

ZONING THOUGHT AND PRACTICE:  
A COMMUNITY STUDY IN WINNIPEG

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BY  
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A thesis submitted to the Faculty of Graduate Studies of  
the University of Manitoba in partial fulfillment of the requirements  
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## ABSTRACT

This thesis aims to examine the nature of zoning, in cognizance of its intents (ie. to protect public health, to protect property, order and the comprehensive plan), with the hope of shedding some fresh insights on zoning in an inner city area of Winnipeg. There are three component parts: a historical study of the concepts behind the fundamental zoning purpose, a selective review of contemporary planning criticism of the purposes, and a community study.

The community study (of Winnipeg's North Logan area during a land expropriation inquiry in 1981-82) allows judgments to be made on the validity of the purposes and their ability to meet the needs of residents in the North Logan neighbourhood. A wide range of resource materials was fortunately available when data was collected, including a tape recording of the expropriation hearing, personal interviews, planning reports from the City's archives, and books and periodicals on the nature of zoning.

The thesis investigation determines that the zoning process, rather than the zoning technique, is functioning inadequately in the North Logan area. The needs of the residents are not being met and the fundamental purposes are not able to meet their expectations. As a result of my research, I recommend that the zoning process be changed to increase resident participation in the decision-making process. This would permit the zoning purposes and supporting concepts to be regularly reevaluated and standards to be amended according to the neighbourhood's needs. The recommendations promote cooperation between planners and inner city residents in the hope that confrontations like this one in North Logan are avoided in the future.

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CHAPTER 1

INTRODUCTION

## Introduction

Zoning is the most prominent tool of North American planning practice. While it has been criticized, challenged and defended in various quarters, it remains steadfast and solid in all communities as an "iron law" of land use. Its reputation for controlling development was built in the time of suburban expansion. But, zoning remained a primarily suburban land use technique. It has not generally been considered an innovative planning technique for serving inner city areas. In fact, planners have questioned its appropriateness for inner city neighbourhoods for some time.

A Winnipeg transitional neighbourhood called North Logan exemplifies the manner in which zoning apparently can adversely affect an inner city neighbourhood development. The area is the focus of a community case study to be taken up later in the thesis, but it is fitting that the area be introduced now since its history, in part, led to my questioning of the zoning process.

## BACKGROUND INFORMATION ON THE CASE STUDY AREA

The 20-acre area in question, a mixed land use area bounded by Stanley Street and Gunnel Street to the east and west and Higgins and Logan Avenues to the north and south, has a well-documented history. With the advent of the CPR railway in the 1870's, the portion of land around what is now Isabel Street was subdivided for commercial, light industrial and residential uses. Typical of most cities during this period, a mix of land uses was accommodated. Emphasis was placed on the efficiency of such a limited spatial distribution of working and living areas. The close proximity of residence to work place was accepted and essential in the absence of affordable transportation for area workers, many of whom were employed by the CPR.

The diverse land uses coexisted until 1950 when the area was zoned light industrial (M2). The residential use of the area was to be phased out gradually. No new houses were to be built. While the presence of noisy transport and cartage companies were a minor threat to health and safety, residents stayed on. Since the M2 zoning did not encourage the upkeep of houses, many became dilapidated and were destroyed by fire or through enforcement of Health and Sanitation By-laws.

It was not until 1980 that physical changes to the area could be carried out. A tri-government body (under the banner of the Winnipeg Core Area Initiative) was formed in late 1980 to guide a \$96-million redevelopment program for downtown Winnipeg. On May 27, 1981, a Provincial Order-in-Council (agreed upon by the Core Area Initiative) initiated the expropriation of the 20-acre mixed use area without questioning the reasonableness of this directive. The objective was two-fold in nature: to package the 20-acres for high tech industries, and to provide a right-of-way for a new Salter Street bridge. In June, area residents and businessmen quickly formed the Logan Community Committee (LCC) to fight the expropriation order in court. They claimed the M2 zoning had never met their need for redevelopment and that the expropriation process was illegal and unfair. They saw the area in a state of transition while the City refused to acknowledge this state. Urban Affairs Minister, Eugene Kostyra, intervened by calling a judicial inquiry in mid-December 1981.

The appointed Commissioner to the Inquiry, Evelyn Shapiro, was asked to recommend whether expropriation of the properties was "fair" and "reasonably necessary" for the achievement of Core Area Initiative objectives. Both the City and the LCC tabled reports over the next four



months which supported and rejected, respectively, the M2 zoning as representative of and meeting the needs of the transitional area. The Commissioner eventually recommended a series of sweeping changes including the development of a new area plan (and zoning) with the LCC as active participant in the future development of the mixed use area. Consequently, the LCC (now the Logan Development Corporation) acts as a responsible partner in determining zoning changes and future development.

### NATURE OF THE INQUIRY

Planning for a mixed use transitional neighbourhood in Winnipeg had been sporadically addressed by the City over a fifty year period. Despite the presence of a comprehensive plan, zoning and some sporadic concern by residents, the area became disrupted over the issue of planned redevelopment with zoning being of no assistance to property owners or tenants in the area. This inquiry poses a central question: why did zoning function inadequately as a land use control for the residents in a transitional area of Winnipeg?

Perhaps the original purposes of zoning do not apply in the modern city. Perhaps the wrong tool is being used in transitional areas. Accordingly, the inquiry broadened to ask four related questions which are dealt with over the course of Chapters 2 through 5:

1. What are the original purposes of zoning? (Chapter 2)
2. Are these purposes still evident in current practice? (Chapter 4)
3. Are these purposes inoperable with the conditions of today?

(Chapter 5)

4. What are, and how valid are, the critical theories about zoning?

(Chapters 3 & 5)

The purpose of this thesis then is to examine firsthand the nature of zoning, in cognizance of its intents, with the hope of shedding some fresh insights on the question of zoning in the inner city.

#### METHODOLOGY

The reasons and inspiration for this thesis derived from readings of zoning law and a case study which arose at the same time. While finishing a planning law class in the master's degree program, I began a series of readings on the history of zoning and its development into Canadian legislation. A review of the British and American origins of development controls and zoning established a personal impression that long standing precedents for land use controls were equated with some degree of reliability and equitable decision-making. It became apparent during the law course, however, that innumerable court cases since the late nineteenth century suggested that the zoning process has always been the source of controversy and that there was rarely enough time and money for either defendant or plaintiff to plead their cases.

Further reading in contemporary zoning issues followed the course. Planning criticism by Michael Smith, David Harvey, Patrick McAuslan, Kent Gerecke and Richard Sennett questioned aspects of four commonly used purposes of zoning: (1) protection of public health and welfare; (2) protection of property; (3) maintenance of order; and (4) the comprehensive plan. Furthermore, zoning was recognized as a political game between interest groups; politicians, planners, developers, and ordinary citizens each vie to have specific needs or demands met. Groups use the fundamental zoning purposes to rationalize the zoning process but invariably apply different degrees of importance to the standards upholding the purposes.

A general review of literature on zoning practice prepares a critique of zoning practice. One author, planner-geographer P. J. Smith, provided a first synthesis of the zoning purposes (as influenced by Utilitarianism) for which the work of aforementioned authors could be used as support. It was soon after reading Smith's article on the influence of Utilitarianism on early planning experience in Alberta that, coincidentally, the North Logan area expropriation inquiry took place. It was the timely opportunity of witnessing the expropriation hearings and of talking with the parties involved that influenced the direction of my thesis.

During the Inquiry hearings, the fundamental zoning purposes supported the City's rationale for expropriating the neighbourhood. The community group's defence incorporated a contemporary usage of the fundamental purposes that addressed the needs of the neighbourhood. The Logan Community Committee (LCC) claimed that the original zoning purposes and their standards (which shaped the enforcing of zoning by-laws and amendments) could not easily be applied to their neighbourhood. It was at this point that the following component parts were developed so as to answer the historical and contemporary questions discussed previously.

The three component parts for the thesis are the historical study, the selective review of contemporary planning criticism, and the case study. These parts are introduced below.

The historical study intends to make sense of the fundamental zoning purposes as the original basis for a land-use planning response. Chapter 2 will selectively examine the urban conditions and theoretical influences that shaped a zoning response. The contents of the historical study will be contrasted to and compared with that in Chapter 4 which describes the contemporary circumstances for testing the purpose.

The selective review of contemporary planning criticism provides a contemporary understanding of the concepts behind the zoning purposes. The selective overview of planning criticism provides for an alternate understanding of the zoning purposes.

The case study is a test of the original zoning purposes in a contemporary setting. Unlike most case studies, it is not known whether it is typical. There are other reasons for using a case study however:

1. A testing ground for the fundamental purposes was provided. The linkage of practice and theory was thus made possible.

2. Extensive data collection on the area and its inhabitants was possible. The Judicial Inquiry into the North Logan expropriation area provided a rare opportunity to review the City's archival materials, the taped hearings, the recommendations of the Inquiry Commission and it also provided the opportunity for interviews with participants in the zoning process.

3. The zoning process is reviewed in detail.

Diagrammatically the three component parts of the methodology can be linked to the overriding question which is: "Why did zoning function inadequately as a land use control for residents in a transitional area of Winnipeg?" Also, keeping in mind the four associated questions asked in the section "Nature of the Inquiry", we find that each component is related to more than one question and vice versa. These three component parts are as follows:

- |  |   |  |   |   |
|--|---|--|---|---|
| <ol style="list-style-type: none"> <li>1. Historical Study</li> <li>2. Contemporary Planning Criticism</li> <li>3. Case Study</li> </ol> | } | yield answers to the overriding question and to the four related questions | } | <ol style="list-style-type: none"> <li>1. What are the original purposes of zoning?</li> <li>2. Are these purposes still in evidence in current practice?</li> <li>3. Are the purposes out of synch with conditions of today?</li> <li>4. If zoning's original purposes are invalid, there is a need to review critical theory. What are, and how valid are, the critical theories about zoning?</li> </ol> |
|--|---|--|---|---|

A literature review was undertaken for each of these component parts. The following paragraphs represent a brief review of these literary sources.

#### 1. The Historical Study

The fundamental zoning purposes, and the urban conditions to which they responded, are examined in the literature review of Chapter 2. A variety of sources were chosen for their focus on aspects of the fundamental purposes as indicated below.

P. J. Smith's work traces the influence of Utilitarianism on Alberta's early zoning legislation. His work provided the structure for discussion of the fundamental purposes. Smith linked elements of Utilitarianism to the development of the four original purposes of zoning and maintained that Canadian zoning practice is based on these theoretical sources. A review of the early Journal of Town Planning Institute (JTPI) issues would confirm Smith's investigation.

Benevolo, Heap and Briggs are cited for their understanding of urban conditions during the Industrial Revolution. They focus on the recorded responses to these living and working conditions. Patrick McAuslan's work was used to understand "proper planning", that being from a judicial

viewpoint. It was from a judicial perspective that "standards" for each purpose were originally set. All of the above mentioned sources give some understanding of the changing "standards" for health, the quality of housing, order, etc.

Ebenezer Howard's Garden Cities of Tomorrow is influential in the discussion of the fundamental zoning purposes. His work is cited by Smith and is frequently referred to in the JTPI issues as the purveyor of reasonable land-use planning. The importance of his work lies in his characteristic reliance on a physical remedy for the overcrowded industrial city, the process of separating land-uses and the social ramifications of the Garden City.

Evidence of the adoption of the fundamental purposes in Canada comes mainly from a review of all JTPI issues.

## 2. Contemporary Planning Criticism

Attention has been given to critics who have reevaluated the concepts behind the zoning purposes. All of the original zoning purposes are shown to be physical planning responses that do not address a radically-changing society, one dominated by more conflict over the nature of the purposes rather than consensus. After reviewing the purposes, it became clear that the original purposes are suspect and often unsatisfactory when applied to contemporary urban conditions. Updated theory has responded with a delimiting of the questions and solutions.

The following paragraph accounts for the sources of contemporary planning criticism used in Chapter 3. Contemporary planning criticism suggests that the zoning purposes are too limited in scope. The concept of protecting the public health and welfare cannot be as simply conceived as it might have been during the Industrial Revolution. Babcock points

out that from the original legal perspective, zoning served broad social and economic purposes that shaped a particular urban and suburban form. Robert Goodman maintains that legal or planning decisions effecting urban form represent implicit ideological or value positions that cannot be overlooked. Gerecke acknowledges this much but, in identifying a common element in zoning (that being to represent the public interest), he insists that the original zoning purpose was not sensitive to the complexities of good health. Canadian planner-architect, Kiyoo Izumi's work expands on the idea of psycho-biological elements that also figure largely in determining good health. Planner-author Michael Smith continues this argument in his reconsideration of the purpose. He discusses a zoning myth which frequently associates ill-health with overcrowding. Again, health, happiness and well-being are not ensured. American historian, S. Olson, examines this assumption by focussing on the abusive potential of the zoning myth. Her historical case study looked at how "blacks" in Baltimore were once dispersed through urban development programs.

In reevaluating the zoning purpose of protecting private property, the discussion centers on measuring its worth. Simmie and Gerecke both write of the need to acknowledge that questions of equity must supercede those of efficiency in the discussion of property. To do this, Gerecke claims that another more complete definition of the public interest must be established on the basis of a social justice theory. When tested against his theory, zoning is found to add to David Harvey's concept of social justice (ie. an unequal redistribution of income dependent on geographical location). Economic equity is not maintained and if some homes are located closer to health hazards and lack an equal amount of

servicing, then social equity is not maintained either. W. Lucy and R. Goodman then explore notions of equity in relation to private property and illustrate how unlikely every piece of private property is to be protected and secured.

The discussion of order relies on a review of Richard Sennett's understanding of order and disorder. Sennett reexamines the concept of order by questioning the nature of diversity and instability. Gerecke supports this examination by arguing that diversity be seen within an analogy to a natural ecosystem which equates diversity with resilience. Uniform land-uses, therefore, become questionable as do the standards upholding them. Finally, P. J. Smith and Robert Goodman question and pass judgment on the value-laden nature of equating conformity and incompatibility as universal laws.

The comprehensive plan is reconsidered by Gerecke, D. R. Steele, Sennett, Carver and Burns. In a practical sense, comprehensive plans are not adhered to. In theory the simplistic, organic concept of planning for the whole, which spawned the monotonous suburbs of the 1960's as a final achievement, is a spent concept. Criticism maintains that the concepts are too simplistic for contemporary usage.

### 3. The Case Study

The case study focusses on the fundamental purposes as they were incorporated in submissions made by two opposed groups in the Logan Expropriation hearings of 1982. The two opposed groups, the City of Winnipeg (representing the three levels of government) and the Logan Community Committee (LCC) adopt and interpret the fundamental purposes differently in their submissions to the Judicial Commission of Inquiry called to settle the expropriation dispute.



Under the subheadings of the fundamental purposes, a variety of resource materials and personalities are referred to. What makes the case study unusual is the amount of data made available. Besides gaining access to original, dated and tape-recorded reference material submitted by both groups to the Commission of Inquiry, several participants in the hearings provide a more thorough understanding of the planning process in detail. Helen Schultes, president of the LCC, provided a detailed history of the area and of the rise of the LCC in their opposition to the City's act of expropriation. Legal representative for the City, Gordon Carnegie, detailed the City's position on the expropriation case and on the question of appropriate zoning. The last significant figure is the Commissioner of the Inquiry, Evelyn Shapiro, who made accessible the tape-recordings of the hearings and assisted in the interpretation of reference materials.

#### ORGANIZATION

There are two organizational aspects of the thesis that must be made clear. These aspects deal with the fundamental purposes of zoning and with the flow of chapters.

Four fundamental zoning purposes are presented, developed and confirmed in Chapter 2. To reiterate then, the zoning purposes are: to protect public health and welfare; to protect property; to ensure the maintenance of order; and the comprehensive plan. While theories of zoning exist, I cannot rely on just one theory to discuss zoning. It is better to view the fundamental purposes and the concepts supporting them.

In accordance with the methodology set forth, the chapters will take a particular form. Chapter 2 develops and confirms the four fundamental

zoning purposes as outlined in Chapter 1. Chapter 3 presents a variety of contemporary planning criticism or the underlying concepts of the four fundamental purposes. In Chapter 4, a case study is undertaken in order to judge the contemporary, practical use of zoning. Chapter 5 presents the findings of the Commission of Inquiry as they relate to the four fundamental zoning purposes. A discussion of the purposes ensues, drawing attention to the inadequacies of the zoning purposes in contemporary zoning. Chapter 6 intends to answer the opening questions presented in the first chapter. The chapter concludes by making recommendations on the zoning process that would encourage a reevaluation of the fundamental zoning purposes.

CHAPTER 2

THE PURPOSES OF ZONING:

A SELECTIVE LITERATURE REVIEW

## CHAPTER 2

INTRODUCTION

In the preceding chapter, four related questions follow the overriding question of the thesis. The first of the four questions seeks to determine the original purposes of zoning. Four purposes of zoning (i.e. to protect the public and general welfare, the protection of property, the maintenance of order, and the comprehensive plan) were established in the introduction. In the present chapter I want to examine and discuss the context for the establishment of the fundamental purposes by drawing on a variety of source material. The literature review, guided by each purpose as a subheading, describes the urban conditions, legislation and/or theoretical strains in planning just previous to the adoption of land-use controls in Britain, the United States and later Canada. This chapter establishes the historical nature or essence of the zoning purposes which will later be contrasted with the contemporary basis of zoning as exemplified in the case study.

The following sections in Chapter 2 discuss the fundamental zoning purposes as established in a particular historical period and influenced by a particular theoretical strain. The historical period under review is in the latter part of the nineteenth century, during the Victorian Industrial Revolution. The final section of the chapter, "The Adoption of Zoning Purposes in Canada", examines the zoning purposes as transposed from their foreign and dated sources. This section reviews the Journal of the Town Planning Institute journals for a rationale for zoning based on early British and American precedents.

It should be noted that in the review of zoning thought and practice, the guiding theoretical base was that of Utilitarianism -

the greatest good for the greatest number. It was a particularly strong critical response to the "evils" of urbanization. Throughout the latter part of the nineteenth century, attention was focussed on the sanitary and housing conditions of the labouring classes. Beyond this focus the conditions were met with minimal, if not deferred, constructive public intervention. Pre-eminent support for public intervention was derived from a Utilitarian ethic. Utilitarianism, as a concept, aimed to legitimize the legal interference of government into private property affairs by advocating happiness, public welfare, well-being and the common good. In the midst of laissez-faire capitalism, the Utilitarian philosophical-political reform movement (articulated by James Mill, John Stuart Mill and Jeremy Bentham) proved to be an effective level of criticism favouring collective reform. An individual's pursuit of happiness at the expense of others became ethically unwarranted.

