

ITEM 8
MANAGER'S REPORT NO. 13
COUNCIL MEETING 1982 03 01

RE: LETTER FROM DEWDNEY ALOUETTE REGIONAL DISTRICT
32386 FLETCHER AVENUE, MISSION, B.C., V2V 5T1
BILL 9 - LAND USE ACT

MUNICIPAL MANAGER'S RECOMMENDATION:

1. THAT the recommendations of the Director Planning & Building Inspection be adopted.

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TO: MUNICIPAL MANAGER PLANNING DEPARTMENT
FROM: DIRECTOR PLANNING & BUILDING INSPECTION 1982 FEBRUARY 23
SUBJECT: BILL 9 - LAND USE ACT

RECOMMENDATIONS:

1. THAT the Municipal Council request the Minister to amend Bill 9, the Land Use Act, to incorporate the major provisions referred to as Items 1 to 4 inclusive in the PROPOSALS Section D of this report.
2. THAT, in addition to making the amendments referred to in Recommendation 1, the Municipal Council request the Minister to delay passage of Bill 9 until an opportunity has been provided to provincial and municipal staff to jointly discuss those specific matters referred to as Item 5 a. to i. inclusive in the PROPOSALS Section D of this report; and that Bill 9 be further amended to reflect the results of such discussions.
3. THAT the Municipal Council express its willingness to meet with the Minister of Municipal Affairs in order to present its concerns directly to the Minister.
4. THAT a copy of this report be forwarded to The Honourable William Bennett, Premier of British Columbia, the Union of British Columbia Municipalities, the Planning Institute of British Columbia, the Dewdney-Alouette Regional District and the Technical Planning Committee of the Greater Vancouver Regional District.

A. BACKGROUND

In 1980, the Ministry of Municipal Affairs produced a document entitled, "The Planning Act - A Discussion Paper", and circulated it widely for discussion and comment.

This document was reviewed by the Planning Department and comments were provided to Council in a report dated 1980 October 01. This report which took the form of a table that identified issues, was received by the Municipal Council at the meeting of 1980 October 06, at which time staff were instructed to forward Municipal comments to the UBCM and the Ministry of Municipal Affairs.

The general conclusion was that with the exception of the issues of local autonomy, mandatory official plan preparation and the Provincial Appeal Board, there appeared to be no reason why the proposed Planning Act could not be generally supported.

However, during 1981 a drastically revised document entitled "Bill 9 - Land Use Act" was tabled in the legislature by the Minister of Municipal Affairs. A review of this document would suggest that there was no support from provincial ministries for the proposed Planning Act, that many of the concerns expressed by local governments have not been addressed, and that on balance the Land Use Act has not only deleted all the advantages of the proposed Planning Act and maintained or worsened all the disadvantages, but also created new problems that were not even contained in the proposed Planning Act. The result is that one would now have to say that there appears to be no reason why the Land Use Act should be supported.

B. RESEARCH AND CONCLUSIONS

A great deal of discussion has been initiated by the introduction of the Land Use Act; and in the Lower Mainland area briefs have been prepared by the following organizations:

1. The Union of British Columbia Municipalities.
2. The Planning Institute of British Columbia.
3. The Dewdney-Alouette Regional District
4. The G.V.R.D. Technical Planning Committee.

There have also been workshops held by the Lower Mainland Municipal Officers' Association and the Planning Institute of British Columbia.

To avoid repeating all of the important and relevant points raised in the above briefs, a file has been prepared for individual members of Council and forwarded under separate cover.

In addition to reviewing the above briefs and attending the workshops, staff of the Planning Department have reviewed the Act itself and prepared the attached Appendix I, which compares the major provisions of the Land Use Act with those initially proposed in the Planning Act discussion paper and comments upon the current issues which have resulted from the new Act.

It is possible as a result of all this activity to conclude that a general consensus has developed among those concerned with the consequences of the passage of Bill 9 which can be identified as follows:

- a. Disappointment that the thrust of the Planning Act discussion paper towards the coordination of provincial planning and land use programs, in order to provide an integrated framework for determining the optimum use of land and resources, has not been carried through into the Land Use Act.
- b. Agreement that the original objectives of the Planning Act - namely, to achieve an efficient, fair and easily understood land use planning and control system by developing
 - . cohesion, accessibility and accountability at all levels of government.
 - . coordination of Provincial planning, and
 - . minimization of delay and uncertaintyare still desirable objectives which will not however be achieved through the Land Use Act. Rather the Land Use Act by reducing local government accountability and accessibility, deleting provisions aimed at coordinating provincial planning and increasing bureaucratic procedures and uncertainty, will work against the original objectives.
- c. Incredulity that there is no provision in the Act for organized planning at the metropolitan level in the urban regions of Vancouver and Victoria, and no vehicle for either local government elected officials or staff to be involved in regional planning processes or decisions.
- d. Deep concern with the centralization of planning at the provincial level; the diminution of local autonomy; the extensive powers of the Minister to impose arbitrary and uncoordinated decisions on local government; the counter-productive and ad hoc nature of many provisions of the Act (particularly those dealing with variances and temporary and special permits), and the reduction of public access to the planning process.

