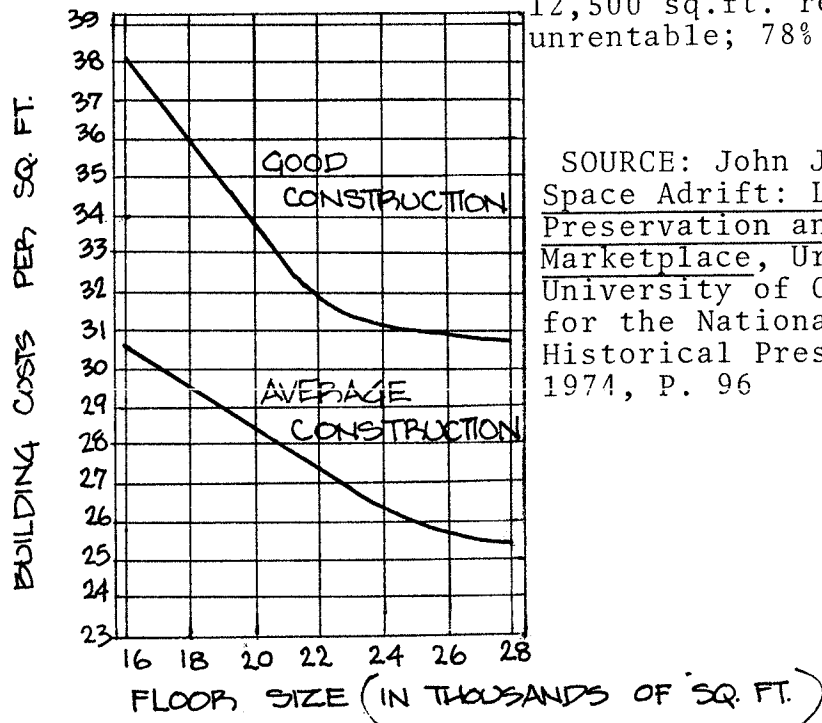
TABLE 5

SOURCE: John J. Costonis, Space Adrift: Landmark Preservation and the Marketplace, Urbana: University of Chicago Press for the National Trust for Historical Preservation 1974 P. 96



Comparison of Efficiency, Large and Small Area Floors

(A) 20,000 sq.ft. floor area: 16,000 sq.ft. rentable, 4,000 sq.ft. unrentable; 80% efficiency. (B) 16,000 sq.ft. floor area, 12,500 sq.ft. rentable, 3,500 sq.ft. unrentable; 78% efficiency.

TABLE 6

SOURCE: John J. Costonis, Space Adrift: Landmark Preservation and the Marketplace, Urbana: University of Chicago Press for the National Trust for Historical Preservation, 1974, P. 96

Building Costs, High-Rise Office Buildings, Chicago, 1972

Source: Dodge Building Cost Calculation and Valuation Guide

development potential will not be saleable because there will be no construction into which they can be incorporated. In cities that are losing landmarks due to rising land values, it is a good assumption that the necessary market will exist. Without a strong construction market, the value of landmark sites would not have increased and the sites would not have come under pressure for redevelopment with the larger structures required to capitalize on these increases in value.

Zoning laws are also responsible for influencing the marketability of development potential. The more restrictive its provisions, the greater the applicability of the development potential transfer mechanism and vice versa. If the density authorizations of the zoning code equal or exceed those that would be justified on the basis of market demand the developer will have no incentive to purchase the additional density.

An examination of transfer of development potential in the Vancouver context warrants the conclusion that cities will suffer little if any tax loss under the plan. The lack of property taxes on the landmark site will be offset by the increased tax yield on the site of the new development. A look at the City of Vancouver's input reveals that the administrative cost's to implement the plan are not significant (See Table 7).