It was thought that only government intervention for the common good could ensure the greatest happiness of the greatest number as the sole end of public action. This forms the basis for early zoning thought. British planning advocates reflect this sensibility in upholding "reason" as the relevant, necessary element to advance the planning principles seen in order, efficiency, health and economy in their attack on "waste and chaos, diseases and squalor"<sup>1</sup> (P.J. Smith 204).

#### PROTECTING PUBLIC HEALTH AND WELFARE

Development controls, or the application of "common sense and fairness" to public regulations, have influenced public health and welfare since the Industrial Revolution. There is no lack of documentation of the poor living and working conditions in Victorian

Britain's cities. What follows is a selective review of literature focussing on the conditions which led to the adoption of strict health regulations (and standards) and restrictive legislation over the development of urban growth.

Descriptions of urban conditions during the Industrial Revolution (1835-1900?) will commonly refer to a mix of land-uses which were detrimental to urban existence:

"Residential quarters naturally tended to be built near the place of work, so that houses and factories were often in close contact, intermingled at random and mutually inconvenient. Factory smoke permeated the houses and factories, waste polluted the water, while industrial movement was generally hopelessly impeded by private traffic.

"This chaos was constantly aggravated by the dynamic nature of the factors involved; factories were transformed and expanded, houses were demolished and rebuilt, the outskirts of the cities crept further into the countryside without ever finding a definite balance." (Benevolo, p.23)

The problem was clearly one affecting both health and housing conditions.

Edmond Heap maintains that although a series of amended Health Acts required each developer to yield to local building by-laws, this singular (rather than general) application was made

"in a fashion which paid not the slightest regard to the sort of development which was taking place, or which was likely to take place, on adjoining or neighbouring land. One could not be prevented from erecting dwelling houses in unhealthy industrial districts and it was possible for industrial buildings to intrude upon the quietude of residential areas." (Heap, p.3)

The slum was a grim place to live in. A common response was the idea that "by creating well-planned urban environments, happy and healthy homes would be made available to working families, constructive social intercourse would be facilitated and economic and social efficiency of the nation would be enhanced, and the general happiness increased. The moral purpose was self-evident" (P.J. Smith, p.200).

It was not only Liberal reformers who felt secure in lecturing on the strength of environmental determinism. The Utopian socialists, Robert Owen (New Lanark) and John Malcolm, promoted a life in a rural setting as opposed to the inhuman living and working conditions that continued for most working people. Most solutions were, again, physical in nature.

To curb chaotic urban expansion, it was necessary to restrict the use of property. Now, we turn to the nature of that response.

The recorded response to chaotic urban growth is nearly always a physical response. It was to this end that Housing Acts were "passed with the view to remedying the deficiencies of public health law regarding the housing of the working classes" (Heap, p.3). The frequent occurrences of cholera in London before 1850 resulted in "minimum sanitary requirements for the rented lodgings and forbade the use of cellars and basements for human habitation" (Heap, p.94). Over forty years later, in 1890, public health and sanitation legislation (i.e. The Housing of the Working Classes Act) was "to adopt the principle of utility, and the goal of the public good, to the realities of social power" (P. J. Smith, p.207). By 1909 the British Housing, Town Planning, etc. Act, while suggesting "the sanctity of free enterprise and self-interest, and a reluctance on the part of government to extend municipal rights over private property" (P. J. Smith, p.207), indicated by what measure planning was to be a mediator of conflicts over public health issues.

At the same time, as an extension of Utilitarianism, Garden City concepts recommending efficient decentralization, land-use regulations and technical rationality became an alternative focus of attention. This translated social, economic and political problems into ones

whose solutions relied solely on physical amenities in land-use maps as being proper planning considerations.

The public administration of land-use was to curb the threat to health, all in the name of a consensual common good. Near the end of the Industrial Revolution the health hazards of industrial life were to be controlled. The elements of health and public welfare (housing) that became "proper planning" - those having to do with amenities, easily understood purposes and a philosophy acceptable to judges (McAuslan, p.164) - are embodied in Section 54 of the 1909 British Housing, Town Planning, etc. Act. Standards of health were established, then maintained by land-use planning. Reason and 'scientific planning' created standards toward what Harvey calls "spatial environmental determinism." This aimed at eliminating the causes of ill-health, the threat of an inadequate water supply and drainage, offensive nuisances and much overcrowding, as a course of resolving conflict "in which the public good is expected to prevail over private good" (P. J. Smith, p.215).

Land-use controls responded to the growing menace of rampant industrialization. The response of health and public welfare (as social control) perpetuated the most influential ethical formula of well-planned urban environments with the healthy home as its centre. Subsequently, "planning is still predicated on the belief that progress can be equated with net increments to the sum of human welfare and that improvements to the net efficiency of our cities and their institutions are sufficient ends to pursue" (P. J. Smith, p.208).



## 1. THE PROTECTION OF PROPERTY

### i. The British Experience

It was for the protection of private property that Utilitarianism and land-use controls were most strongly debated and the most resistance expressed. The struggle to establish land-use controls centered around the physical forms they would take and the relationship between individual and community interests.

Early British planning reports on "housing and public health issues that advocated strong state control and called for public expropriation of private property, rationalization of land, and state construction of housing" (P. J. Smith, p.199) were Utilitarian concerns. Property rights no longer concerned individual rights to use property to its highest use but fell under "the belief that land can be efficiently managed for an identifiable public good through the effective application of scientific knowledge" (P. J. Smith, p.201). The identifiable public good took two forms: the single family home and separated land uses.

The protection of the single-family home became an established objective of both British and American planners. Land-use controls did not only embellish a financial consideration and concern for the reformation of laws and institutions shaping the relations between private good and public good in the market place, but also stood for a moral and ethical conviction entrenched in private property. Benevolo, in citing Disraeli's "Sybil or The Two Nations" (1845) captures the early Utilitarian spirit for bettering the lot of the labouring classes:

"When the work people of Mr. Trafford left his factory they were not forgotten. Deeply had he pondered on the health and content of his work-people. He knew well that the domestic virtues are dependent on the existence of a home, and one of his

first efforts had been to build a village where every family might be well lodged.'" (Benevolo, p.116)

British planners, by supplanting an industrialist's concern for their own desire for technical efficiency as a spring-board to health, efficiency, order and convenience, ascribed more weight to this home-owning myth of betterment. The health and contentment of the labouring classes was correlated with the domestic virtues of the home, but without security from the intrusion of industry this represented a poor investment by middle-class standards.

A recurrent theme in planning was established around this time. A sense of security in some form of land-use planning was developed. Real private property was no longer regarded as an isolated plot of land but rather as a part making up a greater organic whole. Putting land-uses into a use-value relationship to a whole supported the notion of guarding against incompatible mixed-use areas and initiated the metaphor of urban system as natural organism with an ideal balance of physical and social organization. Socialist planners, engineers and medical experts adopted Utilitarian doctrines and aspects of Organicism in their restraining measures to ensure that individual and community interests coincided. (Organicism: in planning, it is a theory that the whole is the result of the activity of all the parts considered as an autonomous, integrated system [see P. Geddes, "Cities in Evolution"]). The idea of social responsibility in urban areas rationalized the segregated and patterned land-uses as a method to protect property values.

The early social reformer, Ebenezer Howard, emphasized the value and the protection of private property in both forms. Howard claimed the benefits were to accrue more equally to the whole community "because the people in their collective capacity own the land" (Howard, p.142).

Howard had a vision of a rational, collective and individualist community to maintain the "efficient and honest" municipality bent on sustaining "an effective belief in the economic, sanitary and social advantages of common ownership of land" (Howard, p.106). The appeal of the Garden City philosophy and physical layout was that it not only protected property but potentially enhanced this security by promoting equity in benefits:

"This plan, or, if the reader be pleased to so term it, this absence of plan, avoids the dangers of stagnation or dead level, and, though encouraging individual initiative, permits of the fullest co-operation, while the increased rents which follow from this form of competition are common or municipal property, and by far the larger part of them are expended in permanent improvements." (Ibid., p.56)

The Garden City plan regulated the use of public real estate and philanthropic institutions according uses to different districts and recommending rules regarding the character and use of buildings and landscape. By enforcing the existence of an encompassing green belt and the existence of four principle districts, the property market could easily calculate the change any externalities would have on the land and property market.

In retrospect, the Garden City approach can only be seen as another complementary form of applying restraints to private property. Under British Common Law, property rights evolved into a body of enactments contained in the development controls of local government administrative acts. The 1909 Housing, Town Planning, etc. Act gave local government the right to plan and regulate development. Later, the 1947 Town and Country Planning Act broadened their right to regulate development and established the district plan as standard planning procedure to protect property values.

In an expansive, turbulent industrial age, land-use control became

the means under which the protection of property and its value was ensured. The supportive concepts of Utilitarianism and the Organic City became the foundation for a planning technique bent on regulating the rights of private property and living standards.

## ii. The American Experience

The influence of American zoning practice on the establishment of Canadian zoning is significant. In Britain development controls were eventually established but Americans are responsible for the legal precedents for zoning practice in Canada.

One of the original purposes of American zoning was to protect property and stabilize land values otherwise considered threatened by an open market. The primacy of private property interests in American zoning legislation is well established. Its validity was initially established by lawyers, notably Alfred Bettman, Edward Bassett and Ernst Freund. (Charles Haar lists legal publications as primary sources. They are included in the bibliography.) Their contributions to American judicial controls and procedures between 1913 and 1926 (see C. Harvey, p. 172) were to have a major impact on Canadian zoning (judging by the frequent references made to Bassett and his contributions to zoning in the Journals of the Town Planning Institute).

It was the City Beautiful <sup>incubator</sup> movement at the turn of the century that heralded zoning practice. The control and protection of uniform land-uses was introduced amid repeated objections. The implications for economic efficiency became acceptable only after prolonged attempts to rationalize and clarify long term land-use patterns as remedies for the destabilizing effects of slums and poverty on land values. Babcock

cites English planner John Delafons on the early acceptance of legal-planning concepts:

"It was a means of strengthening the institutions of private property in the face of rapid and unsettling changes in the urban scene that zoning won such remarkable acceptance in American communities." (Delafons, in Babcock, p.3)

In 1913 the New York Advisory Committee on the Height of Buildings Report was considered the "beginning". The earliest legislative action was undertaken in New York City in 1916 over a dispute between garment industry owners and 5th Avenue store owners. This legislation initiated height, area and use limitations whereas previously protection was limited to private actions related to laws of nuisance or restrictive covenants. With this shift in legislative power a new philosophical emphasis accompanied zoning; it was seen as a "'scientific' tool for improving the quality of the urban environment" (P. J. Smith, p.202).

A stronger sense of Utilitarianism supported the scientific tool, and increased public interference in urban development became the norm. By 1926 the Standard Zoning Enabling Act was passed on the outcome of the Euclid vs Ambler Realty Co. case. Previous to this judicial control doctrines on property rights and especially nuisance and waste had only been upheld for "honorable purposes". Negative controls implied a loss or infringement on private property rights but more important was the common gain or a reciprocal relation with one's neighbour (E. Bassett, JTPI, Vol. 2, No. 5, 1923). The value of protecting property then was a concept conditioned by social, economic and physical threats to its orderly development and preservation.

The aim of American zoning practice was to avoid challenging the rights of private property while, at the same time, controlling and

protecting land uses and values. This meant a concern was maintained for character in an area, stability in property values and the increased marketability of urban property.

### 3. ORDER

In Britain segregating land uses had much to do with establishing a sense of efficiency or order based on the theory of Organicism. Combined with notions of Utilitarianism, the concept of Organicism was the basis for devising standards of order in the Industrial society. The concept hoped to capture an underlying universal order and harmony derived from the idealism of stoic harmony found in Baroque Utopian plans (see C. Sitte, City Planning According to Artistic Principles). All parts of the urban structure were considered functionally dependent so that social and physical components were related and in need of ordering. Simmie makes reference to the relation between Organicism and planning in a discussion of post-industrial Britain:

"Utopian town plans in post-industrial Britain reflected both this same concern for order and the meaning attached to life. The concern for order may be seen both in their physical attributes of regular patterns and segregation of land uses." (Simmie, p.21)

Ebenezer Howard was one of the Utopians who promoted a concern for order and its meaning. In his planning analogy he refers directly to Organicism. His Garden City may be used as an example of a bundle of objectives having social and economic dimensions that can be translated into terms of efficiency. At that time order was the rejuvenation of moral living, the attempt to impose order on a chaotic world. It was a far-reaching principle to establish a unity of design, an organic pattern of growth for which symmetry was natural. Howard maintained a belief in the potential for this artistic principle:

"But it is essential, as we have said, that there should be unity of design and purpose - that the town should be planned as a whole and not left to grow up in a chaotic manner as has been the case in all English towns and more or less so with the towns of all countries. A town, like a flower or a tree, or an animal, should, at each stage of its growth, possess unity, symmetry, completeness, and the effect of growth should never be to destroy that unity, but to give it greater purpose, not to mar that symmetry, but to make it more symmetrical; while the completeness of the early structure should be merged in the yet greater completeness of the later development."  
(Howard, pp.76-7)

In aligning himself with this sense of order, the efficient planner, engineer, or architect, in solving basic spatial planning problems, emphasized the need to remold social processes.

In both the United States and Britain a uniformity or segregation of land-uses generally evolved with zoning or development controls. Canadian planning lawyer, Ian Rogers supplements this notion:

"The national root of zoning is segregation of people and the uses they make of their land...Ghettos are created for the rich as well as for the poor by walls of exclusionary restrictions. Land values are thus preserved by keeping out undesirable uses and consequently undesirable people. The preservation of property investment is the prime motive underlying many by-laws although they do not always clearly articulate this policy." (Rogers, p.43)

This passage points to a concept of order that is based on the incompatibility of uses. The projected uniformity was justified and articulated in similar ways in Britain and the United States. It became unacceptable for industry to encroach on the most revered land-use, that being residential. By separating urban functions via Health Acts, or any other rationalization of order, property values were artificially stabilized and thought to be protected as well. The property market's inconsistencies have been contained in this manner.

The protection of property and the remolding of "degenerate social processes" were closely related. In early zoning or development control arguments, emphasis was placed on the living and working conditions of the

labouring classes. By securing uniform order in the separation and control of uses, the residential dwelling (the purported site of moral strength and security) was thought to be further protected. It was later advanced but never fully articulated that "zoning stabilizes efficiency and values as due in economic equity" (JTPI, Vol. 2, No. 5, 1923).

Planners insisted that by detailing (and thus drawing standards for) uses, areas, heights, intervals and occupancy of structures, elements such as air, light, efficiency and amenity to humans were ensured. For Howard a more rational relationship between living conditions at home and at work was the pinnacle of efficiency.

In summary, the concept of <sup>3</sup>order as a purpose of zoning, materialized in the theoretical guise of Organicism and Utilitarianism. It arrived in the physical form of separated "incompatible" uses validated in a manner that compounded other purposes. For the sake of the labouring classes, problems surrounding health and moral strength were to be solved. Property value was purportedly ensured for the greater efficiency of business and society as a consensual measure of worth.

#### 4. IMPLEMENTING THE COMPREHENSIVE PLAN

The comprehensive plan is a formal designation of all land-use districts or areas in a given town or city. It is often claimed that zoning implements or makes functional the comprehensive plan, representing a distribution of all land-uses to ensure such Utilitarian catch-words as health, efficiency, economy and order. All regulations for zoning are made in accordance with a comprehensive plan that acts as a form guide to the inauguration, preparation, administration and interpretation of the uses.



The concept of the comprehensive plan was formed in both the United States and Britain but if we speak of zoning as implementing the comprehensive plan it is in reference to American planning experience.

The concepts of order and economy dictated early (1916) New York City legislation introduced by two city commissions. One of the many early reports expounded on the scientific nature of the coupling of the comprehensive plan and zoning:

"Zoning is the highest type of city planning because it allows the city to grow in a safe and sane manner and is the only economical plan which a city can adopt. If you know what is going to happen in a certain district the city will save millions of dollars in cities alone. It is absolutely essential that you adopt a comprehensive plan of zoning. One and two family districts, common districts, apartment house districts and non-conforming districts. A zoning ordinance must be drafted so that like districts are treated alike and it must be uniform all over the city. Zoning is the highest type of city planning for it protects the entire community - stabilizing real estate and allowing the city to grow in an orderly manner." (T. Philips, p.9).

P. J. Smith maintains that a compounded concern for order, economy, efficiency and health are reflected as important matters. The comprehensive plan was to establish some balance to these elements but it was usually a greater emphasis placed on the control of the physical arrangements of the city in terms of efficiency and economy:

"From about 1910, then, the City Planning movement in the U.S., which had previously been dominated by an aesthetic vision - the City Beautiful - came to be dominated by a utilitarian vision - the City Efficient or the City Functional. The principle of utility may not have been acknowledged overtly, other than in a belief in the public good, but to maximize efficiency was, ipso facto, to maximize utility." (P. J. Smith, p.202).

The sanctity of private property was still respected in the general plans that were to evolve. The comprehensive plan was to maintain a spatial separation of incompatible land-uses, thus stabilizing land-values. Many JTPI articles refer to zoning as a primary security behind land-values.

Comprehensive plans, easily understood by the courts, were finally accepted as an economic cure:

"The Court of Appeals of New York in the Lincoln Trust Co. case in 1920 upheld the zoning plan of the city, saying that the regulations so far as reasonable would be held by the courts to be within the scope of the police power... Then in 1926 came the great decision of the U.S. Supreme Court in the Euclid case, upholding comprehensive zoning all along the line... Practically all the states adopted enabling acts." (JTPI, Vol. 2, No. 5, 1923)

The action of upholding the comprehensive plan signified in Canada acceptance of the compounded zoning purposes. In the next section we review the acceptance of a similar rationale for the comprehensive plan and the zoning purposes.

#### THE ADOPTION OF ZONING PURPOSES IN CANADA

Canadian planning theory and practice originally borrowed techniques and rational purposes from British and American sources. The Canadian zoning theory, therefore, represents a hybrid of foreign zoning and development control purposes, a mixture of derivative content that not only lacks originality but also, in some cases, appropriateness to a Canadian context. An insightful discussion of early zoning theory and practice in Alberta is made by P. J. Smith. Smith traces the sources of the Alberta Planning Act to

"the Town Planning section of the British Housing and Town Planning, etc. Act of 1909... which suffered little change in its translocation. Its central purposes remained intact, and the greatest part of it was repeated verbatim... [and] there was no apparent sensitivity to the generations of social and political struggle out of which the British Act was born, and no apparent thought to its appropriateness in the very different Canadian context." (P. J. Smith, p.206)

The compounded purposes were transposed in theory and practice in the early 1900's. The Journals of the Town Planning Institute of Canada (JTPI) verifies their unqualified acceptance.

