



Conference Summary

LAND USE Perspectives 2001

Private Property Rights and the Public Trust

Presented by

The Real Estate Institute of British Columbia

and the City Program at Simon Fraser University

at the Morris J. Wosk Centre for Dialogue in Vancouver

November 22-23, 2001



SIMON FRASER
UNIVERSITY
AT HARBOUR CENTRE

Introduction and Contents

The Real Estate Institute of British Columbia collaborated with the Simon Fraser University City Program on the design and development of the conference, *Land Use Perspectives 2001: Private Property Rights and the Public Trust*, which was held at the Morris J. Wosk Centre for Dialogue in Vancouver, November 22-23, 2001.

This collaborative venture was designed to encourage dialogue and learning on a series of current topics related to private property rights and the public trust.

Participants were invited to select workshops of interest to them and essentially to create their own continuing education program over the two days.

This biennial land use conference included eleven professional development workshops on a wide variety of topics including:

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The discussions were lively and the 130 participants from all parts of British Columbia, included real estate professionals, realtors, appraisers, property managers, local government officials, developers, planners and landscape architects.

This conference and its workshops were designed to offer continuing education opportunities for the attendees and formal continuing education units were granted by the Appraisal Institute of Canada, the Institute of Real Estate Management and the Architectural Institute of British Columbia.

This educational program was generously supported by the Real Estate Foundation of British Columbia and their leadership has made it possible to provide this summary of the workshops.

Here is a summary of the workshops—for more information please visit the websites of the Land Centre (www.landcentre.ca), REIBC (www.reibc.org) and the City Program (www.sfu.ca/city).

Judy Oberlander, Director, The City Program, Simon Fraser University

Advanced Strata Property Law

Mike Mangan

Lawyer Mike Mangan highlighted changes in strata legislation that took place when the new *Strata Property Act* replaced the *Condominium Act* in July 2000. The subject is complex and requires a solid understanding of the relevant legislation. Mr. Mangan used excerpts from his book, *The Condominium Manual: A Comprehensive Guide to Strata Property Law* to discuss several key topics.

Rental Restrictions

Under the *Condominium Act*, a strata corporation could limit the number of strata lots that could be rented. Under the new *Strata Property Act*, a strata corporation can pass a bylaw either to prohibit or to limit rental of strata lots. The application of rental restriction bylaws can be complex and depends on a number of factors:

- ▶ The existence or non-existence of a Rental Disclosure Statement.
- ▶ Whether the statement was filed before or after the *Strata Property Act* came into force.
- ▶ Whether the purchaser is a first purchaser or a subsequent purchaser.

Provisions also exist that delay the application of a rental restriction bylaw for a period of one year, as well as exemptions to the bylaws. They are as follows:

- ▶ The restriction cannot prevent an owner from renting to members of the owner's family.
- ▶ If the bylaw causes hardship to the owner, the owner may be exempt.

Age Restriction

An age restriction bylaw is not enforceable if it contravenes the Human Rights Code. Age restrictions apply to the purchaser of a strata but not to a tenant, unless the restriction is to those 55 years and older. Nor does the bylaw apply to occupants who resided in the strata when the bylaw was passed. In this case, the Act grandfathers the new bylaw.

Repair and Maintenance

Mr. Mangan focused on the Standard Bylaws under the *Strata Property Act* and alternate repair bylaws used by some strata corporations. He examined issues of

designation of common property and common assets, responsibilities of owners and of the strata corporation as they apply to both limited common property or strata lots, and disputes that typically arise. *The Strata Property Act* and the regulations determine who is responsible for the cost of repairs, and strata corporations cannot create bylaws that conflict with provisions in the act or regulations regarding allocation of expenses.

All owners of strata lots must contribute an amount, which varies with their unit entitlement, to an operating fund, contingency reserve fund, or to a special levy. The strata corporation decides from which fund money will be drawn for specific repair expenses. A corporation can build exceptions into its bylaws with respect to allocation of expenses among the strata owners for all three sources of funds.

Phases

Phasing of a development is defined as the addition of buildings over time. Each phase is registered with the land titles office as it is completed. *The Strata Property Act* applies to phased strata plans and makes special provisions for these plans. A developer must obtain approval of a Phased Strata Plan Declaration (Form P) before filing a strata plan for the first phase with the Land Titles Office. Form P replaces Form E, which was required under the *Condominium Act*. There are certain transition provisions for developments begun before, and continuing after, July 1, 2000, when the new Act came into effect.

PRESENTER

Mike Mangan, LLB, has written and presented several seminars for Realtors related to the law and avoiding claims. His extensive legal experience includes real estate litigation and professional liability law. In addition to his private practice, Mike is an Adjunct Professor in the Faculty of Law at The University of British Columbia and teaches real estate law in the Real Estate Division of the Faculty of Commerce and Business Administration. Mike is the principal author of *What If...?* a text for real estate salespeople, and *The Annotated British Columbia Society Act*. He is the editor of the legal text, *Directors' Liability in Canada*.