TABLE 7

PROPERTY TAX COLLECTIONS

1. Present Building Size: 295,000 gross sq.ft.
 Present property taxes: \$246,173
2. Highest and Best Use (assumes proposed landmark structure demolished and replaced):
 Estimated building size; 625,000 gross sq.ft.
 Estimated effective gross income: \$4,037,500
 Estimated property taxes: \$1,009,375
3. 330,000 gross sq.ft. of development rights sold to developer and property taxes on landmark structure reduced by 25%:
 - a. Property taxes yielded from development rights:
 330,000 gross sq.ft. 81% efficiency = 267,300 net rentable sq.ft. At an average rental of \$9.50 per sq.ft. yielding \$3,489,350; less vacancy and credit loss factor of 5% = \$3,314,883. Property taxes estimated at 25%, or \$828,721.
 - b. Property taxes from landmark structure: \$246,173 75%
 = \$184,630
 - c. a+b = \$828,721 + \$184,630 = \$1,013,351

Source: Real Estate Research Corporation, 1972.

SOURCE: John J. Costonis, Space Adrift: Landmark Preservation and the Marketplace, Urbana: University of Chicago Press for

National Trust for Historical Preservation 1974, P. 105

The sale of transferred development potential in Vancouver is the only documented case in Canada at this time. The Vancouver experience has demonstrated that transfer of development potential can be a viable mechanism for safeguarding against indiscriminate redevelopment of our architectural heritage. Further applications and trials of TDP will certainly facilitate to limit its shortcomings and help educate Canadians to the benefits and advantages of historical preservation.

CHAPTER 6

CHAPTER VI

CONCLUSIONS

"Respect for the initiative of the past is the inspiration of the future: that hypothesis was proposed by Majorian to the Romans. Canadians can no longer treat it solely as an hypothesis: 1500 years later and a half a globe away, its truth is now being demonstrated."⁶¹

This thesis has reviewed Canadian, American, and British conservation techniques and has touched upon some of the salient points. The case study of Christ Church Cathedral in Vancouver examines the potential of transfer mechanisms as a tool to supplement sound planning and zoning. The application of TDP in Vancouver indicates that a callous indifference to environmental values appears to be giving way to a growing respect for these values.

Citizen action was indispensable to the achievement of this attitude which fostered an awareness of the irreversible damage being done.

The threat to our urban heritage has not arisen by accident: it was built into the legal, financial and fiscal relationships which quietly direct Canadian patterns of development. As with good intentions, mere consciousness of the problem is not enough. Knowledge and political commitment are required to make the concept of environmental accountability more than a pretentious slogan.

PERSPECTIVES FOR THE FUTURE

Under present circumstances, application of TDP in Winnipeg and other Canadian cities would be particularly difficult owing to the nature of zoning regulations and the depressed economic climate. This is well illustrated by the 'unrestricted' nature of commercial activity in Winnipeg within the 'CM' sector. Presently, the need for TDP is more apparent in cities experiencing rapid economic growth. Heritage buildings will be more vulnerable to the 'wrecker's ball' in Toronto, Vancouver, Edmonton, and Montreal than Winnipeg or Regina.

To give aim, purpose and direction to sound, comprehensive municipal planning TDP should be incorporated into all provincial and municipal legislation regardless of the present demands. All buildings in Canadian cities falling within the category of the guidelines listed in Chapter V should be designated. This action would incorporate heritage preservation into long range planning.

CONCLUSION

Transfer of development potential should be considered one means of assistance for the preservation of heritage buildings depending on the individual merits of each case. In order to define the heritage we seek to protect, the following guidelines are listed below:

- i) the architectural merit of buildings: qualities of uniqueness, style, age, quality, architect, period, originality, integrity, construction method and craftsmanship
- ii) preservation of architectural contrasts in local areas:
factors of relationship, texture, atmosphere, harmony and compatibility
- iii) associations with particular past events or with distinguished individuals
- iv) associations with ways of life that have had a significant imprint on the past:
civic, economic, industrial association and government factors
- v) preservation of buildings which have developed sentimental value over many years
- vi) landmarks
- vii) preservation of the integral character of areas or neighborhoods which have maintained their integrity over many years

- viii) preservation of natural features: topographical features, visual focal point, view corridor, streetscape and landscape
- ix) preservation of unique historical objects, both natural and man made

Once designation is made the formula for arriving at development, units should full reflect the loss in land value to those who are unable to develop their property to the zoning maximum. This should be easy to administer. The development potential should be based on units of floor space ratio (F.S.R.) which deals with the total floor area of a building in relationship to its site area.

Now, assuming that the F.S.R. is utilized as the method for determining TDP units the number of units to be awarded should be the difference between the existing F.S.R. and the F.S.R. allowable under the zoning for the site.