Utilitarianism's ethical and moral nature had a strong impression on Canadian planning experience and "continues to be the ethical cornerstone of urban planning legislation" (P. J. Smith, p.196). Utilitarian thought incorporated diverse notions of health, order, economy and convenience into a "naive belief in consensual view of the general happiness, and, following from that, a greater belief in a 'best' technical solution to every problem" (ibid., p.200). The common good or general happiness of a community or nation was a standard without consensual identity for planners or reformers. This means there were many interpretations of how these principles might be incorporated.

1. PROTECTION OF PUBLIC HEALTH AND WELFARE

The purpose of protecting health and welfare is often mentioned in JTPI issues. An early issue claimed that "in the proper housing of the people lies the health and contentment of every nation." The article further stated:

"He [a minister of health to the British government] believed that whatever the cost of better housing might be, that cost would be saved in the prevention of ill-health, disease and social order. Good homes would mean good health, social content, increased self-respect and finally loyalty to the ordered progress of society." (JTPI, Vol. 1, No. 1, 1920)

In another article it is assumed that the healthy home requires nature's essential elements around for the vital health of people:

"The scientific and sociological basis of zoning is provision for the people of adequate sunshine and air, such provision being indispensable for the sustenance of health and efficiency, in fact, of the common welfare of the race. Solar rays have properties of heat, light and chemical reaction, which bring comfort, preserve sight, and foster health by dispelling bacteria and disease. Air is essential to human nutrition mainly by reason of its oxygen content, which through bodily combustion, the lungs being the firebox of the body, brings heat and chemical reactions that fan the flames of life." (JTPI, Vol. 5, No. 4, 1926)

Health and housing then represent a partial realization of the general happiness. Implied in the same statement are moral values in vogue at the time they were introduced and to which planners might feel obliged to promote if they were not "reluctant to state them explicitly." Instead, planning purposes have always relied on technical responses to land-use problems.

At the same time there was a particular meaning attached to life, meaning directed at the "labouring classes" whose plight since at least the 1930's had been a theoretical and practical concern for more radical planners (see P. J. Smith's work on the early Canadian planner John Roebuck who emphasized the "moral obligation of government"). Emerging Utopian planning ideals became "cultural pursuits concerned primarily with education and self-improvement and by their relationship to the industrial social class structure", as Simmie has already noted (Simmie, p.21). These procedural models exemplified applications of standards in architecture and engineering advancing moral rectitude in the guise of unqualified middle-class measures of prevention and gradual correction.<sup>2</sup> By 1923, and continuing until the demise of the JTPI in 1930, the Utilitarian efforts of Canadian town planning were epitomized in the oft-used dedication:

"Town planning may be defined as the scientific and orderly disposition of land and buildings in use and development with a view to obviating congestion and securing economic and social efficiency, health and well-being in urban and rural communities."  
(JTPI, p.1)

Under the broad banner of Utilitarianism, a bundle of justifications for zoning could be offered. Only the situation or time would dictate which rational purpose would be called the remedy. The normative concept of "standards" influenced all purposes. Minimum standards guided by a

process-oriented "scientific" framework were exemplified by health and sanitation-conscious bulk, height and set-back laws.

## 2. PROTECTION OF PRIVATE PROPERTY

The protection of property is an easily identified purpose of Canadian zoning thought and practice. The concept of the greatest good for the greatest number did much to establish planning as a profession concerned with economic functioning. Noulon Cauchon, writing around the issue of an all-encompassing organic planning, claimed:

"Curing our incipient slums and, better, preventing their inception is not a prerogative of charity, it is a function of economic equity no less than moral responsibility - it is elemental to the race...

"Organic planning functions through cities, economics and art as indivisible manifestations of Natural Law - of the first Law of Nature - the maintenance of life." (Cauchon, p.21).

Slums continued to be the result of bad economic planning and the avaricious business behaviour of private persons:

"Disregarding all that Adam Smith had taught them about taxation, they left all the land values created by the process that was driving the poor into dens and cellars to enrich private persons. So long as the growth of towns was left to the unregulated direction of private enterprise it was inevitable that the evils of the past would return in the future in still greater volume as population grew and industry spread her chimneys farther and farther over the country-side." (JTPI, No.8 Feb. 1922, p.16).

A case in point can be made in reviewing Vancouver's early planning history. "Scientific planning" had acquired a political-economic appeal during the 1920's and was met with excessive criticism from property owners. American businessman, Harland Bartholomew who symbolized both the urban vitality and the materialism of the twenties... (and whose) fieldman drafted plans according to "'universal' land-use formulas" was met with skepticism and reproach (Weaver, p.216). Bartholomew's

formulas presented in 1926 coincided with a rise in land values and a transformation of urban form. Weaver maintains it was

"Not until there had been contact with planners did the business community fully appreciate all that planning implied. The way of seriously looking into the future of property opened up uncertainty and stimulated public discussion that inevitably led to anxiety and bickering. At this stage bargaining and the power of special interests were to become established as essential elements in the zoning procedures." (Weaver, p.217).

In this capacity, zoning also became the common recommendation to cure economic evils, merely an extension of laissez-faire/Utilitarian beliefs. A JTPI article from 1923 by Cauchon elaborated on zoning and its financial value.<sup>3</sup> The article attempted to equate the catchwords "stabilize", "efficiency", and "progress" with "profitable results". It would appear that the sanctity of private property had been transposed and preserved intact.

### 3. ORDER

The nature of urban social and spatial order was derived from a culmination of influences. From environmental-conservationist concepts to peculiar urban reform dogma,<sup>4</sup> there existed underlying assumptions about the normal or natural state of societies and towns (Simmie, p.20) reflecting the preferences of those in power. The following principles, which were discussed at an annual meeting of planners in 1920, give some meaning to the term "orderly growth":

"1. That in order to secure adequate provision of air and light in and around the homes of the people there should be definite limitations of the number of dwellings per hectare, and for space adjacent to dwellings such limitation being a matter of Governmental administration in each country.

"2. That the policy of decentralization of industries and the building of new garden cities should be encouraged by legislative provisions and by all other means, both public and private.

"3. That each government acting in partnership with local authorities should prepare in advance and carry into effect a regional survey, followed by planning schemes, with a view of putting an end to wasteful and chaotic developments and ensuring that lines of future growth shall be well ordered and scientific." (JTPI, Vol. 1, No. 1, 1920)

The purpose of order then may best be expressed in the physical conditions of communities. Even though P. J. Smith, in researching the Commission's influence up until its demise in 1921, states that an "unmistakably clear view emerged", this is misleading. Compounded rational purposes and trends were still considered relevant with private and, later, public planning. City Beautiful concepts promoting "coherence, visual unity and civic grandeur" (as a contrast to the disorder and ugliness of slums) would not be entirely forgotten. At the same time, sustained support for the British Victorian notion of civic grandeur was found in the form of the civic centre. But,

"This idea got more support among architects than any other city beautiful principles, since it attracted not only those who considered the civic centre as the focal point of overall city design, but also those who still thought of introducing beauty into the city by creating a beautiful building or cluster of buildings." (Van Nus, p.169)

The virtues of civic grandeur, like the most recent urban renewal movement, were to add buoyancy to the creative drives of "beauty" over the ugliness of squalor in all their culturally-defined forms. The European orientation of expansive civic centres and broad, tree-lined avenues encouraged excessive costs and ultimately economic viability to begin. This finally gave way to the recurring concern for adequate housing and health for workers and war veterans. The course of preserving residential districts retained its exclusive status, once in the form of organic beauty and at other times for the cause of efficiency. If the imposing building was not often realized, the Utilitarian principle of

symmetrical order implemented through zoning was. But, planning agencies more consistently "recognized the orderliness resulting from efficiency as the only part of their vision the taxpayers would support" (Van Nus, pp.179-80). This comment is again indicative of how planning literature generally took for granted that cooperative social interaction is the primary basis for planning decisions affecting social and economic processes.

There exists a repetitious inclination then to absorb any planning theory or rational purpose to promote efficiency. The zoning process has been relatively restricted in depth and eventual consequence. It was not known for reliability in the 1920's and yet from a Town Planning Institute of Canada meeting in 1967 the comprehensive plan and zoning by-laws to implement the plan were still adopted to guide people's "future living." It is also implied by the lawyer, D. R. Steele, at the same meeting that all parties involved in the process are left uncertain of the future:

"There should be a central planning control but the procedural difficulties involved in amending plans should be avoided. A municipality should be able to have an overall comprehensive plan which can be looked at annually and modified or amended with the minimum of difficulty." (Town Planning Institute of Canada Newsletter, January 1967)

Despite planners' laudable efforts to establish zoning practice, little concern existed for the relatively restricted character of planning, or the fact that the comprehensive plan and zoning by-law were not an integral part of municipal government even though public interest-oriented provincial legislation existed.



SUMMARY

From the selective review of literature examined in Chapter 2, a number of observations can be made about the zoning purposes. Under the general banner of each fundamental purpose, concepts, and standards of application, to support the purposes evolved. The concepts below are frequently referred to in the review literature. For example, in the attempt to secure the public health and general welfare, a physical response, in the form of Housing and Health Acts and utopian Garden City concepts, was advanced through public and private actions. These controls, initiated during the Industrial Revolution, were to separate noxious industrial uses from residential ones and to decentralize over-crowded urban areas. Utilitarian thought, the underpinning of such reforms, promoted strict standards of morality in the form of physical changes to the built environment. In the process, a clean, healthy single family home was ultimately to become the vehicle for improved human welfare.

To protect private property, a physical form also evolved in the later nineteenth and early twentieth centuries. In both British and American experience, standards of measure were applied to legitimize land use controls. The long term separation of land-uses was regarded as a means to protect higher land uses from destabilization. The protection of the segregated residential area in general and, specifically, the single family home was to imply both stability in land values and an improved quality of living. The interests of the individual and the community were, furthermore, considered interdependent, likened to the concept of the organism and its defined parts.

A concern for efficient, segregated and patterned land use derived from the strength of Utilitarianism and Organicism in planning. Howard, Simmie and Rogers all record a concept of order dependent on the notion that land uses are incompatible. Again, emphasis was placed on the "neighbourhood" and home. In the course of imposing order on an area, it was thought that other notions of utility, such as efficiency, well-being and economic equity, would evolve.

The comprehensive plan compounded and imposed, in the form of a long range guide to land use, the concepts and standards referred to in Chapter 2. The plan acted as a further reassurance that health, property and order were to be safeguarded in the public interest.

The last section on the adoption of zoning purposes in Canada indicates the concepts behind the zoning or development controls were readily accepted in early planning debates and action in Canada. The same philosophical influences were at work and similar standards of control were implied in anticipation of urban conditions experienced in large British and American cities.

In the next chapter, the author turns to the question of contemporary planning criticism of the concepts discussed in Chapter 2 and suggests other considerations under the heading of each fundamental purpose must be taken up. The content of the next chapter also permits the reader to make some judgments on the contemporary, practical application of zoning, as related in the case study in Chapter 4.

FOOTNOTES

1. A research piece by P.J. Smith entitled "The Principle of Utility and the Origins of Planning Legislation in Alberta, 1912-1975" discusses the relationship of the concept of utility to the zoning phenomenon in Alberta.

2. Indicative of this moral preoccupation is a quote from an American zoning pamphlet called "Zoning Primer", dated February 1927:

"We know what to think of a household in which the undisciplined daughter makes fudge in the parlor, in which her sister leaves soiled clothes soaking in the bath tub, while father throws his muddy shoes on the stairs and little Johnny makes beautiful mud-pies on the front steps.

"Yet many American cities do the same sort of thing when they allow stores to crowd in at random among private dwellings, and factories and public garages to come elbowing in among neat retail stores or well-kept apartment houses." (JTPI, Feb. 1927, p.44)

3. The following paragraphs reiterate the position of the Journal of the Town Planning Institute on the zoning process:

"At present in unzoned cities the use and development of rural and urban land is so largely unregulated and thereby unprotected that its equity and security in ownership and investment are perilously unstable.

"Progressive development in town building largely depends upon securing the use of cheap money. Money is cheap to the measure of security. Security is determined by the degree of stability in value.

"One of the chief functions of zoning in town planning is to stabilize economic values in the use and development of land, be they commercial or residential.

"Zoning, by establishing fixed and protected conditions of density and purpose in residential areas maintains the negotiable values.

"Zoning of commercial areas by restricting unregulated expansion to within the limits of supply and demand establishes a stabilized and assured value for business properties.

"Zoning thus protects and stabilizes the value in use and development of both the business section and of the residential areas of a city to the great mutual advantage of both.

"Zoned property is assured of environmental conditions that sustain its value; it is insured against depreciation from deteriorating surroundings. Zoned property affords safe investment; it secures safety to the margin of security for loans.

"Zoned property, therefore, is more negotiable and commands cheaper money for its development...

"Zoning would stabilize values and should be of the greatest concern to the home owner, to the business man, to the investor, to the loan agency, be it bank or trust company, as also to the municipality for maintaining its tax resources and fostering development through security and resultant cheap money. Zoning in other and far-reaching ways lessens the cost to a municipality and heightens the efficiency of the its public services and administration such as sewage, water service, fire protection, arterial highways, transportation, etc., minimizing its bonded indebtedness and its taxation, heightening its credit and enabling greater development with profitable results... " (JTPI, p.3)

4. In the 1920's British-Canadian planner Thomas Adams drew a varied and seemingly contradictory rationale for planning as T. Gunton points out: "housing was a key issue in planning, that state intervention was essential, that garden cities were a good idea and that private property should be expropriated without compensation. But he also argued that private property was sacred, private enterprise crucial, and transportation, park planning and zoning the primary concerns of the planner." (T. Gunton, p.189)

CHAPTER 3

Contemporary Planning Criticism:

A Selective Overview

## INTRODUCTION

In the previous chapter, the original purposes of zoning were examined in relation to specific urban conditions and theoretical influences during the late-Victorian era. In the final section of that chapter, it was noted that British and American precedents for land use controls were adopted as proof that similar purposes were valid in Canada.

The intent of Chapter 3 is to answer another of the four related questions in Chapter 1; ie. what are and how valid are the critical theories about the purposes of zoning? The questions seek to find out what critical theories exist about the purposes of zoning. Under the heading of each zoning purpose in Chapter 2, it was discovered that standards controls dictated the manner and the extent to which the zoning purposes were applied in the form of public policy (ie. Housing Acts) and physical form (ie. height, bulk and setback requirements for houses). Contemporary planning criticism has passed judgment on the standards and on the bases supporting the purposes. It is the author's intent to use the fundamental zoning purposes as headings and to draw briefly from a variety of source material which ultimately questions the validity of the original purposes as used in a contemporary context.

## SECURING PUBLIC HEALTH AND WELFARE

Material in Chapter 2 makes reference to a concern for public health as a fundamental purpose of zoning practice. During the Industrial Revolution and well into the 1900's, a general concern for health in British and American experience advocated coherent streetscapes, regulated building sites and the separation of land uses, all of which were to be administered by non-elected public authorities. The concern for health was legally sanctioned with Health and Sanitation By-laws and frequently

was supported with claims to Utilitarian principles such as order, efficiency and convenience.

Under the banner of the health theory<sup>1</sup> it was hoped that urban form and the rate of development could be controlled and manipulated by standards controls relating proper sizes and types of living units and by designating height, bulk and setback minimums for any area. Residential areas were the highest valued zones. In most cases, the cause of health was a response of deficiencies in urban development, deficiencies in the form of high densities, a lack of zoning and a lack of social balance presumably equating living space with income and moral codes. The deteriorating living and working conditions of the labouring classes were condemned as unsanitary hazards to society, symbolic of a lack of respect for the preservation of property values and economic efficiency. In the course of securing public health, social arguments associated with urban development were limited in scope. Babcock points out that lawyers who were largely responsible for the existence of zoning in America "were interested more in the practical aspects of making zoning work than in the broad social and economic overtones" (Babcock, p.88).

It has been previously stated that the health theory takes into account only particular aspects of urban forms in justifying zoning practice. However, Gerecke maintains the health theory must support some concept of the public interest (this being a common factor in all planning thought) "providing such things as light and air to enable us to survive and be in good health" (Gerecke, p.16). Early proponents of zoning would not refute this much. But, Gerecke continues, "this ignores such essentials as inadequate housing, happiness, human rights and a host of others" (Ibid., p.16). Diverse pressures in a technological society demand that planning

tools constitute a more sensitive multi-disciplinary approach to the health theory.

For example, we have only to look at man's psycho-social and, in particular, his perceptual needs which cannot be ignored. Architect Kiyo Izumi lists four human considerations that should be applied to the health theory:

"First, those human considerations which are primal, psycho-biological perceptions in and of our environment. This aspect is the significance of the experienced environment which affects what, how and whys of learning and the subsequent perceptions and conceptions. Second, are those considerations that are still primal and universal but which arise from man's conscious sense of being; ie. his self-awareness of his environment and of his consciousness of the effects of the experienced environment on himself. Third, are those considerations which arise from the further development of his emotional and intellectual traits reflected in his deliberate selection of places and the conscious intervention to improve it in the name of, for example, esthetics. Then, fourth, are those considerations that arise from the fact that man has devised a symbolic system and he is prone to attach significance to an event and evolve beliefs, mythologies, philosophies and even religion from these experiences." (Izumi, p.2)

From the brief references to Gerecke and Izumi, it is evident that the original concept of health is static and limited in scope. Other sources readily admit that the concept of health is difficult to grasp under the most informed circumstances (see Kevin Lynch's work) and still other sources will suggest that owing to the fallacy of projective planning, "whose essential purpose is to explain reality in advance of experience" (P. J. Smith, p.104). This "reality" is expectedly unpredictable in an age of erratic social and economic changes.

Zoning, as a projective planning technique, ignores for example what M. Smith calls the "myth of pathological density and crowding". In the early 1900's high density mixed-use districts without building or land-use restrictions solved the problems of accommodation during rapid growth



periods. Simplistic theories called for adequate sunshine and air to sustain the body and mind of the labouring class individual but this rationale has ignored, as Gerecke suggests, other essential elements of good health. Smith's psychological, rather than economic, argument says that increased population and spatial densities do "not produce stress or any other social pathology unless accompanied by other stress producing conditions" (Smith, p.191). The stress or feelings are already there when crowding occurs. Even though some forms of social preventive health measures are necessary (see M. Smith, Ch.6) in crowded "unstable" areas, the virtues of crowding are many and varied.

Smith believes crowding would allow livelier neighbourhoods, a vital street life, safer streets, mutual-aid networks in close proximity and a "critical mass" to sustain small businesses, cultural facilities and political interest groups. Smith indicates how this rational purpose of zoning, that being to secure health and welfare, represents economic and political interests served by this myth of overcrowding. This zoning purpose does much to legitimize economic interests, private property values, suburban real estate speculation, suburban shopping centre developments and ultimately increases profits to financial institutions capitalizing on sprawl. Smith adds that the myth surrounding high density living makes it difficult to show the public the policy advantages of higher densities.