C. OPTIONS AVAILABLE

Given the level of concern being expressed and the fact that the Bill is tabled in the Legislature, what options are available to Council?

1. Accept the Bill as a fait accompli and notwithstanding all the misgivings, receive it without comment and make it work as well as possible in its finally adopted form.
2. Assume that the only changes possible at this stage are those of detail rather than principle, and comment only on minor matters of detail.
3. Recognize that as the level of government most affected by the proposed Act, there is a responsibility to make municipal views known on major matters of principle and comment only on major aspects of the Act.
4. Take the view that the Act is much worse than current legislation and rather than attempt to improve it, recommend its defeat.

It is the view of the Planning Department that the most responsible position to take is a combination of options 2 and 3, which would give priority to matters of principle but include comment on detailed matters that are considered important to Burnaby.

D. PROPOSALS

123

Based upon the research and review into the Land Use Act, that has been carried out by ourselves as well as others, and following a combination of options 2 and 3, the following amendment proposals are put forward for the consideration of Council:

1. That the Act make provision for a coordinated provincial planning process in which plans and policies of provincial ministries are established and made known to municipalities in order to provide a framework for local government planning; and that provincial ministries be required to respect the resultant approved policies, plans and bylaws of municipalities.
2. That the Act provide for municipalities, including the City of Vancouver, that constitute an urban region (particularly in the Greater Vancouver and Greater Victoria areas) to participate fully with the province both at a political and staff level, in meeting the comprehensive and co-ordinated planning needs of their metropolitan area.
3. That in order to maintain local accountability in land use matters, the Act be reexamined in relation to the respective powers of the Minister of Municipal Affairs and municipal councils, and be amended to reverse the move towards provincial centralization at the expense of local autonomy and local decision making.
4. That the Act make provision for increased public access to the planning process, by open public hearings on provincial and regional, as well as local, planning matters thereby precluding unsupported decision making at any level of government.
5. That the Minister authorize his staff to discuss the following specific items with municipal staff, leading to reports to the Minister and the Council on further necessary amendments to the Land Use Act.
 - a. The appropriateness of including a transit service levy in the Land Use Act and the potentially negative effect of such a levy on the municipality's objectives for Metrotown.
 - b. The possible detrimental effects of unsuitable time limits defined in the Act, on municipal development processes and the objective of orderly development with a minimum of delay.
 - c. Clarification of the intent of the Minister in giving himself the power to set regulations and servicing standards governing municipal development.
 - d. The undesirable effect of the mandatory intensive agriculture legislation on urban municipalities.
 - e. Clarification of criteria governing the use of a residence for handicapped persons, in order to avoid a potential loophole in the payment of development cost charges.
 - f. Reintroduction of proposals contained in the Planning Act, permitting a municipality to be compensated for the closure of public rights-of-way when initiated through plans cancellation procedures.

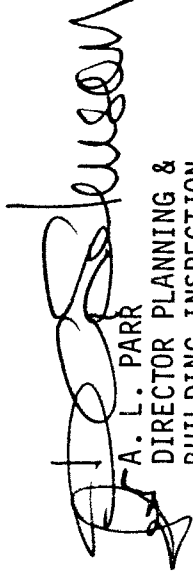
9. Confirmation that plans formally adopted by resolution of Council as part of the official plan process are still available to municipalities as an expression of Council policy and as a guide to developers and the public.
- h. A complete re-examination of the impact of temporary permits and variance permits on the municipal planning process, and the preservation of neighbourhood stability.
- i. Confirmation that provincial ministries and crown corporations will respect the official community plans of municipalities.

CONCLUSION

The Land Use Act is an extremely important piece of legislation, impacting as it does on so many municipal activities in the area of growth and development. It is clear that the Act should not be passed in its present form; that major changes are required; and that a great deal more discussion and work is required before it can meet the objectives originally prescribed by the Minister when he released the "Planning Act - A Discussion Paper".