Compensation for Downzoning

Dan Bennett & Brian Taylor

Lawyers Dan Bennett and Brian Taylor of Bull Houser & Tupper discussed the effects of local government rezoning powers on the use and the value of privately owned property. Mr. Bennett raised the issue of possible compensation for landowners from the statutory perspective, citing relevant court cases and their findings. Mr. Taylor addressed the same topic but from a business perspective. Both stressed that land use issues are complex and that wise developers can take the following steps to protect themselves:

- ▶ Keep up with possible changes in zoning indicated by Official Community Plans.
- ▶ Obtain building permits in a timely manner.
- ▶ Complete developments within a reasonable amount of time.

Downzoning may have several results: *de facto* expropriation, sterilization for public use, or creation of holding zones that effectively freeze development. Thus, the central questions around compensation for downzoning are as follows:

- ▶ What constitutes a public use?
- ▶ What constitutes a loss of all private uses?
- ▶ What are reasonable private uses?
- ▶ How does one determine value of compensation and of the possibility of future upzoning?

Definitions of public use and determination of local government intent were the two central issues in the court cases described by Mr. Bennett. Under the *Local Government Act*, regulation does not give rise to compensation. If, however, the regulation restricts the land to a public use, there may be compensation to the landowner. The *Act* balances the power of local governments to create land use bylaws in keeping with community planning and the restriction of zoning powers used either to expropriate land for public use, or to devalue the land so it can be acquired for a lower price. In order to freeze land use, however, local government can refuse an application to upzone a property or to buy it for a fair price.

If land is expropriated, the landowner can apply for compensation to the Expropriation Compensation Board. If a landowner believes that downzoning has

effectively sterilized his property, the landowner can go to court to have the bylaw struck down, or apply to the Board for compensation. As an example, Mr. Bennett presented the case of *MacMillan Bloedel v. Galiano Islands Trust Local Committee* bylaw disallowing logging on MacMillan Bloedel lands. The court upheld the bylaw on the grounds that it was consistent with the *Islands Trust Act* mandate to protect the environment within the Trust area.

To date there have been no cases of compensation being awarded under Section 914 of the *Local Government Act*. However, in some cases bylaws have been set aside where the intent of local government was to create a development holding zone. Mr. Bennett suggested that it will be interesting to see the outcome of a compensation case taken directly to the Board and not through the courts.

Mr. Taylor presented the facts and outcomes of a court case wherein the developer sued a municipality for compensation for downzoning, not under Section 914 of the *Act*, but for damages arising from breach of contract. The case produced several important outcomes:

- ▶ The right of local governments to enter into contracts with developers would conflict with their legislative responsibility to represent the public interest.
- ▶ The protection of councilors from legal action or from the threat of having to pay damages if a development or rezoning application is turned down promotes good planning decisions.
- ▶ Local governments cannot enter into agreements that bind future governments.
- ▶ Seeking damages for breach of contract is simply another way to seek compensation for downzoning, which is not allowed under the *Local Government Act*.
- ▶ Development rights are subject to change because community values will change over time, and will be reflected by changes in local legislation.

PRESENTERS

Dan Bennett, LLB, is a Partner with Bull Houser & Tupper, and has extensive litigation experience acting for various local governments, developers, and land-

owners. His expertise includes prosecuting and defending bylaw challenges, appeals from the decisions of approving officers, and various applications before the British Columbia Supreme Court and the Court of Appeal. Dan regularly appears before the Expropriation Compensation Board. He is an Adjunct Professor at The University of British Columbia law school.

Brian Taylor, LLB, is a Partner with Bull Housser & Tupper in the Local Government and Real Estate

Practice Groups of the firm. The majority of Brian's practice is devoted to providing counsel and solicitor's services to a broad range of local government clients and other self-regulating bodies. These services include advising local governments, drafting by-laws and regulations, and preparing documentation associated with the development of land such as public-private partnering agreements, development agreements, restrictive covenants, statutory rights-of-way, easements and subdivision servicing agreements.

Corridors of Green and Gold

Moura Quayle & Stanley Hamilton

Dean Moura Quayle and Dr. Stanley Hamilton discussed the economic and other values of greenways to achieve the following learning outcomes:

- ▶ To provide a vocabulary for discussing the tangible and intangible values of open spaces and greenways.
- ▶ To provide criteria for estimating qualitative and quantitative values of greenways.
- ▶ To give participants a tool kit to allow them to make a case for the provision of greenways in development.