The conventional application of the zoning theory has proven then to be outdated and inadequate as an indicator of the public interest. Clean air, sunshine and a single-family home are not assurances of happiness or well-being. In the same respect, these conventional values can be used to manipulate groups of people by selecting race, religion, national origin

under

and income as identifying targets. S. Olson's urban history of Baltimore examines the abusive potential of the myth of overcrowding in planning action:

"The old city had an average density of thirty thousand per square mile, ten times that of the new annex. If one looks more precisely at the bounds of black space, one can find concentrations as high as fifty thousand to one hundred thousand per square mile in the seventeenth ward and just west of Hopkins Hospital, as high as the immigrant clusters around the harbor had been in the late nineteenth century. These densities did not, however, imply crowding of houses. Most people, even in narrow lanes like Greenwillow and Union streets... lived one family to a house, and less than one person per room. Popular assumptions about congestion, breathing space and promiscuity were not borne out by studies of the Urban League. But because the traditional high-density urban habitat was identified with black space, crowding was blamed for all the problems of the black community, and a negative view was taken of high-density environments. For the first time, "urban problems" were identified with "the negro problem", and the slum was associated more with blacks than with immigrants. The same districts stuck out on new maps made of violent crime, juvenile delinquency, and family service case loads. Social problems were identified with crowding and "dark breeding places". In 1934 a housing study by W.W. Emmart for the Real Estate Board designated a belt of half a dozen neighbourhoods as a ring of "blight" around the commercial heart of the city. He recommended that such areas, the locus of crime, delinquency and dependency, be demolished or at least thinned out... The perception was fixed for the next generation of urban renewal as a series of targets for black removal." (Olson, pp.325-326)

When enforced as justification for the dispersal of "undesirable" groups, zoning invariably produces highly undesirable consequences. It is unlikely that the objectives in this case reflected the aspirations of the community as a whole but rather they reflected the prejudices of planners and elected officials.

It is the implicit moral overtones surrounding zoning that is a recurring problem. Without explicit debate on this manner it stands to limit discussions between all interest groups involved and to hinder the planner's role. Former CIP president, Peter Martin, questioned planners' reluctance to incorporate the matter of moral values:

"For some reason, we have a reluctance to consider moral values - or we are reluctant to state them explicitly. Consequently, we prepare plans without any apparent consideration of, for example, equity - either for the owner, for the owner of the adjacent property, or for any other identifiable 'publics'. We find it easier to deal with technical matters such as traffic congestion and sewer capacity. By avoiding moral principles, however, we are avoiding underlying issues. And if you think those issues are clearly understood and therefore don't need to be stated, I suggest you're wrong at best, they are understood in different ways by different people. Our technical work would be much improved by their explicit recognition." (Martin, p.5)

The contemporary context for zoning demands the ability to delimit the arguments necessary to assess an area's health needs. The ideological or value position of the planner (normally middle-class) may be countered by the assembly of alternative arguments. To meet the public interest on the grounds of health and well-being of a community demands that the planner broaden his disciplinary framework by first transcending his entrenchment in physical-oriented analysis. Then it only makes sense that, in the search for a more fluid structure of zoning process, he decipher and recode information concerning needs of property owners and tenants when these needs do not correlate with the traditional projected planning needs of any land-use area.

#### PROTECTION OF PROPERTY

It was felt by planners that the general welfare would be promoted if the rights of property were limited. But zoning could only adopt a property-oriented bias in its attempt to accommodate reasonableness. The general welfare of a population has become based on the sacred nature of private property in North America. However, this would imply that people without the benefits of private property are at an immediate disadvantage.

Robert Goodman clarifies this question of inequity as follows:

"With zoning, the businessmen could have their cake and eat it too; the "character" of the neighbourhoods where they lived would

be maintained while they could reap enormous profits from the neighbourhoods of those they exploited. It could also be used to promote such general welfare as making sure where certain kinds of people could live or not live." (Goodman, p.151)

A commonly used example of discrimination surrounds the location of Chinese laundries and living quarters in both Canada and the United States. Ordinances passed by city councils with the general welfare in mind eliminated hundreds of such establishments.<sup>2</sup> But, as Goodman points out, even though "courts have usually struck down clear cut cases of using zoning to discriminate, the ways of zoning are not always so clearly cut" (Ibid.). It is a subtle change from concentrating on efficiency to that of inequity.

Although equity, whether social or economic equity, was an intended virtue in zoning, it was not until the post-industrial period that more intense conflicts over its meaning and substance in practice made it a reality. M. Webber cited by Simmie attests to this increasing level of conflict that differentiates our planning era from an earlier one during which the rational purposes of zoning were conceived:

NO. 1  
? "The industrial age was dominated by the idea of efficiency. The post-industrial age is likely to be dominated by conflicts over equity. The overriding question for planners will be how should the social product of an increasingly affluent and increasingly capable society be distributed?... Who shall pay? Who shall profit? And who shall decide?" (Webber, p.208) }  
P

Gerecke insists that the zoning process must change to accommodate equity over efficiency.

Planners have always been involved with a working concept of equity. As well as making a claim on the public interest, planners also influence the performance of any concept of equity by establishing the physical form of common needs and values; ie. who receives particular public services, what minimum standards are enforced for building height and

and bulk, which areas are the object of renewal operations or special housing programs, etc.

Using David Harvey's work as a source, Gerecke asks whether equity is part of the public interest when applied under the social justice theory. Harvey found that zoning actually aids social injustice - an unequal redistribution of income, because land-uses are not naturally separated (Gerecke, p.22). Gerecke supplements this with a reference to the fact that it is often the poorer home-owner or tenant that must settle for accommodation alongside water pollution, noise and/or congestion. The distribution of these negative externalities therefore correlates spatial form with social injustice. He concludes that "zoning does contribute to the spatial form of the city and existing zoning practices contribute to social injustice" (Gerecke, p.23).

Zoning, then, does not necessarily guarantee the equitable distribution of benefits allotted to property owners and tenants (indirectly) but may be used as a weapon of uncertainty and worse, if coupled with the crippling restrictions of sanitation and health by-laws, may jeopardize one or more concepts of equity, those being equality, need and demand (W. Lucy, p.448). Lucy addresses these three concepts of equity as viable notions for local planners dealing with issues having spatial dimensions. What Lucy's work indicates is that in dealing only with the equality, need and demand concepts of equity one finds keys as to how a designated zoning may first affect the level of equity in, for example, public services and in turn how equality of services influences the value of property, the nature of its use and occupancy. The discussion of equity has many variables of which only the aforementioned three will be referred to owing to their use in making planning decisions. The undermining of private property's

value contributes to the uncertainty felt in zoning concepts. If we accept the idea that zoning is "a sophisticated weapon to maintain the existing control under a mask of rationality, efficiency and service," (Goodman, pp. 171-2) it becomes apparent again that its use is not clearly neutral. The early, somewhat vague, Utilitarian planning concepts of economic or social equity, or even zoning for the general welfare, affects people in different ways.

If we borrow Lucy's example of local services and equity and apply them to the zoning purpose in question, we are in a position to evaluate the limitations of this purpose. Considering residential zones as our specific context, the same quality or quantity of services should go to any residential area. But limitations, as outlined by Lucy, restrict the degree of equality in services:

"The first limitation is that equality is inconsistent with the other... equity concepts. If services are distributed based on need, for example, then unequal need leads to unequal services. The second limitation is that equal distribution of services to individuals often is physically impossible. Parks, libraries, and fire stations cannot be located equidistant from everyone. The third limitation is that equality is not a coherent concept when service data are analyzed systematically. Equality of service resources (street width or police patrol officers) does not lead inexorably to equality of service results (equal vehicular traffic or equal arrest rates)." (Lucy, p.448).

Even though a residential zoning implies a degree of equity in public services on par with other residential zones, there is no guarantee that this will occur. There is, first of all, inequality of residential zones: a status quo maintenance preserved by segregating people and income groups. The political nature of zoning ensures that "the privileged and the intermediate groups often triumph over the numerically superior forces in the latent or large groups because the former are generally organized and active while the latter are normally unorganized and inactive" (Harvey,

p.76). Therefore, need can, in some cases, be insignificant. Even though a particular residential area should get more services, the political bargaining process relies on a zoning map to maintain the existing control under a mask of rationality, efficiency and service, as previously stated. Decisions applying concepts of equality and need as arguments then would easily overshadow demand. Although zoning still exercises concepts of economic and social equity under the guise of utilitarianism, in light of these concerns of equity or distributive justice, the use and occupation of property is not a certainty for large groups.

#### ORDER

In Chapter 2, order as a purpose of zoning recommended incompatible uses be separated to preserve property values and to protect residential areas. The utilitarian planning concern with orderly growth of urban form propagated a belief in the virtue of "scientific" projective needs planning, in the name of efficiency. Previous planning movements (environmental, conservational, and regional-metropolitan and urban reform) have adopted the "assumption that the planning of cities should be directed to bring order and clarity to the city as a whole" (Sennett, p.141). It is just the assumptions and predilections of this directed urban order that are crucial in reevaluating the zoning purpose of order.

More recent planning theory questions the premises on which this zoning purpose has been based. Although a limited concept of order remains incorporated in legislation and planning decisions, alternative concepts of order represent a level of social criticism. The context in which the concept of order was previously used to justify zoning is no longer acceptable in an age dominated by high technology, limited

economic growth and diverse social change. Two alternative concepts, diversity and change, are in conflict with conventional notions of order in zoning practice. The following critiques focus on these concepts.

Richard Sennett, in The Uses of Disorder incorporates a socio-psychological approach, questioning the social benefits of planning for uniform, segregated land uses. He states that the social consequences of this myth of communal solidarity in suburbia are not positive reminders of the contribution zoning has made to urban form. He looks at the inwardly-turned affluent family (and the sheltered individual), which he guessed to be in the majority of the population, as the main element to promote spatial and social diversity and instability. Sennett, in his introduction, accepts Marcuse's revolutionary message to support "an education accustoming men to accept a certain amount of anarchy and disorder in their lives" (Sennett, p.9). Sennett believes that suburban areas are "harmfully understimulating". He maintains that social crisis, chaos, and the mixing of socio-economic classes and incongruous land-uses do not reduce the general happiness or impede efficiency but result in positive forms of diversity and allow instability to derive a constructive meaning again.<sup>3</sup> For decades an organic model dictated "that the ultimate and natural state of social interaction is not the possibly violent clashes between groups during change but the eventual stable equilibrium" (Simmie, p.24). The virtues of diversity and instability concepts in zoning then should be seen as a breakthrough.

Sennett's work repeatedly draws attention to the fact that planners have done much, since Baron Haussmann's City Beautiful principles cultured numerous grandiose changes, to minimize diversity and instability. For Sennett, order is ultimately dependent on a "peculiar calculus of



efficiency" found in city planning that, at the same time, declines to use a "new conception of the humane uses of cities" (Sennett, p.86). Sennett establishes a convincing argument against particular "assumptions by which professional planners conceive and mold cities" in a technological era. Haussmann assumes that "it is desirable to treat city problems (in a social, economic and physical sense) as a whole...; [and] it is a good idea to plan physical space for predetermined social use" (Sennett, p.90); and, accordingly, these assumptions have been adopted in metropolitan-regional planning practice. Every area of a city is assumed to be functionally related to the whole (hence an abnormal area is perceived as being somehow deficient) and it is within this mechanistic image of efficient unity that Sennett views the concept of order in planning:

"In planning done along this line, the plan first determines the 'projective needs' of an urban area in the present and future, and then proceeds to design the physical and social facilities, the 'parts' to service them. The assumption is that the larger the scale of this process, the more efficient, in the machine sense, the results." (Ibid., p.93)

It is Sennett's social-psychological message in respect to his concept of planning order that is provocative. It is the function-oriented geographical process of planning that places life experience in jeopardy, preserving some vague sense of immunity from urban complexity, so that "it is not what people do or experience in their own lives that counts, but the external relationships of these acts to areas of indirect experience that is the focus" (Ibid., p.95). Controlled, mechanistic coordinated land uses prevent disorder and instability while, at the same time, rationalize the previously discussed zoning purposes.

The incompatibility of land-uses is, as Gerecke claims, "the fundamental concept behind zoning" and is used to perpetuate controlled

land-use patterns, fixed definitions of quality of life and fixed categories of compatible and incompatible living/working/recreation space. Collectively, these elements represent a conservative position reinforcing the myth of common beliefs and values associated with distinct geographical processes, such as the development of suburbia. Viewed as an integral planning tool for decentralized mass society, the assumptions behind zoning in general, and order in particular, are disturbing.

Gerecke scrutinizes the concept of incompatibility, deriving three arguments that challenge the concept of uniformity in land-use:

"(1) There are various degrees of incompatibility, therefore there is no need to create totally uniform zones.

"(2) There is no universal law of incompatibility due to changing values, so it is impossible to take an absolute view of incompatibility. Some people's values are changing such that diversity of uses is now acceptable and desirable. Blanket application of uniform zones is no longer possible.

"(3) There are socio-economic class differences among people in the city, which means that there are also value differences. Not all classes desire uniformity, and in fact, uniformity may threaten the viability of certain areas of the city." (Gerecke, pp.25-27)

If the purpose of order in the city is mainly to ensure the preservation of land values and residential districts, it does not always follow that socially-just landuse decisions can be made. Indeed, some socio-economic classes are put at a social and geographical disadvantage because, broadly stated, "standards [of compatibility] pretend to have limited impact yet in reality they have great impact and in fact may not represent what we really want" (Gerecke, p.30). In suggesting social justice as a normative theory, Gerecke argues for diversity, suggesting the adoption of an "ecological system". This analogy to natural ecosystems implies that a level of resilience in the urban and ecological structure is attainable. If the majority of suburbs remain oversimplified

and if urban centres are gradually modified to become "office parks" and limited residential areas for the wealthy, uniformity must be considered a stagnant concept. Gerecke concludes that

"diversity is a natural state of the universe and natural system of our world. Our present pluralistic society is itself a case supporting diversity. By creating uniformity we create an unnatural state or false reality. This seems to be another case of man trying to dominate nature or natural laws instead of accepting and living with them." (Ibid., p.30)

After considering a number of arguments that refute the basis for uniform land-uses, it becomes apparent that standards should be in a state of flux. In the last thirty years, the once obnoxious land-uses have now been controlled and/or technically modified to operate in many locations. Light industrial uses respecting maximum noise and pollution controls may be located in and around residential areas. Some heavier industrial land-uses, such as cement factories, are still better off in a separate location. Highly efficient textile and high-tech companies, however, are easily assimilated in any area that is relatively clean and hence the potential for mixed-use zoning (MXDs) is high.

The notion of incompatibility is relative to changing values. When adopted from foreign experiences, the term can only be value-laden. Indeed, it was "the success of the Utilitarians in coping with some of the physical problems of the urban environment [that] led to the unwarranted assumption that all urban problems would be equally amenable" (P. J. Smith, p.200). Keeping land-uses rigidly separated appeared to be one method of solving a problem of chaos and waste and of retaining control over a large immigrant and labouring class population. But as socio-economic changes occur, the resultant diversity in needs and values indicate incompatibility cannot be applied as a universal law.

The socio-economic class differences of groups can easily be ignored by professionals guided by die-hard principles of order and economy over chaos and waste. Physical metaphors are still used to obscure these differences. Robert Goodman refers to the enduring repressive rationale behind the model of Organicism:

"The metaphoric aesthetic language of 'stars' and 'choruses' 'organs' and 'flesh' is a revealing example of how architects have traditionally removed their concern from the essential nature of building design, which should be to provide habitable places for people to live... In this language, buildings are described metaphorically as physical objects in relation to each other rather than as containers for human activity... The usefulness of this metaphoric language to those who rule lies in its acceptance as the language of aesthetic ideology rather than the language of political ideology." (Goodman, p.109)

It is a reliance on models such as this one that naturalizes the importance and complexity of socio-economic class differences. Planners have formalized the practice of zoning by propping up its image as a legal, objective power (until anyone with the time and money to oppose a zoning variance objects) or the Utilitarian motto "the greatest good for the greatest number" which artificially dissolves value differences held by different socio-economic classes.

#### THE COMPREHENSIVE PLAN RECONSIDERED

Ideally, the comprehensive plan indicates the future wishes of the community. In practical terms, this last zoning purpose exhibits an inability to reflect clearly efficiency, economy or degrees of equity. Gerecke argues that there are restrictions on zoning's ability to implement a timed, orderly and efficient growth of the urban area. He maintains "this may only represent the planner's spatial and physical view of the city rather than the total public view" (Gerecke, p.17). The comprehensive plan then is a questionable part of the planning process.

Canadian planner, D. R. Steele raises grave doubts as to whether an official plan, legally implemented by zoning by-laws, provides any certainty to future growth:

"An official plan should be a guide for future living. Living involves people. People cannot be regimented to fit some planner's idea of how they should live. They should be guided, and short of major provincial objectives of economics or conservation, their own elected councils should be the people who do the guiding.

"There should be central planning control but the procedural difficulties involved in amending plans should be avoided. A municipality should be able to have an overall comprehensive plan which can be looked at annually or amended with the minimum of difficulty." (Steele, p.7)

The lack of efficiency and economy involved in implementing the comprehensive plan raises some objections to its usefulness. An earlier Utilitarian-mechanistic concept fostered the belief that orderly, timed physical changes would, especially for the labouring classes, induce positive morally-conscious social change as well. The content of the plan is one that is never finalized or to be relied on; in fact, it has been suggested that preferably it be altered yearly in response to pressures from the real estate market and other factors, for example, job type and location, housing or public services, and terms associated with concepts of equity.

Gerecke submits eight reasons why the comprehensive plan is dysfunctional. These lead to some assumptions about the role of zoning in implementing the comprehensive plan:

"(1) The plan just hasn't worked. For the most part, they have sat on shelves. The Hellyer Task Force in 1969 found, in the national tour, hardly a city with a comprehensive plan. It is known that many exist; their invisibility reflects their ineffectiveness.

"(2) It can't readily incorporate changes in the environment. Plans are usually based on past trends in growth and so they don't allow for any uncertainties that may occur.

"(3) It assumes a capacity for central coordination that does not exist.

"(4) It assumes static institutional arrangements (government structure, zoning), whereas rapid change calls for new institutional arrangements.

"(5) The plan places too great an emphasis on the physical aspects of the city. It does not deal directly with the social aspects, or people's wants. As well, the plans are usually too general to be meaningful as a guide for future development.

"(6) There will always be data shortages, forcing the planner to fill in with his own hunches.

"(7) The plan is inconsistent with the imperatives for action. These big, abstract plans give no guides for action.

