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CHAPTER 18

LOCAL GOVERNMENT LAW

Learning Objectives

After studying this chapter, a student should be able to:

- Describe the powers of the federal and provincial governments with respect to regulating the use of property
- Explain how local governments derive their powers and the controls on those powers
- Identify the key enabling legislation for local governments in British Columbia
- Name the three levels of local government created by the *Local Government Act*, and describe the powers and governance of each
- Identify the four key objectives of planning controls at the local government level
- Describe the planning process in British Columbia
- Explain the nature and purpose of an official community plan
- Explain the nature and purpose of rural land use bylaws
- Discuss the nature and effect of zoning bylaws and how zoning bylaws are created, administered, enforced, and varied
- Explain the concept of rezoning
- Describe how land use contracts impact land use
- Define the concept of a non-conforming use
- Describe the purpose of a board of variance
- Discuss three key permits relating to the use and development of property
- Explain the process of subdivision and the role of the approving officer
- Discuss how building bylaws and licensing bylaws have an impact on land use

INTRODUCTION

The owner of a property, as well as the buyer or potential buyer, will always be concerned with what uses can be made of that property both now and in the future. A licensee has an obligation to obtain and convey correct information in this regard; failure to do so could result in liability for misrepresentation, negligence, and/or a poor reputation. A licensee who makes a practice of gathering all available information with respect to a property will better serve their clients and will develop a reputation for providing quality service.



ALERT

Under section 30(h) of the *Real Estate Services Rules* (the “Rules”), licensees must use reasonable efforts to discover relevant facts respecting any real estate that the client is considering acquiring. Clearly, issues such as zoning, permits, non-conforming uses, illegal rental suites, etc. (all of which will be discussed in this chapter) may in many circumstances, be “relevant facts” that a licensee should seek to discover when providing trading services to a buyer.

This chapter will focus on the important restrictions on the use of property that may be imposed by local governments (i.e., villages, towns, cities, districts, and regional districts). These restrictions are generally referred to as planning regulations or land use controls. Also, this chapter will briefly deal with some of the other municipal powers which will affect property owners.

In addition to these government regulations, the use of property may also be restricted by private agreements, such as a private building scheme or a restrictive covenant registered against title in accordance with the *Land Title Act*. These types of restrictions were discussed in Chapter 3: “What the Purchaser Buys: Estates and Interests in Land”. Public authorities may be willing to provide information on these private restrictions but if a property owner does not comply with them, their enforcement depends on a private court action by the affected person(s). This chapter is designed to explore the role of local government rather than private controls, and will not examine these private agreements.

THE THREE LEVELS OF GOVERNMENT

Regulations controlling the use of property may be imposed by all three levels of government: federal, provincial, and local. Accordingly, it is necessary to briefly examine the powers of the federal and provincial government to regulate land use in British Columbia.

The *British North America Act* (now the *Constitution Act, 1867*) created two levels of government in Canada, the federal and the provincial, and divided powers to make laws between them. The provincial governments were given jurisdiction over matters affecting private property and were also empowered to establish a third level of government by delegating some provincial powers to local governments created for that purpose.

The Federal Government

The federal government does not have any power to directly control the use of property within the provinces, but it can exercise controls which are necessary to carry out its other powers. For example, the federal government has exclusive *jurisdiction* with respect to the development and operation of airports and the federal Department of Transport has established regulations restricting the height of buildings and other objects, including trees, near airports or in airport flight paths. The federal Department of Fisheries has jurisdiction over certain rivers and it has established regulations controlling activities near those rivers. The federal government also has exclusive jurisdiction over its own lands and those lands are not subject to municipal zoning regulations. Federal regulations are only encountered in special situations, while either provincial or municipal regulations will be encountered with respect to virtually every property in British Columbia.

jurisdiction

a particular level of government's general power to exercise authority over persons and things located within its territory

The Provincial Government

The province has delegated most of the authority to regulate land use to local governments; however, the provincial government retains authority over certain land uses in order to maintain uniformity throughout the province or for public policy reasons. The most important and most frequently encountered of these are set out below.