For example

Lot Size	Building A 60' 125'		Building B 100'125'	
	F.S.R.	Sq. Ft.	F.S.R.	Sq. Ft.
Allowed	1.75	13,125	9	112,500
Existing	1.50	11,250	7	87,500
Difference	.25	1,875	2	25,000
Transferable Amount		1,875 Sq. Ft.		25,000 Sq. Ft.

The transfer of density within a district rather than to adjacent sites would provide more sites to receive the development units. The potential maximum density of a district would not be altered by a shifting of the density from one site to another within the district. On the other hand, transfers from one district to another would change the potential density of each district. It would increase the area receiving the TDP's which could result in problems of increased traffic and demands for services.

A complication that could arise at this point is in the transfer of density from one type of use to another (i.e. residential to commercial) or in transfers in mixed use areas. This would require a determination of what commercial floor area would equal in residential or industrial floor area. The conversion formula that would be required falls beyond the scope of this paper.

Another decision to be made relates to the type of restrictions which should be placed on the property from which the development potential was transferred. As a condition of transfer the property owner selling the development potential should guarantee that the structure will be maintained to a certain standard, that the building will be safeguarded from fire, etc. and that if the structure is destroyed by a natural disaster, the F.S.R. of the original structure will not be exceeded unless

development potential is purchased from elsewhere. The maximum after such purchase to be equal to the existing zoning within the same district.

It is beyond the scope of this paper to discuss in detail the many other opportunities for the use of TDP. Briefly, there are other areas where TDP could make a significant contribution to planning in Canada.

Farmland in Western Canada and the fruitland in Eastern Canada have been susceptible to the encroachment of rural residential development. Rural lands have become fragmented and thousands of acres of prime agricultural lands have been taken out of production and lost forever. The ramifications of continuing this practice are far reaching. Transfer of development potential could be valuable and equitable in controlling rural residential development. Directing growth to urban areas would eliminate sprawl and the high cost of extending services to rural areas.

Another resource that should be incorporated into long range planning are open spaces within cities. The shorelines of oceans, rivers and lakes as well as parks and golf courses that lie within the confines of cities make attractive settings for residential and commercial development. Land is not a commodity but a resource and should not be sacrificed for the benefit of a few at the expense of the community. Transfer of development potential can be applied to protect and enhance these environmentally sensitive areas.

In concluding, heritage preservation can work if given the right tools. Transfer of development rights or transfer of development potential is not a cure-all. It is not a panacea. It is simply one of the tools. In fact, rather than being a device intended to replace planning and zoning, it is an instrument or tool designed to augment and be absolutely dependent upon those very same planning and zoning techniques that have been practiced in Canada for many years. As such, TDP is neither revolutionary nor radical but very much a reform movement.

APPENDIXES

APPENDIX "A"

THE PICTURE TODAY

Canadian Bank of Commerce Building, 389 Main Street:

- a. Assessment - Land \$111,620, Building \$50,000, Year 1978 /1979
- b. Real Estate Taxes - \$27,485, Year 1978
- c. Operating Costs - \$36,653, Year 1978
- d. Estimate date premises became vacant - January 1970
- e. Estimate cost to demolish - \$100,000.
- f. Date of request for demolition permit - July 20, 1978.

Hamilton Building, 395 Main Street:

- a. Assessment - Land \$53,090, Building \$290,000 - 1978
Land \$53,090, Building \$ 50,000 - 1979
- b. Real Estate Taxes - \$58,426.98, Year 1979
- c. Operating costs - \$120,825, Year 1978
- d. Estimate date premises became vacant - March 1978
- e. Estimate cost to demolish - \$75,000
- f. Date of request for demolition permit - July 20, 1978.

ECONOMIC ANALYSIS

The following projections consider the market value of the Hamilton Building prior to and following a renovation programme.

The estimated gross building area including the basement is 56,304 sq.ft.