"(8) The diverse values of our pluralistic society cannot be integrated in a single normative scheme. As such, the plan usually represents the middle-class values of the planners who originally draft it." (Gerecke, pp.13-14)

If Gerecke's reasoning, that to implement the official plan in an exact form, is considered unrealistic, then the demands of the official plan cannot be met by the conventional zoning by-law. The difficulty in implementing the "total development process" leads one to believe the notion of efficiency has particular limitations. When zoning and the official plan are put in the context of metropolitan planning ideology which relies on "planning the parts from the nature of the whole" (Sennett, p.92), there is an effective analogy drawn from the mentality that guided industrial production. This mentality was to illustrate how zoning was only supposed to be the efficient catalyst for an official plan, yet a similar mentality is borrowed to support an evolving planning version:

"...planning the parts from the nature of the whole...

"This is, of course, one of the most familiar modern images of unity; it is the basis on which machines are designed and it defines a peculiarly modern concept of "efficiency" in technological and social organization. But, as historians like John Nef have gone to great efforts to show, this image is an assumption about efficiency rather than the nature of efficiency itself. In preindustrial factory systems, the experience of making a product was more important than a standard image, a clear picture, of the "whole" to be made; those craftsmen conceived, therefore, to define in advance what a thing should look like would interfere with "efficiency", that is with the freedom of the craftsman to exploit his materials and forms during production. In an industrial situation, the product to be made is conceived beforehand, so that the realization

of the product, the achievement of the whole, is a passive routine, not an active experience or exploration. By envisioning the fruit of labour in advance of labour itself, it is therefore possible to plan the production process so that the "parts are determined by the whole", since the parts of production are thought to have no life of their own, no role other than to work harmoniously toward the creation of a preplanned entity... Yet when this mentality of production, this image of machine efficiency, becomes transformed to the production of cities, in the designing of social parts from a predetermined, previsualized urban whole, the results become inhumane." (Sennett, pp.92-93).

The evolution of planning from this sense of mechanistic unity intact within an organic analogy, to social ecology, to the specification of sub-systems and, finally, to the application of systems theory, proves the point. The magnitude of this problem and the disillusionment with relying on what seemed to be a simplistic, natural concept is discussed by Humphrey Carver in the context of the 1960's suburban growth period. During the expansion of subdivision planning, Carver was led to believe that the comprehensive plan had everything to do with projecting a "rather orderly expansion and the economic and socially-efficient use of land within an urban area", yet its development seemed to take place in a vacuum absolved of any concern for a humane social concept:

"It became possible to enlarge the focus of suburban planning to the scale of a whole new community. Plans for suburban townships appeared with land-uses plotted to fulfill some concepts of social organization. Since the growth of suburbia went on at such a breath-taking pace, the first generation of suburban planners worked in a high pressure climate of emergency. And since Canada did not seem to have any obvious social concepts to guide urban design, most planners clung to the elementary school system as the available and explainable concept to provide an organizational framework for suburban society." (Carver, p.44)

His criticism is that there has "never before in history... been an urban environment of such uniformity and conformity and lack of diversity" ~~~~~

(Ibid.). This has alarming implications for a social existence based on physical and economic considerations in the worn-out guise of efficiency.

The object of the comprehensive plan and the zoning process has been to achieve the highest quality environment as economically as possible. Neither comprehensive plans nor zoning, however, have been reliable guides. Zoning has not been able to guarantee the certainty that a comprehensive plan might ensure. As beliefs and values of urban dwellers become more diverse, the idea of "quality" assumes different meanings dependent on a multitude of factors. Planners have known for years that "the activity (of imposing a comprehensive plan) is, in reality, a highly complex operation where such things as primary road networks, modal splits, social satisfaction, politics, employment difficulties, housing standards and leisure problems are all interwoven and all require specialist analysis to formulate properly a comprehensive plan" (Simmie, p.4). The comprehensive plan is simply a hollow strategy for coordinated growth.

#### SUMMARY

This chapter commenced by asking the question: what are and how valid are the critical theories about the zoning purposes? A variety of source materials indicated that the standards associated with the application of the original purposes are outdated or limited in their arguments.

Each zoning purpose can be shown to be deficient. For example, the protection of public health and the general welfare limits its concerns to the physical standards of height, bulk and set-back limits. However, a variety of considerations, from redefining the public interest to examining the myth of pathological density and crowding, may be combined to determine the application of standards in any zoning context. The protection of private property, as a zoning purpose, is also limited in its original conception. The notion of equity is not incorporated in the fundamental zoning purpose even though zoning intends to determine the physical form



of a community's common needs and values. The zoning purpose of order has a limited conceptual orientation in nineteenth century organicism and promotes the belief that separate compatible land uses should evolve. Critical theory has focussed on two alternative concepts of order, diversity and change, arguing that varying degrees of incompatibility are not only tolerable but essential for the creation of a vital urban life. The final zoning purpose, focussing on the efficient maintenance of the comprehensive plan, does not provide any certainty for future predictions nor does it facilitate the production of a humane social environment.

The conventional arguments supporting each fundamental zoning purpose must be delimited to assess their contemporary worth. The validity of the purposes will be examined in Chapter 5. The following chapter comprises a case study, a testing ground for the traditional zoning purposes. The study further permits a testing of the traditional, fundamental zoning purposes as they contrast with a community group's interpretation of the standards of the zoning purposes.

FOOTNOTES

1. A general health theory maintains that basic necessities required to maintain human life such as good air, sunshine and pure water could be ensured in a well-planned urban environment. Segregated land uses and the healthy home were the means to the end.
2. In the January 1924 issue of the Journal of the Town Planning Institute, a writer advocated the adoption of zoning by rejecting the "Chinatowns, the most squalid and ugly settlements [that] have been growing up." (Ibid., Vol. 3, No. 1, p.2)
3. It was not so long ago that mixed neighbourhoods of residential, commercial and industrial uses were the norm. Rapid social and economic changes meant diversity and instability were characteristic of these neighbourhoods, two elements that could instill a sense of vitality into an urban life before the idealistic suburban model became the end result of attempts to isolate land-uses. The contemporary concept of stability should be concerned with some definition of "self-sustaining". For example, when housing deterioration, short term tenancy and the intrusion of other land uses are all minimalized, stability is considered measurable. Defining an area as socially unstable is related to the concept of socio-economic class and the protection of property values. It becomes a subjective interpretation based on different values and beliefs. Sennett criticizes Jane Jacobs "for looking at the dense ethnic inner-city areas as traditionally stable places where people got to know their neighbours through years and years of common association. Historically and demographically this has not been true. The warm associations Jacobs found are due to factors other than population stability." (Sennett, p.8)

CHAPTER 4

THE DYNAMICS OF THE CASE STUDY

## CHAPTER 4

### INTRODUCTION

In a bid to develop a better understanding of the zoning process, a series of questions were asked at the outset of the thesis in Chapter 1. The second of those questions, that being whether the purposes of zoning are still in evidence in current practice, is to be answered in Chapter 4. To answer the question, the author examines a case study in the City of Winnipeg, specifically the North Logan area. In the case study the four purposes of zoning (ie. to protect the public and general welfare, the protection of private property, order and the comprehensive plan) are discussed as they were interpreted by the two parties in the North Logan Expropriation case, the City of Winnipeg and the Logan Community Committee.

To examine the two interpretations, written transcripts of the taped hearings, planning reports and special submissions to the Inquiry were reviewed. The judicial Inquiry called to settle the dispute between the City and the community developed a rich source of information on the reality of contemporary zoning. This information was relied on to draw further contrasts between the two conflicting positions.

### THE ZONING HISTORY OF THE NORTH LOGAN AREA

The North Logan area's zoning was established in 1939, at a time when planning techniques were again assuming prominence in Manitoba after a period of neglect.<sup>1</sup> Originally, only a portion of the North Logan area, west of Isabel Street between Higgins Avenue and Logan Avenue was zoned. By-law 15206 designated the area I1, an Industrial District, on November 27, 1939. Heavy industry was not permitted while, at the same time, residences were not prohibited. Lands lying to the east of Isabel Street remained unzoned.

The 1939 by-law was replaced with by-law 16502 on April 1, 1950. This further established a zoning for the area east of Isabel Street as part of the development of a Master Plan for Greater Winnipeg. Lands lying to the east and west of Isabel were zoned "M2", Light Industrial, replacing the I1 classification. The M2 zoning limited industrial uses and prohibited new residential development.

While the zoning classification did not change from 1950 onward, an amendment to the zoning by-law in 1972 permitted residents to upgrade their properties. With this amendment to the zoning by-law, all single and duplex dwellings could be expanded but were still forbidden by law to be rebuilt.



PAST STUDIES ON THE NORTH LOGAN AREA

Most of the planning studies prepared by the City between 1947 and 1980, which addressed the North Logan area, recommended the area to be consolidated for industrial use. Early reports, such as "Zoning - Greater Winnipeg, 1947", established the City's general impression of the area's future before North Logan was zoned in 1950. A preference is given to maintaining a single land use, ignoring the long time existence of the mixed-use area. In the 1947 report "good zoning" was to

"make proper provisions for amenable living which requires pleasant, undisturbed residential neighbourhood with adequate commercial services and provisions for employment opportunities in business and industrial areas..." (Ibid., p.23)

Various studies through the years recommended the area remain zoned light industrial. One of these studies, the 1957 Gerson Report entitled "An Urban Renewal Study for the City of Winnipeg", reemphasized the need for separated land uses to eliminate nuisances, overcrowding and blight. An earlier report from 1955, "Housing Survey of Central Winnipeg" by the

Emergency Housing Department, called for comprehensive rehabilitation in the inner city but excluded the North Logan area. †

The area was to remain in limbo and uncertainty through the 1970's. At least four public reports in the 1970's indicate that there was much ambiguity in future recommendations to the area. In the "Winnipeg Rail Study (1972)", Damas and Smith recommended the unexpected. Although a transportation corridor was planned for the Midlands railway line to run into the Logan-CPR transportation corridors, there was a residential component in the reclaimed CPR classification yards. Although no official status was given the study, it does indicate that the area could assume residential purposes if there were a relocation of the CPR yards to the north, contrary to the previous studies which repeatedly recommended industrial redevelopment, demolition and transportation corridors. The action again hinged upon the costly removal of the CPR mainline and yards, which action Council was not prepared to implement. ✕

The Winnipeg Department of Environmental Planning completed a further study, "The Winnipeg Area Characterization Study", in 1979. "The Neighbourhood Characterization Study of the North Logan Area" (1979) was included in a larger, more encompassing study. The study formed the backbone of the City's case in the Inquiry hearings. Some of the findings which led the City to state that "the traditional notion of a neighbourhood no longer exists" (Planning Background-Logan Expropriation Area [PB-LEA], p.20) were later proven by the Commission Inquiry to be misleading.

Following these reports were the poorly attended Plan Winnipeg public hearings which led to the City's Executive Policy Committee recommendation that the larger Logan-CPR area remain zoned industrial even though the first draft (summer, 1980) designated the area as an "older neighbourhood" ~

(During the Inquiry hearings the City admitted this designation was a mistake.) The draft by-law (2960/81) is the last paper to reiterate that the area be characterized as industrial for policy purposes.

The preceding North Logan area planning studies were referred to by the City during the Logan Commission of Inquiry. The following City representatives made references to one or more of these studies in their briefs to the Commission: Commissioner of the Environment, David Henderson; City Planner, Tom Yawk; Environmental Planning Department Director, Len Vopnfjord, and its Director of Research, Gord Courage. Their central professional theme was that the City's planning studies have always recommended the phasing out of the residential component in favour of industrial land use, and these recommendations were supported in the 1980's. They insisted that the process of expropriation for the purpose of creating a high-tech industrial park was a just and proper course to take. Their position is further elaborated in the following discussion under headings of the four purposes. Direct references to City spokesmen by name will be used only when special points are made.

## 1. THE CITY

### A. Public Health and Welfare

The mixed-use nature of the area suggested to the City "that the processes of neighbourhood decline have been occurring for at least fifty years" (PB-LEA, p.20). City representatives reasoned that after the CPR maintenance operations were moved to a northwest Winnipeg location around the turn of the century, the area was seen to be disadvantaged and in decline. Commissioner of the Environment, David Henderson, summarized

the City's position by saying:

"It is historically considered to be an industrial area, the land-use zoning is industrial and its location is that of a centrally located industrial area with existing access to road and rail transportation networks... Within this area are 180 residential dwelling units. These units represent the poorest quality residential housing pocket in the City. Within the boundaries of the area there are no amenities or facilities which could serve to support a residential population."

The social costs of the area's "blight", owing to mixed-land uses, were considered high by the City. The worsening housing condition was further used as an indicator of the area's welfare.<sup>2</sup>

Housing was a non-conforming use in the area, and its status had been a contributing factor in recommending houses be demolished. An inspection by the City previous to the Judicial Inquiry indicated how poor conditions were. A housing inspector and an architectural draftsman classified 50% of the residences as being in "poor" condition requiring only routine maintenance. The majority of the housing stock then was listed in "poor" condition by the City, that being beyond economic rehabilitation. It was during the Commission hearings, however, that the "conditions" became a point of contention. City Planner, Tom Yawk, under cross-examination by Commission Chairperson, Evelyn Shapiro, admitted that "in the end analysis, the decisions as to good or poor housing, the conditions are judgmental." Yawk went on to state that the City's position was uninformed.

The City insisted that other indicators suggest the area's standards of health and public welfare were being undermined. For example, excess noise and truck traffic caused by industrial intrusion were cited as being detrimental to any residential population. Furthermore, the proximity of the CPR and related industries, the intrusion of automobile-associated firms and the isolating factor imposed by Logan Avenue are all



factors which were to have made remedial efforts to establish a healthy residential environment ineffective.

The psychological factor of neighbourhood isolation and lack of a sense of neighbourhood was submitted. The City observed that the traditional role of a residential neighbourhood is one of providing for the routine and daily needs of its residents. To the City, the "Logan-CPR as a defined unit does not function in such a way. In fact, the various forces acting upon the area have collectively contributed to the physical, social and economic disintegration of the area over many years." A lack of amenities (ie. a lack of shopping and recreation facilities) suggested to the City a non-functioning sense of the term "neighbourhood". The only recreational facilities mentioned were the Pioneer Arena and a tot lot at the south-east corner of Henry and Patricia.

The City also listed the area as "unstable" on the basis of the low proportion of homeowners and characterized it as having a drastic turnover of residents. The area was considered unstable because the population in 1976 totalled 995 people, a loss of 355 or 25% since 1971. The City noted that in 1976 67% of the housing stock in the North Logan area consisted of single-detached and single-attached dwellings while only 37% of all the dwelling units were owner-occupied. The City listed 63% as tenant-occupied as compared to a city average of 42%. Turnover and owner-occupancy figures were then used to infer that people had no sense of belonging and a measurable increase in neighbourhood vandalism was most likely (the Commission of Inquiry determined that these statements were unfounded however).

## B. Protecting Private Property

The City maintained that the zoning was protecting land values by ensuring that a single-land use would evolve. This end would be realized when light industrial uses become consolidated, thus eliminating land use or zoning conflicts. The process of consolidation would only take time since "virtually all of the housing in Logan-CPR is non-conforming with the entire area zoned for both light and heavy industrial uses" (City Planning Department Planner, G. Courage). Another indicator of impending consolidation was that the age of the housing stock is pre-1925, with more than 65% of the housing in Logan-CPR built before 1920.

The City reiterated that a single-use area was recommended in all planning reports since 1947. From the "Metropolitan Plan of Greater Winnipeg, 1948", the City restated that "since zoning affords protection to property values, it should be applied to the entire area to guide all future development" (ibid., p.23). Zoning was then aimed at increasing the marketability of the property as uniformity ensued. Any adverse effects on housing property values were considered natural, as evidenced in the following passage from the City's statement:

"An added problem was the fact that as the area grew, the railway-related industrial activities on Higgins Avenue, together with a growing commercial/industrial corridor along Logan Avenue, wedged the remaining mixture of single-family residential units and businesses into a narrow strip, without parks or major neighbourhood identity." (ibid., p.2)

Any form of "growth" in the area was associated with industrial activity encouraged by the zoning. Roads, sewers and parks were neglected since the zoning had not entitled the area to the same quality of services offered to a residential area.

In response to a question as to why Neighbourhood Improvement Program

grants were not made available to a stable, identifiable neighbourhood, the City replied that "NIP is not mandated to deal in any way with the assembly of industrial lands for purposes other than housing or related uses" (Ibid., p.10). The non-conforming status applied to the residential enclave is the liability that City officials favour.

### C. Order

The City claimed the spatial form of the area had been changing over the last fifty years. Physical decline in the buildings was expected since the elements of "service, newness and difference... central to area revitalization" were admittedly withheld until land uses had been consolidated. The City's terms of efficiency and program eligibility (ie. NIP assistance) dictated that a single-land use value must evolve, otherwise the area is recognized as "unstable" (physically and socially) and cannot spawn an identity.

The physical instability of the neighbourhood was discussed at some length by the City. City officials maintained that the "preservation of residential areas is preferred" (Vopnfjord). In light of past reports, the City did not dispute this value but recognized it only when the residential use is separated, unmixed with commercial/industrial uses. Over the past fifty years the City claimed the area's disordered mix of land uses led to the lack of a major neighbourhood identity.

The City supported their statements with referrals to previous reports. The notion of single-land use zoning for the area is reiterated in a 1955 report called "A Low-Cost Housing Study for the City of Winnipeg", which recommended displaced inner-city residents be moved to single-use residential suburbs. Likewise the Plan Winnipeg hearings, conducted prior

to the Logan area judicial inquiry, recommended "the Logan-CPR area be designated an industrial area in order to guide Council in future policy analysis" (PB-LEA, p.8).

In summary, the City gave support to a notion of a traditional sense of order in land-uses, recommending a separation of what they see to be incompatible land uses that have destroyed any sense of the term neighbourhood. The City concluded on this subject by submitting the following quote:

"The traditional role of a residential neighbourhood is one of providing for the routine and daily needs of its residents. Logan-CPR, as a defined unit, does not function in such a way. In fact, the various forces acting upon the area have collectively contributed to the physical, social and economic disintegration of the area over many years." (Ibid., p.20)

#### D. The Comprehensive Plan

Enforcing the M2 zoning indicates faith in the concept of a comprehensive plan implemented by zoning by-laws. The by-law was established for the purpose of guidance and the City supports this rationale. Planners indicated there was no recourse as to how the area fit into the Master Plan. Commissioner of the Environment, David Henderson, claimed that poor housing created in part by a rapidly declining population in the past and by an inadequate number of acceptable dwelling units, by established access to road and rail transportation networks and by the ambition to consolidate commercial and industrial land uses, contributed to the future goal of making the area efficiently viable. The comprehensive plan did not attempt to accommodate uses other than industrial ones for the area since all others would have been incompatible.