Agricultural Land Commission Act

In the early 1970s, the provincial government established an independent government agency (now the Agricultural Land Commission (ALC)) and agricultural land reserves (ALRs). The approximately 5 million hectares of land within ALRs may not be used for any non-farm purposes, nor may the land be subdivided without the ALC's approval. However, one single-family dwelling or principal residence per land registry parcel is permitted within ALR lands, provided it is permitted by zoning. Any newly constructed principal residence must have a total floor area of 500m² or less, although a local government may impose a lower size cap under their bylaws. ALR property owners may also have the option to build an additional small secondary residence on their parcel, provided that they obtain approval from the local municipal government or First Nation in order to do so. The allowable size of the secondary residence depends on the size of the ALR property, and the size of the existing principal residence. The secondary residence may be used in ways beyond occupation by property owners and their immediate family, including housing extended family, agritourism, labor accommodation, or rental property. Another additional dwelling (apart from the small secondary residence) may be approved by the ALC if it is necessary for farm use, but otherwise, additional residences are prohibited (s. 25(1.1) of the *Agricultural Land Commission Act* (the "Act")). "Farm use" is defined in the Act as an occupation or use of land for farm purposes, including farming of land, plants and animals, and any similar activity designated as farm use by regulation. The ALC may, by regulation or order, prescribe specific uses that constitute farm uses.

The objectives of the Act are to preserve areas of land to be available for agriculture if and when needed, and to protect these lands from development for non-farm uses, including urban sprawl.

When ALRs were established, the various land title registrars attached appropriate notice to affected certificates of title. Listed under the "Legal Notations" section of title, one will see the following:

Sample:	THIS TITLE MAY BE AFFECTED BY THE AGRICULTURAL LAND COMMISSION ACT, SEE AGRICULTURAL LAND RESERVE PLAN 2345, 17-03-31
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The above is not a charge but simply a notice that the property is within an ALR and is subject to the provisions of the Act, which may have a significant impact on how the property can be subdivided or used. Although the land title registers/records should be accurate, licensees should be aware that the ALC's records take precedence over certificates of title; therefore, in the rare instance where no notice appears on title but the ALC has land recorded as being within the ALR, that land is still subject to the Act.

As a Licensee...

Licensees dealing with land close to ALR boundaries or near farm land should review the title certificate and check with the ALC or the local government to determine if the property is located in the ALR. If there is no notation on the title certificate, licensees should still consult the ALC's ALR Property and Map Finder website to confirm that the property is not located in the ALR. Licensees can also use this tool to determine the precise boundaries of the ALR within any given neighborhood in British Columbia.

The ALC has the power to:

- pass regulations affecting ALR land;
- exclude land from an ALR (an ALR landowner can apply to the ALC, through the local government, to have land excluded. Once excluded, the land is not subject to the Act, only to local land use bylaws and regulations);

- allow non-farm use of the ALR land (upon successful application, the land may be used for non-farm use but remains within the ALR and subject to the Act and local bylaws and regulations); and
- allow the subdivision of ALR land (upon successful application, the land may be subdivided but remains within the ALR and subject to the Act and local bylaws and regulations).

The local governments continue to have land use planning and regulatory responsibilities for ALR land but any local legislation must be consistent with the Act and is subject to the ALC's decisions. The ALC works closely with local governments to ensure that the local bylaws and regulations are consistent with the provisions of the Act. Licensees dealing with land within or near to an ALR should examine the community plans and/or local bylaws to determine the effect, if any, the Act has on the particular property.

Public Health Act

The *Public Health Act* establishes public health departments responsible for maintaining the public health of the province. Included within their jurisdiction is the control over the installation of septic tank disposal fields as a private means of sewage disposal. In order to obtain municipal approval for a subdivision of lands not served by a municipal sewer system, it must be shown that the lands can be adequately served by a septic system. That determination is made by the local public health department.

Local Services Act

In a few cases, some planning regulations are enforced in rural areas of the province under the *Local Services Act*. Most planning functions in rural areas are carried out by regional districts. Information concerning these regulations is available from the regional district office for the particular area.