This is a complex subject, and the proposed legislation has many implications and ramifications. For this reason, should Council consider it desirable, Planning staff would be pleased to attend a special meeting to discuss the Act in some depth.

Respectfully submitted,



A. L. PARR
DIRECTOR PLANNING &
BUILDING INSPECTION

ALP:lf

cc: Municipal Solicitor

RELATIONSHIP BETWEEN THE PLANNING ACT - A DISCUSSION PAPER AND BILL 9 - LAND USE ACT

APPENDIX I

SUBJECT	PURPOSE	PROVINCIAL LAND USE PLANNING AUTHORITIES	MINISTERIAL RESPONSIBILITIES
<p>Comments and issues contained in 1980 October 01 report to Council on the Planning Act Discussion Paper.</p>	<p>The Planning Act primarily addressed the use of land by incorporating most of Part 21 of the Municipal Act; with the result that local government planning was rather narrowly defined with no reference to social, economic and environmental factors.</p>	<p>The Planning Act proposed increasing involvement of the Provincial Government in local government; but the resultant loss of local autonomy was balanced by provisions for increased coordination at the provincial level, a clearer understanding of provincial policies, and a requirement that provincial ministries respect municipal plans.</p>	<p>Under the Planning Act, the following questions were raised:</p> <ul style="list-style-type: none"> • The extent to which the Minister would involve himself in local government decision making. • Would the GVRD be established as an urban region and be given responsibility for preparing the provincial regional plan. • What would the Minister consider as provincial interest, or the public interest of the province when considering municipal official plans. • Will the Minister's regulations for subdivision and land use bylaws apply within municipal boundaries. • Can a municipality continue to use unofficial community plans as guide plans or does every document referring to growth and development have to be "official". • Clarification was required as to the extent the Minister intended to use his powers under the Planning Act to involve the province on a day-to-day basis in municipal planning or whether he would literally concern himself only with the broad provincial interest.
<p>Effect of B11 9 - The Land Use Act - on issues raised in the 1980 October 01 report.</p>	<p>The land use nature of the legislation has been recognized by renaming the Act - "Land Use Act", with the result that the purpose of planning is even more narrowly defined and restricted than proposed in the original discussion paper.</p>	<p>The Land Use Act by deleting the provisions for coordinated provincial planning and removing the requirement that provincial ministries not only declare their own plans but also respect municipal plans has removed the balance inherent in the Planning Act. The result is increased ad hoc involvement of the province in local planning matters, greater loss of local autonomy, and no accountability by provincial ministries for their actions in relation to land use matters.</p>	<p>The Land Use Act has increased the number of opportunities available to the Minister to become involved in municipal planning on a day-to-day basis; eliminated the role of the GVRD in regional planning; made no provision for its replacement to meet the special planning needs of urban regions; removed the requirement for the preparation of provincial regional plans, and made it clear that the Minister can impose subdivision and land use bylaws upon municipalities.</p> <p>Clarification is therefore still required on the extent to which the Minister intends the role of the GVRD to be replaced by a centralized provincial bureaucracy, and the extent to which the Minister or his staff will be come involved in municipal planning on a day-to-day basis. The "provincial interest" needs to be defined in the Act.</p>

ITEM 8
MANAGER'S REPORT NO. 13
COUNCIL MEETING 1982 03 01

<p>The Land Use Act has not changed the mandatory requirement to prepare an official plan and requires that it cannot be adopted by the municipality until it has been approved by the Minister. The Land Use Act also spells out in some detail what shall be contained in the official plan, and the relationship of the plan to municipal land use bylaws.</p> <p>The issue of flexibility versus rigidity of community plans and its impact on the ability of local government to cope speedily with growth and development matters remains unchanged. Should the municipality be required to prepare official plans with all that is entailed or should it remain a permissive piece of legislation as at present? It should be noted that even though the province has to approve the official plan, there is now no requirement that provincial ministries respect the official plan</p>	<p>The key issue raised under the Planning Act discussion paper was the requirement that it be mandatory for a municipality to prepare and adopt official plans, and that such plans were subject to provincial approval. This raised the long-standing question of the flexibility of a guide plan versus the rigidity of an official plan, the extent of provincial involvement in community plans, and the status of unofficial community plans and policy documents.</p>	<p>LOCAL GOVERNMENT AUTHORITIES (OFFICIAL PLANS)</p>
<p>The Land Use Act has deleted the provision for an appeal board.</p>	<p>The Planning Act proposed the creation of an appeal board with wide powers, raising the question of the extent to which the value of an appeal board in correcting land use decisions would be balanced against the potential for additional cost and delay in land use activity; and the likelihood of the board being an outlet for irresponsible appeals.</p>	<p>LAND USE APPEAL BOARD</p>
<p>Under the Land Use Act, the mandatory disclosure of ministerial land use policies and objectives is no longer required and in its place the Land Use Act proposes permissive legislation allowing a regional co-ordinating committee to prepare regional planning statements. This is the only part of the Land Use Act which deals with a provincial or regional planning system, and there is no mandatory provision that there be consultation with local governments; that local governments be represented on the regional co-ordinating committee; that there be public hearings; or that such statements be binding on provincial ministries; and yet the Minister may require that municipalities be bound by such statements and require them to alter their plans or bylaws accordingly.</p>	<p>Under the Planning Act, statements were to be prepared containing objectives and policies for the land use responsibilities of ministries and crown corporations as the basis for provincial regional plans. The intent was to ensure thorough review by the Environment and Land Use Committee that provincial land use objectives and policies are consistent.</p>	<p>PROVINCIAL POLICY STATEMENTS</p>