A. Present Value Estimate:Land Market Approach ¹

6,000 sq.ft. @ \$50.00 overall per sq.ft.	\$300,000
---	-----------

Income Approach ²

Basement	n/a
----------	-----

Ground Floor- 4,184 sq.ft. @ \$7.50 per sq.ft.	31,380
--	--------

Mezzanine- 2,788 sq.ft. @ \$2.50 per sq.ft.	6,970
---	-------

Upper Floors- 31,616 sq.ft. @ \$4.75	<u>150,176</u>
--------------------------------------	----------------

Total estimated gross revenue	\$188,526
-------------------------------	-----------

Operating Expenses (estimated 1976)

56,304 \$2.86	\$161,029
---------------	-----------

Net Cash Flow	27,497
---------------	--------

Capitalized value- 27,497 @ 12%	229,142
---------------------------------	---------

Present value estimate	<u>\$230,000</u>
------------------------	------------------

B. Value including proposed improvements:

i. Estimated hard cost improvements ³	\$806,400
--	-----------

ii. Estimated soft costs .33%	266,112
-------------------------------	---------

Summary

Present Land Value 6,000 @ \$50.00	\$300,000
Hard Costs	806,400
Soft Costs	<u>266,112</u>
Value (costs) including improvements	\$1,372,512

iii. Income approach

Revenue

Estimated market rent- vrs. sq.ft.

Gross Area- 56,304 sq.ft.

Floor Efficiency- 69% overall.

Total estimated gross revenue:

Basement	- 2,352 sq.ft. @ \$3.75	\$8,820
Ground Floor	- 4,184 sq.ft. @ \$9.50	39,748
Mezzanine	- 2,788 sq.ft. @ \$6.00	16,728
Typical Floor	- 31,616 sq.ft. @ \$7.85	<u>248,186</u>
		\$313,482

iv. Operating Expenses:

Total 3.75 56,304 = \$211,140

Net Income \$313,482 minus \$211,140 \$102,342

v. Financing:

Assuming a 75% Mortgage at 11%⁴ with a 25 year
amortization could be arranged, the annual debt
service is:

cost	\$1,372,512
mortgage	.75x\$1,372,512 = \$1,029,384
debt service	\$1,029,384x .1155 = \$118,894

vi. Return:

Net Income	\$102,384
Debt Service	<u>118,894</u>
Cash Flow	(\$ 16,552).

Summary:

Cost	\$1,372,512
Mortgage	1,029,384
Equity Required	343,120
Return on Equity	-

1. assuming no value to the improvements.
2. extended lease up period anticipated.
3. 120% of 1976 estimated costs.
4. 1976 estimated mortgage rate 12%.

*The above data was extracted from a Feasibility and Development Proposal on the Bank of Commerce Building and the Bank of Hamilton Building.

APPENDIX "B"CAPITAL COST SUMMARY DEVELOPMENT PROPOSAL

1. Land @ \$65.00 per sq.ft.	\$ 4,350,000
2. Promotion and Leasing	2,300,000
3. Interim Financing	2,000,000
4. Legal	100,000
5. Property Management	150,000
6. Construction - Office Tower, Parkade and Exterior Landscaping	20,300,000
7. Design	915,000
8. Administration Overload and Profit	1,750,000
	<hr/>
	\$31,665,000

INCOME SUMMARY DEVELOPMENT PROPOSALNet Leasable Area.

It is suggested that the size of the typical office floor should be in the order of 16,000-18,000 sq.ft. for one half the floors to accomodate the anticipated larger tenancies. The balance of typical office floors should be in the order of 10,000 to 12,000 sq.ft., a traditionally marketable range in the Winnipeg market during the past decade. The building would be planned around a "central core" configuration reflecting a net leasable area to gross floor area of approximately 87.6% in the office tower and 83% overall.

Parking: (Based on a ratio of one stall per 963 sq.ft.
leasable area) - 328 stalls

Net Operating Income

The annual operating expenses for the entire complex will be born by the tennants in proportion to the amount of space occupied. They would fall in the range of \$4.00 to \$4.50 per sq.ft.

Overall Rate of Return: $\frac{2,600,000}{31,600,000} \times 100 = 8.22\%$

The estimated Gross Annual Income is:

Office: 257,300 sq.ft. @ \$7.00 per sq.ft.	\$1,801,100
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Commercial:

11,130 sq.ft. @ \$18.00 per sq.ft.	200,340
11,570 sq.ft. @ \$15.00 per sq.ft.	203,550

Oliver's:		
11,020 sq.ft. @ \$13.00 sq.ft.		143,260
Computer Centre:		
22,860 sq.ft. @ \$ 9.00 sq.ft.		251,460
Parking:		
328 stalls @ \$40.00 per month		157,440
		<hr/>
		\$2,757,150

Vacancy

A 5% vacancy and bad debt allowance has been applied
to NET OPERATING INCOME.