Moura Quayle addressed the big picture regarding greenways. She also presented the results of the qualitative portion of their study of the impacts of proximity to riparian greenways on property values. Stanley Hamilton shared the empirical results of their study of four different communities. The hypothesis of the study was that proximity to greenways raises property values.

Dean Quayle explained the importance of open space to people and outlined the parameters of the study sites and the role of the DFO in constructing the study. Dr. Hamilton distributed a portion of the survey used in the study to the audience for completion and discussion of results.

The major conclusions of the qualitative portion of the study were as follows:

- ▶ Affordability was the most commonly cited reason for selection of a residential area.
- ▶ Proximity to greenways ranked higher in importance than proximity to shopping, schools and parks in the choice of a residential area.
- ▶ 75% of respondents agreed that proximity to greenways affects property values and of those, 98.6% were of the opinion that this was a positive effect.
- ▶ 33% of respondents felt that turnover in their area was reduced and 66% felt that properties would sell more quickly because of proximity to a greenway.
- ▶ Higher accessibility led to better respect for, and higher valuation of, the greenway.
- ▶ 66% felt a collective ownership of the greenway, but not a sense of responsibility for its maintenance and management.

An interesting question for further study arose from the results of the survey: How could the information be used as an aid to future planning of greenways and the stewardship and responsibility issues associated with them?

Discussing the results of the audience survey, Dr. Hamilton highlighted the larger issue of estimating the net effect of proximity to other types of amenities, such as airports or high voltage transmission lines. The questions are complex. Depending on their perspective, people will always see positive and negative effects.

Dr. Hamilton also described the research methodology, the regression model of empirical analysis, and the role of expectation of impacts in the construction of the research model. He used valuation of gold as an example of a regression model to introduce the corresponding model of property valuation. He discussed the variables contributing to property value, such as location and square footage or composition of the dwelling, and the importance of the variables in the regression equation.

Both commented on the possibilities for future research arising from their study. Evidence suggests that proximity to greenways does impact property values. The evidence supports the qualitative perceptions revealed by the survey portion of the study. The researchers highlighted public policy and public realm planning issues, as well as the communication gap between private and public sector interests. They also identified opportunities for academic researchers, landowners, policy makers, and developers to work together to overcome the complex challenges in urban planning and preservation of natural landscapes.

PRESENTERS

Stanley W. Hamilton, PhD, is the Philip H. White Professor of Urban Land Economics and Senior Associate Dean of the Faculty of Commerce and Business Administration at The University of British Columbia. He is a honorary member of the Real Estate Institute of BC. Stan has extensive teaching and research experience in the area of real estate analysis and valuation, and was Director for the BC Assessment

Authority. Currently, he is Director of the Bureau of Asset Management at UBC and Chair of the Board of Trustees of the UBC Faculty Pension Plan.

Moura Quayle, MLA, FCSLA, ASLA, P.Ag, is Dean of the Faculty of Agricultural Sciences at The University of British Columbia. Moura is the former Director of the UBC Landscape Architecture Program, and held a

joint appointment between the Program and the School of Architecture from 1983–1996. Her teaching, research, practice and advocacy focus on landscapes, the public realm, urban ecology, greenways, public ways and streets. Moura chaired the City of Vancouver's Urban Landscape Task Force and in 1993, was named a YWCA Woman of Distinction in the category of communication and public affairs.

Covenants as a Land Conservation Tool

Dave Clark, Ann Hillyer, & Bill Turner

Ann Hillyer gave an overview of the legal framework in which we use conservation covenants and discussed the tax implications of covenants, gifts of land, and gifts of ecologically sensitive land. Bill Turner presented relevant case studies, and Dave Clark discussed valuation issues surrounding covenants, citing case study examples.

A conservation covenant is an agreement between a landowner and an eligible land conservation organization and is permanently registered on the title of the land. Covenants may apply only to certain portions of a land parcel. Covenants are sophisticated, flexible tools that have several uses:

- ▶ To protect sensitive habitats, while allowing some additional compatible uses.
- ▶ To exclude human activities.
- ▶ To create greenways, trails, and protect agricultural lands.
- ▶ To prevent future subdivision of land that has cultural, agricultural, or heritage significance.
- ▶ To increase restrictions of use over and above current zoning restrictions.

According to the relevant legislation, covenants can be used as follows:

- ▶ To protect land or amenities in their natural state.
- ▶ To restrict uses of land or construction of improvements.
- ▶ To impose subdivision requirements, or guarantee that contiguous land parcels be sold together to maintain large tracts of land.