The City's planning reports illustrate the effectiveness of the

comprehensive plan since its adoption in 1950:

"The entire nature of the area has changed since the first housing survey was conducted in 1955 from one of endless, close-together substandard dwellings with a highly-overcrowded population to one of vacant lots, is empty, boarded-up housing and a smaller number of mostly single dwellings in poor condition." (Ibid, p.21)

In brief, the City maintained that in respect to the change that has occurred in the area, zoning has implemented the expectations of the comprehensive plan.

#### E. Summary of the City's Position

During the Commission hearings, the City emphasized the mixed-use area's decline, the lack of integrated services, the "poor" road, sewer and housing conditions and the fact that no single-land use was yet visible. These factors were seen as combined risks to the health and functioning of individuals and the neighbourhood at large.

In an effort to maintain and protect property values in North Logan, the aim of zoning was to restrict development to a single-land use, that being light industrial. The City insisted that services such as roads, sewers and parks, although needed, could not be expected where residential use would defeat the rationale for a zoning map.

The City insisted that the continuing mixture of residential, commercial and industrial land uses is incompatible. A mixture of land uses indicates an expected level of instability. Without neighbourhood identity the area was unapproachable for either residential or light industrial redevelopment. The zoning was being used to restore a separation of land uses to stabilize property values and to encourage residents to resettle elsewhere.

The City's comprehensive plan would ensure that the North Logan area

become a segregated light industrial land use. A dynamic whole was presupposed with a definite boundary and, therefore, a definite size. To ensure the upgrading of utilities, appropriate traffic engineering (ie. for heavy truck traffic), the maintenance of health and building codes and general productive efficiency for light industrial land use, the City recognized the area should be of a single use. It was only within the expectant relationship that zoning was recognized as a catalyst.

2. THE LOGAN COMMUNITY COMMITTEE

A. Public Health and Welfare

The Logan Community Committee (LCC) was well aware of the City's position on the area as an "eyesore" and, therefore, sought to couch their arguments in terms of a contemporary understanding of health and welfare.

In the traditional sense of zoning securing the public health and welfare for the area, the LCC believes zoning has actually harmed the area's chances for survival. Since the area was zoned, residents claimed it "has been ignored by the City, partly because rumours of redevelopment and expropriation have cropped up time and time again. The streets need repairs, sidewalks are cracked and water-main breaks are common." (M. Brosnahan, Winnipeg Free Press). Furthermore, the LCC insisted that

"for over twenty years following the passage of Zoning By-law 16502, the North-Logan area was "coloured" industrial in the City's thinking and policies. Municipal services were allowed to deteriorate as normal maintenance did not take place. City neglect was in evidence throughout the neighbourhood and the Logan area was never included in any government program." (SNL, p.15)

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The North-Logan area was seen as an irregularity which, if allowed to prosper while larger planning schemes were proposed, would block attempts at land assembly. The LCC claims, however, that their mixed-use area was still a "neighbourhood" even though conventional planning theory could dispute this. The LCC maintains that the area's zoning was inappropriate and actually undermined the existing housing and sense of neighbourhood.

In an effort to update the data contained in the Neighbourhood Characterization Study, the City had reexamined and graded the area's housing stock. 75% of this housing stock was found to be in "poor" condition. The LCC believed the area's zoning had biased the City's housing stock study and downplayed any alternatives to the demolishing of many homes. Under cross-examination by the Commission Chairperson, the City related that the housing assessment was handled by a housing inspector and an architectural draftsman. They graded the houses either "very poor", "poor", "fair" or "good"; the grading being based on an external viewing. It was the amount of "poor" quality housing reported which became the contentious issue.

The LCC argued the City's housing study was subjective in that there was no quantitative or qualitative checklist used, leaving the survey open to unsubstantiated value judgments. Using the City's checklist, the LCC's architect and planner conducted a survey of the same houses and classified 13% of the houses as in "good" condition as opposed to the one house the City found. The LCC team also classified only 48% of the houses as in "poor" or "very poor" condition whereas the City described nearly 75% as such.

Several other inconsistencies characterized the City's housing survey according to the LCC. The LCC accused the City of conducting a

superficial survey which viewed only the exteriors of homes. Residents complained that interiors although upgraded had been unaccounted for in the City's survey. Another concern was that a definite bias was felt against older homes. During the cross-examination of City officials, "good" housing was found to be that which is recently constructed.

Finally, the LCC felt nothing was mentioned of the costs to upgrade housing in "very poor" or "poor" condition at that time. Again, the area's zoning precluded this being discussed.

The City replied that similar general surveys were undertaken for an overview of neighbourhoods in the city. The LCC, however, claimed (with the agreement of the Commission's Chairperson because the information was used to a specific end; ie. to raze the neighbourhood) the assessments are prejudiced against neighbourhoods with older housing stock.

Contrary to the City's argument the LCC claimed the mixed-use neighbourhood was not crippled by health and welfare problems but rather

"these industries did not displace housing to a great extent but existed side by side with housing. No distinct decline in housing is evident in the years 1930 to 1950, nor was any significant change made in the character of the industries located in the area... The housing stock in the area did decline with many fires in houses and apartment blocks; these could not be replaced after the zoning restrictions were imposed." (Ibid, p.8)

Although the area had lost many houses to fires or to health and sanitation by-laws, this was to be expected if rebuilding were not permitted.

Another issue related to health was debated. A health risk attributed to industrial intrusion was identified in the noise and traffic in the area. The LCC agreed that industrial intrusion brought with it some threat to the safety of residents but a higher priority was given to



affordable housing and the close proximity to work, schools and shopping outlets. A proposed plan to reroute traffic, increase the amount of green space and limit the future variety of industrial uses was further endorsed by the Commission Chairperson. She suggested the residential and industrial components of the neighbourhood could coexist.

A final inconsistency lay in the City's description of the area as socially "unstable". The City felt that the low percentage of resident homeowners and the high percentage of tenant turnover indicated the neighbourhood was unstable. Although the City claimed the area had a high percentage of tenants (63% compared to the City average of 42%), the LCC's survey showed "54% of the homes are occupied by owners, 48% of the residents have lived there over 10 years and 11% are over 65 years old" (SNL,4). Rental accommodation was not necessarily seen to be an indicator of the instability. The area has had a long history of rental accommodation, first for immigrant workers and now "much of the present housing is still rental accommodation, and provides a cheaper and more convenient place to live than is available in much of the rest of the city" (ibid).

If what is needed to produce happiness is a "good environment", the LCC argued that from a historical perspective the area had produced decent living conditions. The LCC studied the area under seven sub-headings: residences, schools, churches, social services, industry, amenities, and the community. At least some sense of the services listed were present in the area<sup>3</sup>. Although separated by arterial traffic routes (common to downtown neighbourhoods), shops, churches and schools were in

close proximity to the area. Dufferin Public School also offered special needs classes and extra-curricular activities. Adequate green space was admittedly lacking but was to be included in the LCC's redevelopment plans. The oral and written submissions of area residents further indicated to the Commission that a sense of community existed.

The welfare of the community and its residents was seen in a different light. Even though an M2 zoning was given the area in 1950, there was enough "evidence that a vibrant community of homeowners, tenants, small businesses and industries had existed there since the earliest development of the area" (ibid.). When zoning was administered the LCC asserts that it didn't take account of the mixture of land uses even though this mixture persisted through the many years with no zoning restrictions and has continued to exist through all uncertainties of the past twenty to thirty years" (ibid., p.8). Instead of securing the public health and welfare of the area, the LCC suggest the M2 zoning only went as far as ensuring the area's physical and social decline, and supported public prejudice that the area was dangerous to live in.

#### B. Protecting Private Property

During the expropriation hearings the LCC challenged the zoning that would not protect their property values. The LCC could not find an identifiable public good in applying the zoning M2 to North Logan. They suggested that the zoning originating from a city council without resident participation did not ensure happiness, decent living conditions or the protection of their property values. The LCC believed the latter element in society is able to maintain some standards for the maintenance of the first two. However, for the LCC ascribing weight to the home-owning myth of betterment (equated with health and contentment), this is apparent but

conditional. What was challenged by the LCC were the administrative conditions set by the City that meant to protect the single family home.

One of the methods used by the LCC to question zoning's ability to protect their properties was to challenge the reasoning that exempted the area from NIP funds. It was their contention that underlying their exemption were more fundamental reasons that affected the protection of their properties. The LCC stated:

"We believe the decision to exclude North Logan in 1973 was done more from a subjective reaction to the many past planning studies favouring demolition, to the industrial zoning of the neighbourhood, and to the lack of public investment during the previous 30 years rather than from an objective and qualitative analysis of the area." (Ibid., p.16)

The LCC reasoned that past planning studies were used to prejudge "the positive nature of a neighbourhood -- its vitality, character, stability, tenacity in spite of its problems." The LCC prepared what they considered to be a more realistic picture of the area's physical and social organization as opposed to an ideal balance.

After the 1972 By-law 233-72, when non-conforming dwellings were deemed conforming for the purposes of upgrading and additions, there was some cause to believe the City's attitude toward the area was changing if not the zoning. Zoning did not provide any assurances for the many upgrading projects. In retrospect, then, it was the LCC's

"feeling that similar to earlier reports and studies, little first-hand data was obtained about the character and essence of life in North Logan before the NIP decision. Rather planners continued to view this area as "expendable", as one with little power or worthwhile use to the city and therefore one that required little accountability." (Ibid., p.16).

In the same respect, it was felt that zoning had not provided any assurances for the neighbourhood considering incompatible those uses the LCC found compatible:

"We believe that a dynamic neighbourhood is one where housing, industry, commerce and amenities are blended into a balanced and integrated unity." (Ibid., p.31)

In summary, the North Logan residents felt that their property had not been protected and land values had not been stabilized owing directly to the zoning. Furthermore, zoning had worked against stability by negatively influencing any attempts to provide public aid to the area including basic public services that any neighbourhood is entitled.

### C. Order

The LCC recognized that an oversimplified notion of order had been imposed by the City which promoted a particular meaning attached to life through permitted physical and social growth patterns. The LCC responded to this notion of order with another perspective.

By tracing the area's growth historically, compatible mixed uses were found to have existed there since the late nineteenth century. Only since 1950 (when the areas to the east and west of Isabel Street were zoned) has there been an attempt to terminate this form of order. The LCC found a unity of form was possible where housing, industry, commerce and amenities are blended. This integration of uses was never supported by zoning. The LCC felt that it was only a problem for planners and city council to accept the mixed use area as different but efficient at the same time:

"North Logan has historically been an awkward area for planners to fit into crisp categories on a map - next to a railway, a bridge and in the midst of commerce and industry, it had no clear identity. In 1950 planners decided to resolve this conflict by colouring over the past and zoning the area 'INDUSTRIAL'." (SNL, p.17)

If zoning originally attempted to achieve a unity of design or an organic pattern of growth for which symmetry was natural, the LCC believed this was not necessary in North Logan:

"The entire neighbourhood has changed since the first housing survey was conducted in 1955. The neighbourhood is no longer overcrowded but is instead dotted with vacant parcels of land. Existing zoning will not permit the construction of new infill housing." (SNL, p.24).

What the LCC wanted was the positive nature of the mixed use area to remain and only the deteriorated buildings removed to another area and demolished. A zoning change was also recommended:

"It would be our intent to encourage this residential rehabilitation by stabilizing the residential nature of the North Logan neighbourhood by proposing to rezone the area from Bridge to Ellen Streets and from the lane off Logan to the lot line between Henry and Higgins... from M2 to R3. In addition, we would propose to change the zoning along the north side of Logan between Fountain and Bridge from M2 to M1. The zoning of the land west of Salter we would retain as M2." (ibid., p.32).

The LCC, in their recommendations, emphasized the detailing of uses to indicate that the preservation and improvement of property values and residential use is possible if the incompatibility of mixed uses is not accepted. Citing "dramatically changed social, physical and economic conditions of North Logan itself, the city as a whole and the state of the world over the last ten years" (ibid., p.16), the LCC maintained that creating ordered, separated uses and binding zoning designations has proven the fallacy behind making spatial organization a sound, irrevocable objective in meeting the public interest.

#### D. The Comprehensive Plan

The LCC acknowledged that town planning schemes or comprehensive plans are traditionally justified in the promotion of health, the lessening of congestion and excessive concentrations of the population in poor housing. Planners had referred to zoning as a means to secure health and land values but this was something which zoning and the comprehensive plan had not ensured for North Logan residents. The residents felt that the legal-

planning decision to zone their area M2, and thereby consolidate industrial land uses near the CPR tracks for the purposes of "a grandiose planning scheme" over twenty years ago, had little concern for their neighbourhood. At the time

"massive redevelopment projects involving total clearance were formulated; complicated road networks, gobbling up acres of development were envisioned." (SNL, p.15)

Given the fact that new road networks and massive redevelopment schemes were not realized through the guidance of a comprehensive plan, the LCC felt the plan was more flexible than they were led to believe. The LCC presented a number of assumptions and facts that stem from "an apparent change in attitude" on the part of the City:

"In May 1972, the Winnipeg Railway Study proposed that with the relocation of the CPR mainline and yards, the Logan Area could be used for residential purposes.

"In November of the same year, the City amended the Zoning By-law; all existing single and double dwelling units were designated as 'conforming uses'. Therefore, residents now had the same freedom to renovate and expand their homes as that enjoyed by people living in 'residential districts'.

"The 1978 Winnipeg Characterization Study also indicated that the Logan area should be residential if rail relocation materialized." (Ibid., p.15).

The LCC also noticed that "the first draft map for Plan Winnipeg (1980) designated the area as an older residential area. This was subsequently changed when the Draft By-law was prepared [in August]" (Ibid., p.15).

The LCC did not make the claim that the comprehensive plan itself is something outdated but revealed in their position paper that the content of the plan is never to be relied on.

#### E. Summary of the LCC's Position

The LCC viewed public health and welfare problems as directly caused by the area's M2 zoning. At the same time, the terms or definition of what constituted public health and welfare were scrutinized during the

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Commission Hearings. To the LCC, zoning had quickly "coloured" the neighbourhood which was abnormal by "today's standards" from its inception. The incompatible housing enclave was expected to deteriorate to the point of being a health hazard. Industrial intrusion was to bring safety risks in the form of heavy traffic and noise. According to the City, the area's welfare was reflected in its level of instability. However, to the Commission's approval, the LCC argued that a "vibrant community" existed whether it be defined by the City's standards or by community consensus.

Residential property was not expected to be protected with an M2 zoning. Again, the LCC saw past studies being used to misrepresent the area's residential component. If the negative influence of zoning had not disallowed the rebuilding of houses, the residential enclave would have been a valuable asset to an otherwise depopulated downtown.

The LCC contested the use of the normative concept of order in zoning North Logan. Because compatible mixed uses had been present for decades, there was no reason to believe a single land use zoning was more efficient than a mixed land use zoning. Although vacant parcels of land and deteriorated housing existed, the LCC maintained it was the negative effect of zoning which prevented an alternate sense of order to exist.

The comprehensive plan had for decades indicated a light industrial land use for the area. Residents, however, did not experience redevelopment projects of the late 60's and 70's, and had, therefore, assumed their properties were safeguarded. A 1972 amendment to the zoning by-law permitted homeowners to upgrade their properties. This reinforced their belief in the area's future stability.

## CONCLUSION

Chapter 4 began by addressing the question of whether the four concepts behind zoning existed in contemporary zoning practice. This chapter review of the two sides in the case study reveals that the traditional purpose of zoning are still being employed. Through the four concepts one can see that two divergent views emerged on the purposes; one view maintaining that the zoning for North Logan was appropriate and valid and the other view claiming just the opposite.

The contemporary use of zoning in the Logan expropriation case was supported by the City during the Commission hearings. The City insisted that zoning's negative effects on public health and welfare, property values, compatible land uses and the concept of a workable comprehensive plan were in keeping with zoning's intents. Zoning was correcting the poor land use decisions made before 1950 and it would only take time before the area was of a single-use nature.

The LCC presented an alternative argument for the reevaluation of the area's zoning. They viewed the traditional zoning purposes as being unreasonable. The LCC maintained that, owing to the industrial zoning, the traditional notions of health and welfare centered around the well-kept single-family home and the maintenance of a stable residential neighbourhood were unattainable. The conventional zoning process had crippled the area's development as a mixed use neighbourhood. The LCC insisted that zoning was not representative of the mixed use nature of the neighbourhood and this resulted also in unstable property values. The sense of order imposed by the City was foreign to the residents and businesses. The LCC's understanding of unity of form would, rather, encourage the co-existence of mixed land uses. Finally, the comprehensive



plan did not ensure the guidance of development in the area. The LCC found that the comprehensive plan also did not guarantee the other zoning purposes and was not flexible enough to permit changes representative of the area's development.

The existence of two conflicting views told us that the concepts of zoning are being used but it also indicated that they are being challenged. There was little consensus between the City and the LCC on the goals of the zoning process as it was applied. For the residents and businesses affected by zoning on a daily basis, the zoning process appeared to be inoperable or invalid. The next chapter goes beyond the LCC's reasons for dissatisfaction by offering two further questions in the thesis enquiry. The questions are whether the purposes of zoning are out-of-date with the contemporary conditions they are addressing, and whether the critical theory surrounding the fundamental purposes in such a case is valid.

FOOTNOTES

1. In Winnipeg, after City Council appointed a Greater Winnipeg Planning Commission in 1914, planning activities were curtailed, "almost completely eliminated during the depression of the 1930's, remaining dormant until World War II" (Carrothers, p.16). The demise of the Journal of the Town Planning Institute coincided with planning's discontinued functions during the depression that adversely affected planning activities across the country.
2. In a Winnipeg Free Press article, it was reported that "of 178 residences that existed in the area in January 1973, 41 have been demolished... of those still standing, 33 are unoccupied." (Ibid., April 2, 1982)
3. A community worker reiterated that services and amenities were not absent. He reported that services such as the recreation centres (the Indian-Metis Friendship Centre and the Freighthouse), three day-care centres and the Health Action Centre on Elgin were frequently used by area residents.

CHAPTER 5

LESSONS: COMMISSION FINDINGS

AND DISCUSSION

## INTRODUCTION

Chapter 5 looks at answers to the last two questions advanced in Chapter 1. The first of the questions asks whether the traditional zoning approach is appropriate for current practice as in the North Logan area. The second question focusses on whether the traditional purposes are operable in view of contemporary zoning experience in the North Logan area.

The chapter is organized first to give an overview of the findings of the Commission of Inquiry, focussing on references made to the fundamental zoning purposes. While the Commission did not present the same questions as in this thesis, it passed comment on the zoning purposes and emphasized the legitimacy of complaints from North Logan residents and businesses.