ITEM 8
MANAGER'S REPORT NO. 13
COUNCIL MEETING 1982 03 01

<p>PROVINCIAL PLANS</p> <p>The Planning Act described who would prepare provincial regional plans and required that they be prepared in consultation with local government, who would use the plan as a framework for their own programs. It was assumed that in the Vancouver area this intent would be covered by the GVRD being designated as an urban region.</p>	<p>URBAN REGIONAL PLANS</p> <p>The Planning Act provided for the designation of an urban region, the appointment of committees and authorization to prepare an urban regional plan. Local government was to have elected and staff representation on committees, and the urban regional plan was to provide an integrated framework for official plans and land use bylaws of local government. This proposal was assumed to be a replacement for the planning function of regional districts, with new names applied to the regional plan and the technical planning committee. It proposed new relationships between the provincial government, the G.V.R.D. and the local municipalities. It raised the question of whether this was better or worse than existing regional planning legislation.</p>	<p>URBAN REGIONAL PLANS</p> <p>The Land Use Act completely removes any reference to urban regional plans or the need for any vehicle to enable local municipalities to get together for the purpose of preparing an integrated framework to guide their own planning endeavours. The Land Use Act appears to establish two levels of planning: a provincial level, where without consultation policies are established and approvals granted or withheld; and a municipal level, at which centralized provincial policy making is to be implemented by the mandatory creation of provincially-approved official plans and the passage of bylaws which must comply with such plans.</p>	<p>OFFICER</p> <p>Under the proposed Planning Act, the approving officer was to be appointed by the Lieutenant Governor in Council on the recommendation of the municipal council and, as well as being administratively responsible for approval procedures in subdivision, zoning and development permits, he was also to prepare procedure manuals related to the use of the land.</p>	<p>SUBDIVISION APPROVAL</p> <p>The Planning Act made no change in the legislation governing subdivision approvals except for providing for the conditional approval of a subdivision plan.</p>
<p>APPROVAL</p> <p>Essentially no change between the proposed Planning Act and the Land Use Act.</p>	<p>APPROVAL</p> <p>The Land Use Act has not changed the proposed duties of the approving officer but it has returned the duty of appointing the approving officer to the municipal council where it belongs under the current legislation.</p>			

ITEM 8
 13
 COUNCIL MEETING 1982 03 01
 MANAGER'S REPORT NO.

<p>CANCELLATION OF PLANS</p> <p>The Planning Act provided municipalities with additional powers to cancel plans and to require compensation for cancelled highways, a provision pursued by Burnaby for several years.</p> <p>The Land Use Act has deleted the proposed provisions and simply restates the existing legislation contained in the Plans Cancellation Act. There is therefore no provision for municipalities to be compensated for cancelled rights-of-way.</p>		
<p>COVENANTS</p> <p>The proposed Planning Act included legislation from the Lands Title Act, presumably as a part of consolidating relevant land use legislation into one Act.</p> <p>The Land Use Act makes no reference to covenants, thus leaving this legislation in the Land Titles Act.</p>		
<p>BYLAW ENACTMENT</p> <p>The Planning Act required that no land use bylaw be contrary to an official plan and that a single bylaw be adopted governing zoning, subdivision and development permits. The bylaw was to be adopted within 6 months of a public hearing and all land use bylaws were required to be deposited with the Inspector of Municipalities.</p> <p>There is virtually no change in the Land Use Act, although the municipality is now not required to deposit the bylaw with the Inspector, but only forward a copy of the bylaw or a part of it to the Minister upon his request.</p> <p>The issues identified originally remain unresolved; namely, that 6 months is too short a period (12 months would be better) leading to unnecessary and additional public hearings; and that a single bylaw may prove cumbersome and unwieldy.</p>		
<p>ZONING AND SUBDIVISION</p> <p>With a few exceptions, the Planning Act carried forward the provisions of the Municipal Act. Additions include:</p> <ul style="list-style-type: none"> • allowance for vertical zoning • density variations in designated areas • regulation of building setbacks • landscape screening • parkland criteria to be contained in official plan. <p>No substantive change between the proposed Planning Act and Bill 9 - Land Use Act.</p>		