In preparing a covenant, the landowner and conservation organization should consider the following issues:

- ▶ Responsibility for the continuing management of the covenant area
- ▶ Access to the covenant area for monitoring
- ▶ Enforcement and mechanisms for dispute resolution
- ▶ Provision of resources for monitoring
- ▶ Liability issues and priority over mortgages

Covenants have several tax implications regarding gifting of property and of ecologically sensitive property. Federal tax credits are based on the value of the gift and the taxable income of the individual. Gifts must be made to a qualified recipient. In the case of gifts of ecologically sensitive land, the land must be certified as ecologically sensitive by Environment Canada, the recipient must be qualified, and fair market value must be certified by Environment Canada.

Bill Turner emphasized that realtors should be aware of the impacts of conservation covenants. Appraisers must also understand the effects of covenants on valuation of covenant lands, especially when valuing gifts for tax purposes. Land trusts must be certified to hold covenants and sometimes more than one will hold covenants on the same land, in case one goes out of business. Mr. Turner went on to cite various examples of covenants at work in different scenarios.

To conclude the presentation, Dave Clark discussed three case studies, outlining for each one the appraisal assignment and conclusions regarding evaluation of highest and best use, as well as valuation of the parcel before and after acquisition.

PRESENTERS

Dave Clark, AACI, P.App, R.I.(B.C.), began his real estate appraisal career with Canada Mortgage Housing Corporation in 1967 in Victoria. He went into private practice as a fee appraiser in 1974, and relocated to Duncan in 1988 where he continues in private practice. Dave's career has spanned the gamut of real estate including single-family dwellings, acreage, islands, farms, warehouses, apartments, office buildings, park acquisitions, telecommunication sites, highway and forestry yards, and fish farms and greenhouses.

Ann Hillyer, LLB, practices environmental law with Hillyer Atkins in Victoria. She has been involved in the development and implementation of law and policy in connection with a wide range of issues including protection of private land, land use planning, urban growth management, fish protection, forestry, climate

change, pollution prevention, environmental assessment, and compliance and enforcement. Ann has worked on legal issues related to protecting private land in British Columbia, and teaches environmental law at Royal Roads University. She is a member of the Appraisal Review Panel for the Federal Ecological Gifts Program.

Bill Turner, ALC, served with the Saanich Police Department for thirteen years. In 1989 he became a Realtor and was awarded the Accredited Land Consult-

ant (ALC) designation. In 1997, he founded The Land Conservancy of British Columbia (TLC) based on the model of the National Trust of England. He is currently the Executive Director and Chair of the Board for TLC, in addition to being Chair of the Board for the Land Trust Alliance of BC. Bill is Vice Chair for the South Okanagan Similkameen Conservation Partnership, and a Board member for both the Veins of Life Watershed Society and the Saanich Inlet Protection Society.

Demystifying Heritage Conservation

Alastair Kerr

To accomplish the task of demystifying heritage conservation, Alastair Kerr defined terms such as “heritage designation” and examined the effects of heritage designations on property rights and values. Several topics were discussed:

- ▶ Identification
- ▶ Conservation
- ▶ Protection
- ▶ Economics
- ▶ The Historical Places Initiative
- ▶ Archaeology

He offered a definition of heritage value and an overview of the legislation that defines heritage sites, specifically the *Heritage Conservation Act* and the *Vancouver Charter*. After highlighting the key concepts for identification and evaluation of heritage sites, he discussed the historical, aesthetic, scientific, and social/cultural values that are the criteria for designating heritage sites or buildings.

Kerr stressed that once heritage sites have been identified, conservation becomes important. Conservation is the management or stewardship of identified sites to protect, preserve, or enhance the heritage value or character of the property or area. Conservation includes preservation, rehabilitation, and restoration processes.

Protection of sites that have important heritage value is accomplished legally through legislation (heritage designation, restrictive covenants), and through monetary and non-monetary incentives to the landowner. Monetary incentives can take the form of grants or tax relief and non-monetary incentives can include regulatory relaxations and enhanced

support services. Local government may award compensation for heritage designation when designation causes a reduction in market value of a property.

The economic implications of owning a designated heritage building depend upon the condition of the building, the property value, and applicable zoning bylaws. Rehabilitation potential and available government grants or concessions affect the value of heritage sites and the economic viability of ownership. The Federal Government’s Historic Places Initiative is the defining legislation for conservation and protection of designated heritage sites and may provide federal financial assistance in the form of grants and tax relief.

Mr. Kerr concluded with a discussion of the automatic protection of archaeologically significant sites under the *Heritage Conservation Act*. Such sites include burial places, pictographs and petroglyphs, and heritage wrecks of vessels or aircraft more than two years old.

For additional information, see the BC Heritage Branch and the BC Heritage Trust website (www.heritage.gov.bc.ca).

PRESENTER

Alastair Kerr, MA, is Senior Heritage Planner for the Heritage Branch, Ministry of Community, Aboriginal and Women’s Services. For the past 26 years, he has worked for the Government of British Columbia in a variety of heritage conservation capacities from historic site research, planning and interpretation, to urban heritage planning, policy development, facilitation, and training and dispute resolution in multi-party settings. He is an active lecturer and author of numerous articles on heritage conservation and architectural history. Currently, he is President of the Victoria Heritage Foundation.