Net Operating Income (before vacancy)	\$2,757,150
Vacancy and Bad Debt	137,858
	<hr/>
Net Effective Income	\$2,619,292
	<hr/>
	\$2,600,000

*The above data was extracted from a Feasability and
Development Proposal on the Bank of Commerce Building
and the Bank of Hamilton Building.

APPENDIX "C"

SITE ANALYSIS

SITE AREA:

$$500' \quad 120' = 60,000 \text{ ft.}^2$$

$$169' \quad 120' = \underline{20,280}$$

$$\text{Total} = 80,280 \text{ ft.}^2$$

FSR PERMITTED: 9

Total floor area allowable:

$$80,280 \quad 9 = 722,520 \text{ ft.}^2$$

Minus area of Christ Church Cathedral

$$- 24,037$$

$$\underline{698,483} \text{ ft.}^2 \text{ allowable}$$

Total floor area proposed:

Above Grade: Offices 634,528 ft.²

Mechanical 1,789

Retail/Commercial/Atrium 24,074

Below Grade: Amenity facility (exempt)
(Health Club, Lunch Room)

	4,275	
B1 + P1 levels	19,193	ft. ²
B2 level	15,768	ft. ²
P2 - P6 levels	<u>2,180</u>	ft. ²

Area proposed:	697,532	ft. ²
	(951)	ft. ² under)

PARKING ALLOWABLE:	697,532	ft. ²
@ 1/1000 =	698	spaces

PARKING PROPOSED:	483	spaces
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LOADING REQUIRED:	634,528
Offices @ 1/30,000 =	21 bays
12,500 ft. ² Retail @ 1/5000+1/20,000=	6 bays
Total required:	<u>27 bays</u>
LOADING PROPOSED:	11 bays
BUILDING HEIGHT PERMITTED:	
450' above grade	
BUILDING HEIGHT PROPOSED:	
450' above grade (El. 170')	

APPENDIX "D"

DEVELOPMENT COST PRO FORMA

LAND

Acquisition	\$15,000,000	
Agents Commission	377,500	
Cathedral payments	800,000	
Legal fees	150,000	
Appraisal and feasibility	10,000	
Survey	5,000	
Interim taxes	1,880,000	
		\$ 18,222,500

CONSTRUCTION

General contract		
- shell	51,421,000	
- lane	300,000	
-garage	6,440,000	
-landscape	900,000	
Tenant allowances (\$8 sq.ft.)	4,880,000	
Lobby furnishings	250,000	
Signs and graphics	50,000	
		64,241,000

CONSULTANTS

Architect & engineer	1,900,000	
Other consultants	1,200,000	
Permits	10,000	
Insurance	(incl. in contract)	
		3,110,000

MARKETING

Lease commissions	2,000,000	
Other marketing costs	100,000	
		2,100,000

CAPITALIZED VACANCY

193,000	193,000
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OVERHEAD AND DEVELOPMENT FEE

1,800,000	1,800,000
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FINANCING

Interest - interim	21,168,000	
		21,168,000

TOTAL

\$110,834,500

PRO FORMA SUMMARY

		<u>TOTAL</u>	<u>PER SQ. FT.</u>
PROJECTED PROJECT COST	680,000 s.f.	110,000,000	162
PROJECTED REVENUE			
Office Space	590,000 s.f.	11,800,000	20
Retail Space	20,000 s.f.	800,000	40
Parking	184,000 s.f.	936,000	5
	<hr/>	<hr/>	
	610,000 s.f.	13,536,000	
LESS VACANCY AND STRUCTURAL ALLOWANCE (5%)			
	676,800		
LESS CATHEDRAL RENT	225,000		
	<hr/>	902,000	
NET OPERATING INCOME			
(95% of projected revenue on net lease)		12,634,000	
OVERALL RETURN			11.5%

FOOTNOTES

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FOOTNOTES

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