ITEM 8
 MANAGER'S REPORT NO. 13
 COUNCIL MEETING 1982 03 01

<p>SPECIAL PERMITS</p>	<p>The Planning Act repeated the provisions of the Municipal Act as they applied to development permits, and added a provision for intensive agriculture permits. There was no particular policy shift from the current Municipal Act in respect to the use of these permits.</p>	<p>The Land Use Act on the other hand has provided for a range of temporary and variance permits which are almost impossible to enforce and which permit decisions to be made that can create serious land-use conflicts and incompatibilities. More seriously, the introduction of these permits undermines the whole intent of community planning to provide certainty, protect property values and establish neighbourhood stability. To permit on an ad hoc basis industrial uses to gain a foothold in residential areas, to allow residential uses to use industrially-zoned land, to permit increases in height and density in residential areas, and to insist that if land is agriculturally zoned it allow the keeping of animals, is contrary to the very essence of establishing long-range community plans to control and guiding the growth and quality of neighbourhoods.</p> <p>The Act requires the preparation of mandatory official plans and then legislates the means of circumventing them.</p>
<p>NON-CONFORMING PROVISIONS AND BOARD OF VARIANCE</p>	<p>The Land Use Act is similar to proposals contained in the Planning Act, and the Planning Act provisions were similar to the provisions of the Municipal Act.</p>	<p>The Land Use Act is similar to proposals contained in the Planning Act, although it is less stringent about approving additions to a building or structure.</p>
<p>DEVELOPMENT APPROVAL PROCESS</p>	<p>The Planning Act provided for the development approval process to be spelled out in the land use bylaw, including steps, times, fees, officials involved, etc. The approval of the Inspector of Municipalities was required and no land use bylaw could take effect until that approval had been given.</p>	<p>The Land Use Act still requires that a procedure manual form a part of the land use bylaw but approval of the Inspector of Municipalities is no longer required. However, where a municipality fails to prepare such a manual, the Inspector may order a manual prepared; and, if this is not complied with, the Inspector may prepare the manual and impose it on the municipality.</p>

ITEM 8
 MANAGER'S REPORT NO. 13
 COUNCIL MEETING 1982 03 01

621

<p>FEEES</p> <p>The Planning Act made provision to set fees for processing development applications in the land use bylaw.</p> <p>The power to set fees is similarly contained in the Land Use Act. However, there is one major addition to the Land Use Act which could have serious consequences for Burnaby and that is the power given to the Minister to designate an area of a municipality as a "transit facility benefit area" and impose a levy on all new development within the area. The amount of the levy is at the Minister's discretion but it has to be collected by the Municipality and paid to the Urban Transit Authority.</p> <p>A major factor in the development of the ALRT system is the servicing of regional town centres, considered essential to the management of urban growth in the region. To impose an additional financial burden on developers through a "transit service levy" could be seriously counter-productive to Burnaby objectives by discouraging rather than encouraging development focussed on the Metrotown ALRT stations.</p>	<p>ADVISORY PLANNING COMMISSION</p> <p>Both the Planning Act discussion paper and Bill 9, Land Use Act, permit municipalities to establish Advisory Planning Commissions to advise Council on official plan matters.</p>	<p>TRANSITION AND REPEAL</p> <p>The Planning Act discussion paper included provisions for the transition from the existing plans and bylaws of local governments to the new enactments of Councils required under the Act coming into effect.</p> <p>The transitional provisions have been removed from the Land Use Act. At some point, it will be necessary to have details of transitional legislation in order to analyze the impact of the Act on existing policies, plans and bylaws of the municipality.</p>
<p>At the time the Planning Act discussion paper was released, Burnaby's approach to its Planning Commission was compatible with the proposed Act; namely, that advice was received on policy matters only. Since that time, the Burnaby Advisory Planning Commission has been given the authority to report on individual rezoning applications, which will now be incompatible with the intent of the Land Use Act.</p>		

ITEM 8
 MANAGER'S REPORT NO. 13
 COUNCIL MEETING 1982 03 01