Development Land Valuation: Techniques, Tips & Pitfalls

Doug Williamson & Ian Birtwell

Doug Williamson and Ian Birtwell discussed the factors that influence development land valuation from both a conventional appraisal perspective and a real world developer's perspective:

- ▶ Development risk and profit
- ▶ Environmental constraints
- ▶ Highest and best use analysis
- ▶ Market research information
- ▶ Absorption rate
- ▶ Projected revenue
- ▶ Financial modeling
- ▶ Estimation of density potential

They also gave a brief overview of the municipal planning and approval processes involved:

- ▶ Rezoning and subdivision applications
- ▶ Official Community Plan impacts
- ▶ Permit requirements

Mr. Williamson covered the topics from an appraiser's perspective. When determining the value of land with sub-division or other development potential, an appraiser can use either a direct comparison approach or a land development approach. Finding market comparison examples can be difficult. In such cases, the land development approach is favoured. To estimate the value of development land with this approach, an appraiser must have the following key information:

- ▶ Approvals in place and yet to be acquired
- ▶ Site servicing options
- ▶ Plan of subdivision, development costs, and pricing schedule for lots
- ▶ Expenses associated with phasing, marketing, property taxes
- ▶ Absorption rate estimate, and market research
- ▶ Developers profit allowance estimate

The main challenges to an appraiser are determining highest and best use of the land, and estimating use and density, taking into account environmental

constraints, economic feasibility, and market absorption information. The valuation method is flexible and allows the appraiser to give an accurate valuation of the land at all stages of development in the absence of comparable market data.

Mr. Birtwell gave the developer's perspective on the following aspects of land valuation:

- ▶ Proforma Cashflow Fundamentals – a multi-variable analysis of all revenue and costs over time.
- ▶ Valuation – Who are the players involved – developers, bankers, purchasers? What are the desired outcomes—property acquisition, financing, risk management tools?
- ▶ Legislative Framework – OCP, zoning, permit requirements, subdivision policies.
- ▶ Risk and Reward – risk factors at different stages in the process, profit margins.
- ▶ Multiple Variables – projections, yields, absorption rates, site servicing, amenities, municipal charges, development cost charges, soft costs, financing, and cash flow.

According to Mr. Birtwell, land valuation is an art. Developers need to question everything and have solid grounding for all their assumptions in order to evaluate land development potential.

PRESENTERS

Doug Williamson, AACI, P.App, R.I.(B.C.), is a senior appraiser in the Tri-Cities office of BC Assessment. He has over 24 years of property valuation experience, 16 years of which were gained in the private sector as a fee appraiser specializing predominantly in ICI property valuation in the Greater Vancouver and Fraser Valley market areas. He has a total of eight years experience with BC Assessment. Doug has also spent considerable time in the valuation of Development Lands and for four years was a senior member of the Tri-Cities Development Land Valuation Team.

Ian Birtwell, MSc, MCIP, MPIBC, has 34 years of experience in the field of planning and land

development. This includes six years as a planner and consultant in the Prairies and for the Greater Vancouver Regional District. He has held positions with the Greater Vancouver Housing Corporation and Progres-

sive Construction and prior to 2001, had spent 15 years as a development manager with Genstar Development Corporation. Ian is currently a Real Estate Manager, Major Land Projects for BCBC.

Downtown and Commercial Area Revitalization

Ed Grifone

Ed Grifone outlined the key elements involved in the process of urban revitalization, discussed the strategy, concept, design and construction phases of revitalization, and listed the many benefits of community enhancement. He also provided details of some key features of downtown revitalization and how these features enhance urban landscapes.

According to Mr. Grifone, community enhancement entails:

- ▶ Vision and planning
- ▶ Economic analysis and marketing
- ▶ Urban design and engineering
- ▶ Communications among all participants and the public
- ▶ Finance and construction
- ▶ Involvement of varied interests

The process of revitalization begins with the formulation of a strategy. The next step is to create the streetscape or site-specific concept and the secure of approvals and financing. The final two steps involve design and engineering, and finally, construction.

Many elements make up a revitalization plan:

- ▶ Streets and sidewalks and how they relate to people and businesses
- ▶ Traffic circulation and parking to provide accessibility to the downtown area
- ▶ Climatic conditions and effective snow removal
- ▶ Courtyards and back alleys that provide seating for people

- ▶ Central themes used with caution and taste
- ▶ Business improvement associations
- ▶ Street lighting, street furniture, signage and way-finding tools
- ▶ Landscape features and maintenance
- ▶ Wall murals, banners, sculptures and public art

Community enhancement has many positive effects:

- ▶ Builds community character.
- ▶ Adds aesthetic and economic value.
- ▶ Increases the livability and vitality of the area and
- ▶ Bolsters pride in the community.
- ▶ Encourages diversified land use and development of infrastructure.