The discussion, following the overview of the Commission's findings, reviews the four purposes by drawing together information from reports, the tape-recorded hearings, critical planning thought and the author's understanding of the case. Through this review, the recommendations of the Commission will be drawn out and interwoven with sources of planning criticism from Chapter 3.

Finally, the conclusion summarizes the discussion and answers the questions put forward at the outset of this chapter.

## OVERVIEW OF THE COMMISSION OF INQUIRY FINDINGS

The Commission of Inquiry drew a number of conclusions which indicated a dissatisfaction with the present zoning. The findings affirm the presence of the residential and business communities rather than calling for their elimination. The Commission explained that the redevelopment of the area does not necessarily mean that it must be expropriated, totally demolished and reconstructed. Redevelopment may be accomplished by

rearrangement, rehabilitation, the improvement of City services and, perhaps, even beautification. The Commission's findings, therefore, do not support the expropriation and redevelopment plans for the North Logan area as formulated by the three parties to the Agreement.

Two of the principles underlying the Logan Community Committee's (LCC) plans for the area are supported and recommended by the Commission in their report of May, 1982:

1. "The co-existence of a residential neighbourhood and light industry is not, in itself, objectionable as long as the industry is compatible with a safe and healthy environment; and
2. "A 'mixed' community which successfully balances the needs of residents and businesses may, and often does, offer mutual benefits to each other, especially in older areas of a city."

(Ibid., p.87)

These principles were to be incorporated in negotiations with particular attention to the following details which make reference to and support a zoning change:

- "9. The redevelopment of the area into a 'mixed' but balanced community which can accommodate a residential neighbourhood and industrial/commercial enterprises by concentrating the residential component in one section of the area so as to preserve the residential character and to enhance its environment. This will require...
  - (3) providing green space designed to be used as recreational space and as a "buffer" between the residential and industrial component;
  - (4) developing street traffic patterns which protect residents from undue traffic or noise hazards; ...
10. Changes in the City's zoning by-laws so as to maintain the integrity of the residential neighbourhood, to encourage property improvement, and to ensure the compatibility of the industrial/commercial sector with the residential sector.
11. The upgrading of municipal services (such as streets and watermains) to the level provided to other areas of the city and to the level required by both housing and industry."

(Ibid., pp.95-96)

The preceding recommendations suggest that the contemporary use of zoning as advanced by the City is inadequate. The following four sections give a critique of the contemporary use of zoning from the case study, particularly the judicial inquiry. The discussion will focus on how the City's rationale for retaining and enforcing the zoning for North Logan is inconsistent with the special needs of the neighbourhood.

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#### CRITIQUE OF ZONING IN NORTH LOGAN

The City advanced an outdated, subjective and instrumental approach in the use of zoning for the North Logan area. The inadequacies of the zoning purposes were borne out in the case study. The traditional purposes represent a partial view and, perhaps, even a false view of the neighbourhood's needs. The City's zoning analysis, originally based on the idea of efficiency, had not been reconciled with any notion of equity that would have accounted for the needs of the residents. It was not until the Commission hearings that planning studies of the area could be discussed in light of both residents' needs and zoning thought.

The following excerpt from a discussion between representatives of the City, the LCC and the Commission illustrates the extent to which the errors of the City needed reexamination:

"Ernie Peltz (LCC lawyer): 'It seems to me, Mr. Yawk... that one respect in which they [city reports] remain relevant is that over the years these reports have had an impact on Logan area and have in effect become a self-fulfilling prophecy... they have prevented action from being taken that may otherwise have been taken, for example, for residential rehabilitation. Would you agree with that?'

"Tom Yawk (City Planner): 'No, I wouldn't. And even in terms of the zoning there are areas the city zoned I in 1950; and I think areas were zoned I on the basis of the city finding a solution to the problems of determining neighbourhoods, residential neighbourhoods, the solution was that they would be totally taken over by I enterprise. I think it was inappropriate thinking and inappropriate planning and by-law regulation, but in 1950 it happened and there were other areas of the city that were more favourably located that were zoned entirely I, where the opposite occurred, where the residential strengthened in

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spite of the industry, and where these areas flourished and so when we moved into at least one of these areas with our NIP, we found I zoning but we found a sound, rather viable, at least viable enough to work with, residential area. I mention in particular North Point Douglas to the east of the Disraeli freeway, which was held in an I zoning and to the same extent was infiltrated by I enterprise, but this enterprise was totally peripheral to that community and could be totally buffered by...'

"E. Shapiro (Commissioner): '...so what you're trying to say is that the City's actions can contribute to the deterioration of housing in an area... but whether you call it benign neglect or specific intervention that it is possible in the city doing nothing... can actually... help deterioration to take place.'

"Tom Yawk: 'Yes, I think the 1950 zoning helped deterioration to take place.'

"Ernie Peltz: 'For example, in the provision of municipal services... by designating an area to be I an area that should be cleared, in the mean time until it is clear, there might be a reluctance to upgrade, etc...'

"T. Yawk: 'And there might be a reluctance based on the fact that the area is designated for transportation proposals, or an overpass or whatever. A report designating the area as a transportation corridor would have the same effect...'

(taped source, March 1, 1982)

In many respects, then, zoning by-laws and amendments are, as Shapiro points out, reflective of thinking currently in vogue among those in power at the time they are introduced.

#### 1. PUBLIC HEALTH AND WELFARE

The City's concept of public health and welfare, when applied as a rationale for the purpose of zoning in North Logan, is deficient and outdated. The zoning decision will therefore be narrowly conceived, a concept limited in its practical use, guided more by zoning's preventive trends or the subjective biases of inspectors rather than principles. If some degree of flexibility (ie. a process that would permit and encourage citizen participation) is not incorporated in zoning such elements as "standard" housing and neighbourhood controls, then zoning becomes a one-dimensional control over what is "proper" size and type in living units and designation of height, bulk and set-back minimums in any area. The question of housing in the North Logan area is a case in point.

The arguments regarding the public health and welfare of the area were primarily focussed on the compounded effects of "poor" housing, the lack of integrated services and "poor" road and sewer conditions. The discussion led by the City marginalized the influence of other contributing health factors. The problem was clearly one of delimiting the question of what constitutes public health and welfare. For example, zoning protection stops short of incorporating man's psycho-social and, in particular, his perceptual needs, and overemphasizes what Michael Smith calls the "myth of pathological density and crowding" (Smith, p.191). If mixed land uses are properly integrated with concern for the users' needs then the standards governing public health and welfare are variable. In light of the North Logan case study and the City's arguments for determining quality of living, there is a need to reconsider some basic beliefs which support the notion of zoning as a protector of public health and welfare.

The notion of "cleaning up" the North Logan area as a preventive measure had been a deeply rooted planning recommendation that is not without opposition. The following considerations aim to counter the recommendations of the City's planning reports since 1947 and the need for single land use zoning.

A belief which guided the City's planners was that towns had failed to produce satisfactory living conditions and that the solution to the problems of inner city areas was, therefore, to be found in planned suburbanization and decentralization. This was the measure of progress and represented a quest for purity echoed in the following passage issued by the City:



A common set of requirements and standards (inherent in zoning by-laws) are advanced which eventually create more conflicts as testified to by their inconsistencies and contradictions.

The importance attached to the upkeep of the single family home, the differentiation of compatible/incompatible uses, the needs for parks and neighbourhood identity/stability are all reminders of zoning's faults. The Commission's recommendations and the LCC's proposed development program (based on an amendment to the zoning) point to an overemphasis on inflexible, outdated standards applied without an understanding of zoning and its application in different contexts.

## 2. PROTECTING PRIVATE PROPERTY

As a result of testing the zoning purposes in a contemporary case study, it becomes apparent that the protection zoning affords to property has limited scope. It is taken as a tenet that the single family home is the element to be protected from other land uses. This relationship between uses is still considered the ideal balance of physical and social organization by the City. It is still assumed that, with the isolation of residential uses, there is room for cooperative interaction of land uses and functions. The standards promoting the health and contentment of the labouring class population are typically those correlated with the domestic virtues of the home. However, without security from the intrusion of industry this represents a poor investment by middle-class standards. The inequality of residential zones dictates which resident's needs are taken care of. Services are usually rendered according to a status quo maintenance of segregated land uses, people and income groups.

Irrespective of the value judgment associated with segregating land uses, it is still assumed that zoning is to protect and stabilize land

"An added problem was the fact that as the area grew, the railway-related industrial activities on Higgins Avenue, together with a growing commercial/industrial corridor along Logan Avenue, wedged the remaining mixture of single-family residential units and businesses into a narrow strip, without parks or major neighbourhood identity." (PB-LEA [Planning Background, etc. Logan Expropriation Area], p.2)

There was, also, the belief that there existed some mechanical link between the environmental and human behaviour and what was needed to produce happiness for the greatest number was a "good environment". However, the inflexibility of zoning, guided by several by-laws to protect public health and safety had managed to accelerate neighbourhood decline instead. The City's PB-LEA (Planning Background, etc. Logan Expropriation Area) document claims that "the most prominent of these (by-laws) are the health, maintenance and occupancy and apartment upgrading by-laws" (PB-LEA, p.22). The by-laws, however, in their negative affect on the area's mixed land use development indicate that principles supporting public health and welfare are enigmatic.

Another belief was that the former development of inner city areas of poverty, ill-health, crime and congestion were so intractable as to be insoluble and that efforts should therefore mainly be directed to prevent their continuance or repetition. This leads to the notion of revitalization - namely, for the City, "service, newness and difference" - having a bias for efficiency and purity which was clearly not a priority for area residents.

The preceding beliefs are compounded and acknowledged as consensus on what constitutes good health and safety. As evidenced by the Commission's Recommendations, such beliefs are also myth-making factors. They are predicated on the assumption that all groups in society must share a common set of values and interests on public health and welfare.

values have not been protected and public services otherwise made readily available to residential areas have been withheld while the present infrastructure deteriorates rapidly. Despite the demand for services in the area, the zoning map has been restrictive under a mask of rationality and efficiency. It is owed directly to the transitional area's mixed land uses that there is no guaranteed equity in land values or public services.

Zoning can only adopt a property-oriented bias in its attempt to accommodate reasonableness. If, as stated earlier, the general welfare of the population is dependent on the sacred nature of private property rights, people without the benefits of private property are at an immediate disadvantage. This may be implied in the City's repeated references to area "transients", or the tenant population. The percentage of tenants in the area was not greater than the city average, as the City originally claimed but, until contradicted under cross-examination, this bias provided the City with one more excuse to disregard the area.

The question of property rights, land use and equity require attention. During the industrial era when the protection of private property was tempered with Utilitarianism, emphasis was placed on efficiency. However, in the last two decades increasingly more emphasis has been placed on conflicts over equity, the North Logan case being a prime example. The notion of equity is not found within the terms of utilitarianism, and hence the theoretical and practical problems when coming to terms with an argument over equity. The terms of equity are not couched in status-quo oriented means and ends. Any measure of success would mean invoking a paradigmatic adjustment which would subvert the traditional status-quo decision-making of the planner and politician.

The outdated approach of the City's argument begins with the manner in which the City construed their zoning recommendation for the area as 'natural', as if zoning recommendations were static. It was implied that the community shared a common set of values and beliefs. It is a given, then, that the tenets of economic efficiency should cause the distribution of land uses and economic-social classes as they are. Distributional justice is not taken into account because the dictates of economic reasoning in the use of private property and the functioning of the market offers its own legitimization. This is the type of reasoning that points out that the poorer home owner or tenant must settle for accommodation alongside water pollution, noise and congestion. If the problem had more to do with equity, the distribution of these 'negative externalities' would correlate spatial form with social injustice, an argument more fully explored by David Harvey.

Even though residential zoning implies a degree of equity in the distribution of public services as dictated by need, there is no guarantee that this will occur. In the North Logan case study, the City recognized the presence of 350 residents but, because the zoning did not recognize their residential status, their needs became irrelevant in the political bargaining process. Property values were allowed to suffer under the mask of rational decision-making, efficiency and service.

*at risk.*

3. ORDER *efficiency*

The City's zoning perspective of Winnipeg suggests the city is an organism that cannot accept irregularities and still maintain a high level of efficiency regarding functions and land uses. An irregular part of the whole is something difficult to classify for planners and brings the purposes of zoning into a complex web of possible contradictions and

and critical analysis, especially if the irregular part survives and flourishes. Examples of this sense of the City as an organism are found in the City's reference material to the Commission of Inquiry. The planning documents reflect a general predilection for relating all phases and areas of an overall plan and do not recognize "special" areas.

There is an inherent problem with zoning that denies a diversity of economical living and working spaces to residents who regard conditions of nuisance and untidiness as secondary in importance. Positive forms of spatial and social diversity in land uses and functions allowed an "unstable" concept of order a degree of constructive meaning. The myth of common beliefs and values associated with distinct geographical areas would imply that standards must be kept to disallow diversity. North Logan residents, however, insisted that the City's standards did not represent what they wanted for the area. The chaos and waste that resulted from the mixing of industrial and residential land uses in late nineteenth century Britain represented a specific context for development controls or zoning. However, in the latter part of the twentieth century the resultant diversity in needs and values indicate that incompatibility cannot be applied as a universal law.

The City's understanding of diversity assumes something must be repaired, made correct in such cases because it is emphasized that only zoning is to guide all future (re)development. The rigid standards that define a neighbourhood as needing "quiet parks", local schools, community facilities, services and other requirements in a preferably self-contained development imposes an outdated concept of relating the purposes to an idealized order, an organic whole with limited boundaries.

Broad assumptions on the physical and social space make zoning's structural-functionalist approach seem one-dimensional. It is an idealized, purified inner-city neighbourhood that has the qualities listed above and, furthermore, contains them in one barriered area. Early land use planning in Britain defined land-use functions in order to avoid mixing uses that might trigger epidemics, pollution and high social costs to the family structure. Unlike the industrial context which originally led to the segregation of land uses, the context in the 1980's is one that is energy-and-pollution-conscious and more often witnesses the mixing of uses as a marketing backdrop. In effect, the City has continued to recognize organicism as a theoretical construct to be implemented rather than one that is incompatible with the reality it hopes to regulate.

#### 4. THE COMPREHENSIVE PLAN

If zoning is to implement the comprehensive plan to ensure the utilitarian catch words of health, efficiency, economy and order then, as already indicated in Chapter 3, there are major defects with this intention. The LCC argued that the comprehensive plan projected uncertainty and even inaccuracies rather than assurances of the catch words. This is consistent with Gerecke's critique of the comprehensive plan in that changes to the plan cannot be incorporated, the character of the area was never recognized, data shortages necessitate uninformed planning action, and the diverse values and beliefs in society cannot be found in a single normative scheme. The assumption that land uses must fit into a vision of unity is inappropriate. Zoning, as the catalyst for the comprehensive plan, cannot work as such because a consensual vision of unity has always been absent. In reality, zoning in the North Logan case has only been masquerading as an efficient tool.

The belief in separating uses, even after the fact that the area has functioned as a mixed use area for decades, has less to do with the public good than with the image of maximizing efficiency and, therefore, maximizing utility. The image of efficiency can be misconstrued as an assumption about the nature of efficiency itself. The measure of this assumption of efficiency is reflected in the potential flexibility of the comprehensive plan. In 1974 the Schreyer government of Manitoba identified the North Logan area with industrial renewal "even though some in the technical working committee recommended the area be looked at for residential uses" according to planner Tom Yawk. Because planners have no consensual view on the considerations to be taken into account, this is not surprising. The comprehensive plan has not been able to meet the needs of the North Logan area where primary road networks, employment problems, housing standards and social satisfaction are complex issues that the official plan only suggests have been analyzed with the intent of maximizing efficiency.

The City's reliance on the comprehensive plan has demonstrated how the plan's theoretical basis does not work in reality. This is particularly apparent when elements such as public participation in the zoning process have little to do with the formulation, amendment and revision of the plan. If the comprehensive plan were open to review by community groups or citizens, the implied consensus of the plan would undoubtedly give way to conflict and dissent amongst participants.

#### SUMMARY AND CONCLUSIONS

Chapter 5 began with an overview of the Recommendations of the Commission of Inquiry. The recommendations undermined the rationale behind the City's use of zoning in the North Logan area by indicating how

the traditional zoning approach was inappropriate. The Commission condoned the conditional mixing of residential and industrial land uses if a healthy coexistence could be achieved. Furthermore, changes were recommended for the area's zoning to encourage a coexistence of land uses, safety from noise and traffic hazards, improved property values and the adoption of measures to ensure compatibility of uses and the equitable upgrading of municipal services. To reiterate, then, the Commission's recommendations showed that the traditional concepts of zoning were inappropriate for the inner city neighbourhood. The following four paragraphs point to the inappropriateness of the area's zoning and suggest that the traditional purposes of zoning are inoperable.

The public health and welfare of the residents could not be addressed by the zoning. Zoning had not protected the residential enclave but rather its negative action encouraged deterioration or abandonment. Instead of preserving and enhancing the area, revitalization meant demolishing or rebuilding. Good health and safety in the City's eyes would only be realized when the area is a single land use.

The residential enclave in North Logan has been present for decades but property values were not to be protected as long as land uses remained mixed and the percentage of transients remained high. Attention to public services (to preserve land values) was a future-oriented activity expected only when industrial land uses were present. Owing to the M2 zoning the discussion of equity according to need (ie public services) is not legitimate.

The North Logan area did not fit into the City's organic concept of a whole which would consist of distinct and separate parts (land use). The sense of order promoted by zoning in North Logan assumes the diversity



of uses expired when industry was no longer a nuisance for residential units.

The comprehensive plan remained an impediment to North Logan residents gaining a mixed land use status for the neighbourhood. Subjective decisions by successive groups of planners and politicians maintained its future oriented zoning status. Residents had only derived a feeling of uncertainty from the official plan. Even when the zoning by-law was amended in 1972 the fate of the area was equally clouded. There is a note of failure in the plan's attempt to achieve any sort of social or economic equity through zoning action. The traditional zoning approach, in its inflexibility, did not recognize the residents' demand for equity and, therefore, remained incapable of meeting the need for a sense of security.

Each of the four preceding paragraphs summarizes evidence of the inoperability of zoning when applied to the transitional North Logan area. Therefore, an alternate more appropriate zoning process is required to meet the needs of the residents. The concluding chapter intends to answer summarily the five questions presented in Chapter 1. The author will then be in a position to offer recommendations to remedy the inoperability of zoning practice in transitional inner city areas.

CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

## INTRODUCTION

The opening question of the thesis asked: does zoning meet the needs of an inner-city transitional neighbourhood? To arrive at an answer four related questions were answered in the course of four chapters. A brief review of the questions and the answers will prepare the reader for the recommendations to follow.