Throughout his presentation, Mr. Grifone stressed that follow through is the key. With marketing, leadership, and vision, community enhancement projects can be very successful.

PRESENTER

Ed Grifone, MA, MCIP, MPIBC, is a Senior Consultant and Partner of Urban Systems Ltd. His specialty is commercial and industrial area planning and marketing. Ed has worked for the past 10 years on several municipal and land development projects in British Columbia. He has 25 years of experience in community planning, land development and economic development consulting in Western Canada, and was jointly responsible for the Revitalizing Downtown Alberta program where he worked with several municipalities on their downtown planning initiatives.

Ethical Issues in Private Property Rights and the Public Trust

Mark Wexler

In the opening plenary session, Dr. Mark N. Wexler discussed ethical conflicts and public trust issues in land use and planning that arise amongst four main sectors of land management: instrumental property practices (IPP), hereafter referred to as instrumental practices; regulatory land practices (RLP), hereafter referred to as regulatory practices; communitarian land practices (CLP), hereafter referred to as communitarian practices; and innovative coalitions and land practices (ICLP), hereafter referred to as innovative coalitions. By addressing the following three questions about each of the four perspectives, Dr. Wexler highlighted the areas of conflict.

1. What is the nature of authority (who is in control)?
2. What is the underlying motivation or philosophy?
3. What is the notion of trust?

From an instrumental practices perspective, land use is controlled by the invisible hand of the property owner, who makes market-driven decisions based on land price as a measure of efficient land use. In contrast, practitioners of regulatory practices create land use standards to promote the greater good, with control lying in the hands of experts such as government bodies or planning boards. Not surprisingly these two groups often disagree.

The instrumental practices perspective of trust in

the individual conflicts with the communitarian practices notion of trust in the wisdom of communities. Communitarian practices advocates believe land is a form of community property and are motivated by the notion of stewardship. Instrumental practices advocates see land as a market commodity and are motivated by financial gain.

In innovative coalitions, land use is tied to globalization and technology; trust is in the idea of change. Instrumental Practices and Communitarian practices advocates approach globalization from their own unique perspectives: Communitarian practices promotes global sustainability while instrumental practices advocates a corporate-style approach to land use and planning.

PRESENTER

Mark N. Wexler, PhD, is Professor of Management and Organizational Studies in the Faculty of Business Administration at Simon Fraser University, and the Executive Director of The Perimeter Group of Consultants and Trainers (Inc.) in Vancouver. Mark is a four-time winner of teaching awards, a research mentor and an advocate and developer of education for the mid-life learner. He has provided consulting services for numerous clients in the public and private sectors.

Hotspots in Zoning Law

Bill Buholzer & Raymond Young

Unancouver lawyers Raymond Young and Bill Buholzer addressed several issues in zoning law, described relevant court cases, and analyzed the actions of the courts in each case. The following topics were discussed:

- ▶ Land Use Contract (LUC)
- ▶ Public Hearings
- ▶ Official Community Plan (OCP)
- ▶ Zoning Regulations
- ▶ Development Cost Charges (DCC)
- ▶ Streamside Setbacks

Land Use Contracts

These are site-specific agreements between developers and communities or municipalities, and supersede zoning bylaws. Used in BC in the 1960s and 1970s, they were abolished in 1977. There are many contracts still in place but not built upon and local governments have little to gain from them. In fact, municipalities stand to lose significant revenue in the form of development cost charges. There is now contention between developers and municipalities over the unilateral right of a municipality to cancel a Land Use Contract. By way of illustration, Mr. Young described two specific court cases out of Nanaimo.

Public Hearings

Mr. Buholzer emphasized the importance of procedural protections in the public hearing process. Courts will not judge the appropriateness of bylaws or re-zoning applications. However, if it can be proven in court that proper procedures in the hearing process were not followed to the letter, the court may set aside bylaws or overturn re-zoning or Official Community Plan amendments.

Official Community Plans

Mr. Young addressed the common misconceptions regarding OCP's and their legal effects. They have no legal effect on property owners, but local governing bodies must ensure that all legislation subsequent to the adoption of the OCP is in accordance with the plan. Zoning laws that predate the OCP do not have to be amended for consistency with the OCP, but local governments are advised to keep their OCP's in mind

when creating capital expenditure programs. The consistency between the two has become a grey area in the *Local Government Act*, and may lead to more litigation.

Zoning Regulations

Mr. Buholzer commented on the very specific nature of zoning power in BC. Local governments are not given broad or general power when it comes to land use. He cited four court cases to highlight the following issues in zoning power:

- ▶ Lessees of Crown lands enjoying the same exemption from conforming to local land use bylaws as the Crown.
- ▶ The increasingly fine division of land use categories and the very specific criteria for use and development within the categories.
- ▶ Zoning power for the restriction of land use and compensation for private-to-public use re-zoning.
- ▶ Authority of local government to withhold or place conditions on a building permit for a permitted use when a zoning regulation that will apply to the land is in preparation.
- ▶ Residential premises used for nightly tourist accommodation and auxiliary uses of residential premises, particularly in Whistler, BC.

Development Cost Charges

A municipality can levy DCCs on subdivision applications or building permits as a source of revenue if the proposed development imposes a new capital cost burden on the local government. One outcome of recent court proceedings is that the burden of proof of an increased capital cost burden rests with the local government or municipality and not with the developer.

To conclude, Bill Buholzer addressed Streamside Setbacks. With the passing of the Streamside Protection Regulation this year, the Province has placed the burden on local governments to amend local zoning to comply with the regulation. They have five years to respond either by amending current land use bylaws in the identified riparian habitat areas or by designating them as development permit areas to restrict uses and

enforce setbacks. It is not known where the responsibility for compensation will lie in this case because local governing bodies are implementing Provincial legislation.

PRESENTERS

Bill Buholzer, MA, LLB, MCIP, MPIBC, is a Partner with Lidstone Young Anderson where he advises local governments and planners throughout British Columbia and the Yukon on land use regulation matters. Previously, Bill worked as a regional planner in Alberta and then joined the City of Vancouver Planning Department in 1974. He is extensively involved in professional development activities for planners and lawyers. Bill is an Adjunct Professor at The University

of British Columbia School of Community & Regional Planning, and teaches for The City Program at Simon Fraser University.

Raymond Young, MA, LLB, MCIP, MPIBC, is Founding Partner with Lidstone Young Anderson. Ray worked for the City of Vancouver as a planner and participated as part of the site team for Canada's first federally funded neighbourhood rehabilitation project in Strathcona. He was later involved with some of the early bonusing provisions of Vancouver's Zoning Bylaw. Ray teaches for the City Program at Simon Fraser University, and has been an Adjunct Professor in the Faculty of Law at The University of British Columbia for 10 years.

Increasing Value and Decreasing Risk: A Site Reading Skills Workshop

Michael von Hausen

Urban Designer Michael von Hausen outlined the complexities of land use regulations and environmental and community issues that affect both the value of real estate and its development potential. He introduced a site-reading method to evaluate potential development sites and outlined alternative approaches to planning.

A thorough site reading analysis will give a developer information critical to estimating the value and development potential of a site. According to Mr. von Hausen, the three P's of site reading are Place, Policy, and People. Together, these provide a framework for analysis of any site.

Place

Servicing, biophysical and environmental considerations

- ▶ Servicing considerations include the man-made elements that support the development of the site such as road access, proximity to service connections and to community support services.
- ▶ Biophysical considerations include all the natural factors that affect the site.
- ▶ An environmental analysis will provide information about the biophysical features of the site and highlight any natural restraints that will require special consideration, including salmon bearing streams or sensitive habitat areas.

Policy

Included in this category are zoning bylaws, Official Community Plans, and other relevant regulations. As

part of a site reading plan, a potential buyer will need to determine the policies and regulations that will apply to the development of the site.

People

Identifying community stakeholders and key government staff can be very important to the approval process as well as to the success of a development project.

To illustrate the potential economic and environmental benefits of innovative alternatives, he compared two development concepts, one standard and one innovative, for the same parcel of land. He offered convincing evidence that strategies such as clustering dwelling unit, using natural drainage feature for storm water management, maximizing green space while minimizing paved area can increase density and decrease negative environmental effects.

PRESENTER

Michael A. von Hausen, MLAUD, MCIP, BCSLA, is Principal of MVH Associates, a firm specializing in urban design and sensitive land development planning. Michael has over 20 years of senior experience in both the private and public sectors across North America. His current projects include: urban design guidelines in Phoenix, Arizona; a 200 acre sustainable community in Playa Del Carmen, Mexico; and the transformation of a street into a recreation linear park in Kelowna, British Columbia. Michael has taught at The University of British Columbia, The City Program at Simon Fraser University, and the University of Colorado.

Land Use That Fits Us All

Harold Kalke

Real Estate developer Harold Kalke used several local, national, and international examples to illustrate his main points about the shortcomings of our current model of urban planning. He described the phenomenon of suburban sprawl, with subdivisions replacing small villages such as Parksville. He also questioned the wisdom of developing 275 golf courses in the desert environment surrounding Phoenix.