The first question was: what were the original purposes of zoning? From a variety of sources four fundamental purposes were outlined. The purposes grew out of the late nineteenth and early twentieth centuries British and American land use planning. Each purpose was influenced in turn by some measure of the philosophical-political reform movement of Utilitarianism which advocated responsible action for the greatest good of the greatest number in place of machine-like efficiency or the selfish individual's pursuit of happiness. The purposes were guided by a concern for public health and welfare, public responsibility for private property, a new sense of order and a comprehensive plan for future growth. A physical response was to evolve out of a societal problem. The purposes were incorporated into Health Acts, planning programs and legislation aimed at controlling frequent epidemics, the intrusion of noxious industries into residential areas, and the resultant social unrest.

The second question asked: are the purposes still evident in current practice? From the rich source of information surrounding a contemporary case study of the North Logan Expropriation Hearings of 1981-82, the purposes could be tested. Two conflicting views emerged, that of the City and that of the Logan Community Committee (LCC); both incorporated the traditional zoning purposes as the basis for arguments either for or against the expropriation of property in the Logan area. The Commission

of Inquiry's recommendations also referred to the purposes, criticizing the City's reliance on outdated purposes, labelling them inappropriate in view of the neighbourhood's changing needs. The purposes, and the subjective standards upholding them, are evident in current practice but fall short of their intentions to meet the needs of the neighbourhood.

The third question broadly asks whether the purposes are valid or inoperable given contemporary conditions. Recommendations from the Commission of Inquiry would suggest that the purposes in themselves have no legitimacy. Light industry and residence can coexist side by side given certain restrictions (ie. concern for pollution and noise levels). A balance of residences and businesses will not necessarily depress surrounding land values any further. Rather, it is possible that with the opportunity to rebuild and the close proximity of residence to work, land values may steadily rise.

In the discussion of order it became clear that the diverse interests of the neighbourhood were not accommodated on this subject. A mixed use area does not simply imply incompatibility of uses or the lack of a sense of neighbourhood. There are different conceptions of order and disorder held by both residents and planning critics that suggest that disorder can also instigate a vital, integrate living and working environment.

Finally, the comprehensive plan did not represent the needs of residents for maintaining an unrepresentative zoning designation for the area. In ignoring the changing circumstances of the area, planners in their support for the plan, did not provide any future security to the residents. This action helped to make zoning a negative, self-fulfilling prophecy.

Zoning did not live up to expectations in the North Logan area. It could have been used as a tool to instigate dynamic social and spatial changes to meet the needs of both residents, businesses and light industrial concerns. The lack of comprehension on the part of the City indicates a reliance on the early context of the fundamental zoning purposes as value-and-prejudice-laden precedents.

The fourth related question opened a review of the relevant planning criticism in order to assess zoning's operability or validity. A selective review of planning criticism discussed the purposes in light of their deficiencies and permitted a series of conclusions about contemporary zoning. The purposes have not been incorporated in a changed and highly complex historical, political and social context. Instead of examining man's living environment by including, for example, psycho-social considerations, the zoning problem and solution is ensconced in physical terms (ie. the over-concern for the single-family home). Instead of emphasising equitable solutions to zoning problems (ie. providing needed public services to a residential population in a mixed used neighbourhood), the machine-like notion of efficiency is ascribed to. Instead of opening the zoning process to public participation, subjective standards are enforced as if they were universal in nature. Criticism, therefore, focussed on how the rationale for each purpose was outdated, in need of revision, as it was applied in the North Logan case.

The following sections intend to draw together a number of conclusions and offer recommendations based on the material covered up to this point. The first section reconsiders the zoning purposes in an attempt to delimit the theoretical and practical standards in which they are applied. This section concludes with a quote from Babcock which points to the lack

of scope in the land use process that does not acknowledge the community interests it affects.

The section of zoning as a community-based process discusses the general need for a different zoning process to make operational a contemporary understanding of zoning outside the confines of subjective standards. A community-based process is advanced to suggest that conflicting individual interests can be incorporated. The final section refines the notion of the community level zoning process by describing the neighbourhood level at which it would best operate.

#### CONTEMPORARY PLANNING CRITICISM AND THE FUNDAMENTAL PURPOSES OF ZONING

Contemporary planning criticism brings into question the values and beliefs supporting the fundamental purposes of zoning. The fundamental purposes cannot stand alone without validity. They consistently must have their application and context under review. From a historical perspective changing applications of the purposes would seem to be a normative act but, in reality, this may not always happen.

Zoning or development controls originally focussed on curbing health problems and equating "proper" living space with moral codes or standards. Health and sanitation by-laws of the late nineteenth and early twentieth centuries supported Utilitarian claims to maintain order, efficiency and convenience for the good of the greatest number. Although by-laws did much to check epidemics, in retrospect their influence was often negative to the point of defeating Utilitarian claims. Questions of public health standards act as an example. Are light, air and space the only contributing factors in the assessment of health and welfare? As subjective indicators of efficiency or convenience, overreliance may be placed on them. Other essentials such as psychological well-being and human rights

are equally important in a technological society but are lost in the contemporary case study when the application of zoning was not updated. A more sensitive multi-disciplinary approach to analyzing health and welfare seems appropriate.

Michael Smith's work calls into question the City's claim that the mixed-land use area was overcrowded and a risk to mental and physical health. The crowding together of residential and industrial land uses can also make for a vital neighbourhood, a close proximity of work to residence and the availability of public services. The City, in their analysis of North Logan, looked repeatedly at an error-ridden survey of building exteriors, mixed land uses and poor public services while ignoring a strong social dynamic in the community. Crowding had been blamed for the area's deterioration while in reality it was the zoning which did not allow for maintenance of the area. The problem cited was one of spatial determinism without regard to the complexity of the problem as it affects social space. A reliance on spatial determinism, as identified by Harvey, cannot be reconciled with social space that is both variable for individuals and groups and variable over time. Efficiency and convenience equals dullness for there is no sense of human scale recognized in segregated uses such as the purified residential area.

Planning criticism would also point to the discriminatory and unequitable nature of zoning in regard to the value of mixed land uses in a traditional, single land use area. The zoning should have been changed so as not to maintain the status quo of segregated land uses when the needs of residents were reasonable, while the rationale for sustaining the zoning was not. The highly valued, stable residential

enclave was left to deteriorate while the under-utilized light industrial functions were promoted. If the issue were actually one of efficiency (as expected by planners) the mixing of land uses in the downtown area would seem both practical and cost-efficient. According to David Harvey, it should be residents who determine the liability associated with negative externalities such as noise, traffic or congestion.

The purposes of zoning as they are being used indicate a confusion of principles with techniques. Segregated uses, or districting, and incompatible uses are fundamental concepts supporting zoning practice but are only techniques with serious reservations attached. They should be criticized, altered or removed in relation to new social needs and technological gains, rather than notions of efficiency. Property values can also be maintained by allowing the market to regulate land uses. In the case study area the property values could be maintained if the property could be sold for the same use indefinitely.

Order and clarity to inner city areas were the ideals of an industrial era threatened by epidemics and social upheaval. However, in planning thought, other concepts of order are acceptable. In a no-growth economy experiencing diverse social and technological changes over the past two decades, more consideration can be given to making diversity and instability work for a neighbourhood. The mixing of clean industry and residential land uses still represents, in normative planning terms, instability. Planners must incorporate such land use mixes by reconceptualizing the notion of efficiency. Sennett calls this a 'peculiar calculus of efficiency.' A peculiar calculus of efficiency would regard degrees of incompatibility as acceptable.



Normative planning thought will not incorporate degrees of incompatibility. The concept of the organic whole assumes the existence of a predetermined social and economic use of land, as if it were the basis for universal laws. Stringent controls over land uses prevented mass disorder and social instability in the late nineteenth century but such fixed definitions of the quality of life were never valid. What was once incompatible is not necessarily so now. Therefore, contemporary criticism would suggest that standards to guide zoning ought to be in a state of flux.

The fundamental zoning purpose of order, like the other purposes, must be reevaluated without concern for subjective conceptual and political judgments. As expected, zoning practice reflects the conceptual and political thought of those who created and administered such by-laws. Much zoning is rooted in Utilitarianism and any notion of equity is not attainable. Rather, the image of efficiency and convenience is bound up in the prejudices of planners and politicians. The aspirations of the community are not respected outside of crisis situations, while the articulated needs of the community demand that the zoning process itself be changed. "Efficiency" has proven to be a beguiling catch-all since we do not even know what it means to say; or even if it means to say we are "maximizing the spatial organization of the city" for there is no way to maximize on the multiplicity of objectives contained in potential city forms.

Comprehensive plans have not represented certainty in the direction of urban growth. When based on increasing the degrees of efficiency, the plan cannot accept the inconsistencies of an area like North Logan. Planning criticism, however, would suggest that notions of efficiency

have limitations, as illustrated by the North Logan case study. This case study provides several examples: the plan does not allow for uncertainties, it ignores social change, it is repeatedly threatened by planning data shortages, and it will not incorporate the diverse values of a pluralistic society.

Without enlarging its focus and process, zoning, as a key to implementing a comprehensive plan, is unrealistic and is neither an economically nor a socially efficient use of land in a inner city transitional area. The process of zoning for a comprehensive plan is partly to blame. Amendments to zoning designations require a complex gathering of information on the part of planners which is not always given priority. The unfortunate aspect of such neglect is exemplified in the case study. The City used past reports as precedents to perpetuate status quo decisions by using some of the purposes as principles rather than as planning tools open to criticism and change. The result was the embarrassing reminder that the City enforces standards that do not recognize the fragmented nature of community experience.

Zoning has been a problem-ridden process for either side in this case study. Its fundamental purposes, as applied by the City and as attacked by the LCC, were regulated by subjective standards that rarely produced equitable results for the transitional area residents. In the case study such zoning has been used for parochial advantage and explicitly against the general welfare of the residents. While the inherent logic of planning is democratic, the case study exhibited an anti-democratic bias in operation. This is indicated in the manner in which zoning practice had been maintained and unchanged even though significant changes had been witnessed in consumer tastes, neighbourhood demographic structure, urban

growth and transportation and building patterns. What is needed to challenge this process is an interdisciplinarian approach, focussing on the degree of public input and on the terms of equitable action, in order to ascertain exactly how zoning ought to be applied in similar situations in the future.

#### ZONING AS A COMMUNITY-BASED PROCESS

It is not zoning techniques that must be changed to meet the needs of mixed land use transitional area residents but rather the zoning process itself. The zoning process must synthesize a mutually beneficial land use concept and technique to incorporate periodical reassessments of zoning purposes. What is also necessary is reassessment of the theoretical and practical value of the fundamental purposes of the zoning process. This requires a reexamination of the standards approach to legitimizing zoning action.

The standards approach underlines the weakness in the zoning process. To maintain social order, control and common objectives in planning, reliance has rested on a consensual view of values and beliefs associated with public health and welfare, property, order and convenience. These values and beliefs have been held in common for the good of all. For example, health standards in the form of "proper" living and working conditions and consequent moral conditioning have commonly been respected as objective and proven. We know from the selective review of contemporary planning criticism that the standards are limited in their scope, however.

The fact that all individuals do not share the same values and beliefs (as far as urban lifestyles go) leads the author to emphasize the fact that the basic social and political conditions in which a community

operates is then not one of harmony. Rather, the condition is one of competition among different interest groups for status and power. It is the conflict model approach to planning that acts as a basis for making recommendations for the future use of the planning tool, a process that is unreliable as it is presently organized. The intention of the following section is to show that it is both necessary and constructive to include local participants in the zoning process. The last section will then present a means to organize local participation in the zoning process.

The last section of Chapter 6 is a review of some of the major defects undermining the fundamental purposes of zoning. More contemporary planning criticism leads us to the conclusion that while these purposes only partially reflect the needs of complex urban communities they may be enforced blindly by overzealous planners. The value base for zoning has changed drastically over the past seventy or more years. In early American and British planning literature, efficiency and progress were espoused by planners, engineers and architects; but, more recently conflict over questions of equity have been given priority. This would suggest that the zoning process should accommodate the emphasis on equity whereas the contemporary case study indicates that the purposes are not markedly different from those examined in Chapter 2. The context for their use has changed but the practical content remains essentially steeped in Utilitarian terms which ignore questions of equity. The planner's preference for relying on the time-and-cost-saving notion of efficiency leaves little room for tackling questions of social justice.

To ensure that some form of equity is incorporated in the zoning process, local participants must be included in land use decision-making.

The form of participation may be manipulated by the public participation process as it exists in 1985. Gerecke's concise review (Gerecke, p.53) of procedural changes and innovations deserves mention before making more specific recommendations. While changes often reflect greater citizen involvement, the total redistribution of zoning power is likely to be the real solution. The following points illustrate the changing relationship among zoning, planning practice and public participation:

- Neighbourhood planning assistance has been made available. Area planning offices in the inner-city have made the planner a go-between for the City and residents; ultimately, the planner attained the role of pacifier for either group and consequently a conflict of interest was the obvious failing.
- Resident Advisory Groups (RAGs) established formal channels for receiving information from, and communicating to, central authorities, but a lack of professional assistance and genuine recognition from City Council has generally reduced the impact of their input.
- Minor and major review processes meant two levels of rezoning reviews occurred, depending on the type of controversy. When planners sense a major controversy then politicians can be informed before the planners and developers are able to reach possible agreement. The major fault of this change is seen in its lack of foresight.
- Finally, time limits in processing development permits have sometimes decreased delays and forced decisions.

None of these innovations, however, make the citizen a central element in the zoning process.

The involvement of the citizen, then, amounts to "ritualistic listening" in many cases which does not facilitate the inclusion of any notion of equity in decision-making. This rather abstract notion of equity, as a form of social justice, is more realistic if a city-wide relationship is ceded to citizen participation. Gerecke adds that

"Our normative concept of the public interest would suggest that the total city should benefit, but that we should also examine who benefits and who suffers by a zoning decision. It would appear that some trade-off must be made between citizen participation and benefits to the total city." (Gerecke, p.58)

It is then justifiable to suggest that

"... the greatest potential for zoning innovations is to develop a dynamic, politicized zoning process with various involvements: neighbourhood, city-wide and technical." (ibid, p.58)

Recommendations will focus on public participation at the neighbourhood level.

The North Logan case study indicates there is a need to renew and to intensify citizen participation in the zoning process. Neighbourhood residents are the ones immediately affected by changes and they will have to live with the consequences. Each neighbourhood group needs the opportunity to monitor area growth and affect the decision-making process. When area-specific citizen groups are given technical aid and accept the responsibility of city-wide arguments, there is the ability to accept anticipated changes as the norm. This understanding would prepare residents for the administering of another kind of zoning for transitional areas. Citizen groups would have the option to zone different areas, not simply for their use or physical form but also for their rates of change.

## CITIZEN PARTICIPATION - A GRASS ROOTS APPROACH TO ZONING CHANGES

In this section, recommendations for the future are in response to the circumstances of the North Logan incident. The recommendations are offered with the aim of avoiding standoffs similar to those between the City and LCC.

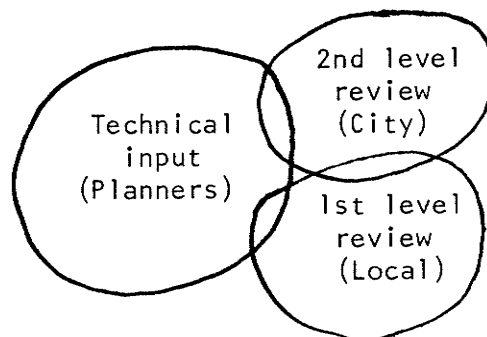
The zoning process can respond to the needs of inner city area residents. A new zoning provision would help to avoid the time-consuming conflicts like the North Logan situation. The current zoning process necessitates organized challenges to zoning in order to allow land use decisions to come to a reasonable result. A new zoning process, however, could lessen the pressures of conflict before change is administered. This would require a new participatory and collaborative relationship among participating citizens, planners and politicians.

Residents in inner city transitional areas have a greater need for special consideration in the distribution of zoning benefits. These residents have less money and, consequently, fewer reasonable options in responding to externally-imposed changes than other city dwellers. This fact alone imposes a particular obligation on decision-makers to safeguard their welfare. To meet the obligation, politicians and planners would be required to establish a new trust in a neighbourhood resident group formed especially to oversee the changes wrought in the zoning tool.

The case study provides a working example of the potential collaboration. The Logan Community Committee (LCC) insisted that it be included as an active participant in the zoning process. Their alternative plans for the area posed a more realistic ideal (in the concept of diversity to begin with) to pursue than land use

uniformity and the eventual demolition of the housing component.

The LCC proposed a "bottom up" form of grass roots involvement in the zoning process. It was the LCC that recommended the redevelopment of the area into a "mixed" but balanced neighbourhood which could accommodate a residential and industrial/commercial component by concentrating residences in one section of the area so as to preserve its residential character and to enhance its environment. The bottom up approach works in conjunction with the established planning processes. By using the technical expertise of planners and the guidance of politicians in the the political process, the LCC could respond to land use questions before a crisis forces a confrontation. The relationship of the three groups can be diagrammatically represented as follows (Gerecke, p.65):



In the case of the North Logan residents this interdependency would facilitate changes in the City's zoning by-laws so as to maintain the integrity of the residential neighbourhood. The same organizational structure could establish regular meetings to encourage property improvement and to ensure the compatibility of the industrial/commercial sector with the residential sector. In collaboration with politicians and planners, the citizen group could plan for the upgrading of municipal services to the level provided to other areas of the city and to the level required by both housing and industry.



The organization of public participation cannot operate without government support. Remuneration in the form of dollars or professional services must be transferred to community groups to encourage success. Funding could be provided from existing City and Provincial program funds. In the North Logan case, additional resources from the Tri-Partite Agreement, that might otherwise help people to upgrade their houses, could be used to expand community services (with the aid of consultants) in the zoning process.

In light of the prolonged state of uncertainty among the North Logan residents and businessmen at the time of the case study, the author urges the Provincial and Municipal governments to acknowledge the interests of inner city community groups in the zoning process at the earliest possible opportunity. This action would eliminate the chances of a North Logan case happening again. The participation of citizens would also force planners to question their outdated beliefs supporting the zoning purposes. Amendments to the zoning process might also curb the desire of the City to proceed without due process of the law. The North Logan case study provides a case in point. Instead of the LCC or residents being able to respond to zoning information made available to them, it was one month after the expropriation process had begun that they learned the land they occupied was slated for clearance in order to create an industrial park. A judgment as to whether an action is fair and reasonably necessary depends, at least in part, on the availability and comparative merits of viable alternatives by which the area's objective needs can be achieved or met. It is organized, informed and responsible public participation that would assess the needs of a community so as to protect its integrity and would maintain the health and safety of its residents.

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