Mr. Kalke argued that we now feel the effects of poor planning, and are concerned about tomorrow. Future realities we will have to face include the following issues:

- ▶ Overpopulation due to a huge growth rate
- ▶ Limitations of earth's resources
- ▶ Increasing poverty and human conflict
- ▶ Devastation of ecosystems and rapid extinction of species
- ▶ Loss of agricultural lands

He stressed the importance of understanding the shortcomings of our current model of urban planning and of becoming proactive in changing the model to reflect our future needs.

The main stumbling blocks to understanding the model and the effects of urbanity are as follows:

- ▶ Time—As a society we have an inappropriate understanding of time. Instead of planning for the short term, we should be projecting 100 to 200 years. Our goal should be to create planning concepts that are timeless.

- ▶ Scale—Earth's resources are limited; therefore we must conserve and recycle. We must also increase density for more efficient use of resources.
- ▶ Interconnectedness—There is no such thing as a stand-alone community. What happens in one community will have an impact on other communities.

He stressed that we need to change urbanity from within. By focusing on our micro-neighbourhoods, the places where we actually live, we can develop sustainable communities. Our greatest challenge lies in changing our views of time, scale, and interconnectedness. Mr. Kalke concluded his presentation with some examples of his own work in development and a challenge to the audience to cite examples of exceptionally good or poor fits in land use.

PRESENTER

Harold Kalke, MBA, P.Eng, is founder of Kalico Developments Ltd., Salt Lick Projects Ltd., Dandelion Geothermal Ltd., and several other business ventures in both Canada and the USA. Harold's real estate development projects are widely acclaimed as being critical elements in the re-establishing of "neighbourhood" and have won community, heritage, and industry awards, including the Ethics in Action Award. He received an MBA from the University of Western Ontario, and was granted a Honourary Doctor of Laws from The University of British Columbia.

Risk Management for Commercial Realtors

Keith Olsen

Keith Olsen gave participants the tools to recognize and avoid potential liabilities in their everyday work. He discussed several issues:

- ▶ Critical issues in real estate
- ▶ Sales and leasing hot spots
- ▶ Risk management

He addressed the following critical areas of liability:

- ▶ Negligent Misrepresentation
- ▶ Failure to Disclose
- ▶ Negligence
- ▶ Mistake

A list of hot spots in real estate risk management that can lead to misunderstanding or misrepresentation and result in liability would include the following:

- ▶ Misinterpretation of source information
- ▶ State of title issues
- ▶ Physical aspects of properties
- ▶ Age of dwellings or dates of renovations
- ▶ Drainage or other environmental issues
- ▶ Chattels, lease details, and local improvement charges

Disgruntled clients may claim breach of fiduciary duty if they feel that a realtor placed his or her own interests above the client's. Fiduciary issues include trust, loyalty, and confidentiality. It is the duty of realtors to act ethically.

There are several other areas in which realtors must exercise caution:

- ▶ Buying for their own portfolios
- ▶ Representing competing clients
- ▶ Secret commission arrangements
- ▶ Unidentified buyers or undisclosed purposes
- ▶ Contract creation and breach of contract
- ▶ Advertising and listing guidelines
- ▶ Documentation of the transaction
- ▶ The rules of offer and counter offer
- ▶ Deposit management
- ▶ Due diligence and trust accounts

Realtors can take three steps to manage risk:

1. Anticipate the risk.
2. Shift the risk to a more capable party.
3. Develop a plan to control risk and deal with problems or complaints that arise.

The Real Estate Council can also provide guidance regarding all issues of real estate practice. (see website: www.realestatecouncil.bc.ca)

PRESENTER

Keith Olsen, BComm, CCIM, began teaching while serving in the Canadian Navy. In 1981, he became a partner in a small company involved in tax consulting and real estate syndication and in 1984, began his career as a licensed Realtor. After a short period selling residential real estate, Keith made the transition to commercial-investment real estate and, in 1993, was honoured by the Fraser Valley Real Estate Board as ICI Realtor of the Year. Keith has taught the CCIM Introductory Course and developed and taught several commercial real estate programs at various real estate boards.

About the Sponsors

Co-host:



The Real Estate Institute of British Columbia is an organization of diversified professionals whose mission is to advance the highest standards of education, knowledge, professional development and business practice in the real estate industry.

Real Estate Institute of British Columbia

Telephone 604.685.3702 or 1.800.667.2166
Email info@reibc.org
Web www.reibc.org

Co-host:



The City Program is dedicated to the enhancement of our understanding of the city and how we as citizens can participate in shaping its future. All programs are sponsored by the SFU City Program Steering Committee.

The City Program at Simon Fraser University

Telephone 604.291.5254/5079
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The mission of The Real Estate Foundation of BC is to use its resources for the benefit of British Columbians by supporting efforts that improve all aspects of land use and real estate practices.

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Telephone 604.688.6800
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