Islands Trust Act

This statute has as its objective the preservation and protection of the unique amenities and environment of the Gulf Islands, located in the Strait of Georgia between Vancouver Island and the mainland of British Columbia. In order to simplify the planning process for the Gulf Islands, the provincial government assigned many of the planning powers contained in the *Local Government Act* to a body called a trust committee. Both zoning and subdivision powers, as well as regional planning powers, are exercised by the trust committee. This statute also establishes the Islands Trust Council, which is comprised of elected representatives from each local trust area plus the municipality of Bowen Island. The Trust Council is responsible for establishing general policies for carrying out the objective of the statute as described above.

Transportation Act

As a general rule, the *Transportation Act* requires that the approval of the province be obtained prior to any rezoning of lands located within a radius of 800 metres of an intersection of a controlled access highway, for example Highway 1, with another road. The Ministry of Transportation's website provides a list of all controlled access highways in the province.

Environmental Management Act

The *Environmental Management Act* is intended to establish a province-wide, uniform development screening process to screen out sites which might have contamination problems, such as lands formerly used as gas stations or industrial operations. The first step of the screening process is triggered when an applicant applies to a local government for development approval, such as subdivision, rezoning, a development permit, development variance permit, demolition permit, or the removal of soil. The second step is a determination of whether the subject property was ever the site of a former land use that could have potentially contaminated the soil, such as gas stations or laundromats. The full list of potential uses is included in Schedule 2 of the *Contaminated Sites Regulation* under the *Environmental Management Act*. If the answer to that determination is no, or if any of the numerous exemptions included in the Regulation applies, then no further action in the screening process is required. If the property was the site of a prescribed activity listed in Schedule 2, then the applicant must provide a site profile to the relevant approving officer or municipality. The site profile is a screening tool that identifies potential contaminated sites. Approving officers and municipalities are required to receive these site profiles, assess them, and forward them to either the site registry or the provin-

cial manager. The development approval process is then frozen pending certain approvals by the province. Licensees may commonly interact with the provisions of the *Environmental Management Act* and related local government bylaws in the context of underground storage tanks, as previously discussed in Chapter 10: “The Law of Contract”.

Heritage Conservation Act

A heritage site includes any land that has “heritage value” to the province, a local government, a first nations people, or other community. The definition of heritage value is broad and includes properties that have historical, cultural, aesthetic, scientific, or educational worth. As previously mentioned in Chapter 4: “The Subdivision of Land and Title Registration in British Columbia”, a property can be designated as a heritage site by the province under the *Heritage Conservation Act* or by a local government under the *Local Government Act*. These Acts serve to regulate and prohibit the demolition, relocation, and alteration of both the interior and exterior of a property that is designated as a heritage or archaeological site. Complying with the restrictions imposed under these statutes may become costly for an owner if they wish to redevelop the property, such as the requirement to obtain a heritage alteration permit from the local municipality. Heritage properties may also be subject to specific maintenance standards. The *Local Government Act* sets out severe penalties for illegal alteration or destruction of protected heritage property. Typically, the heritage designation runs with the land and binds future owners. Depending on the type of heritage protection scheme in place, if the heritage building is destroyed, the owner may be required to rebuild a replica of the heritage building.

If a property is designated as a heritage site or archaeological site by a local government or the province, the designation may appear as a Legal Notation on title, examples of which are shown as follows:

Sample: HERITAGE STATUS NOTICE, HERITAGE CONSERVATION ACT, SECTION 32, SEE A52254

Sample: HERITAGE STATUS NOTICE, LOCAL GOVERNMENT ACT, SECTION 594, SEE A52254

In addition, the province and many municipalities each have their own heritage registers. However, the *Heritage Conservation Act* can apply to a property even if it has not been formally designated as a heritage site. For example, entire neighbourhoods may be classified in a local government’s official community plan as a “Heritage Conservation Area”, for which restrictions on redevelopment may be in place. The title search for properties located in a heritage conservation area may not include any indication of their status. Therefore, searching title may not be determinative.



As a Licensee...

When dealing with potential heritage or archaeological sites, licensees should exercise due diligence by:

- making inquiries with the local government for information on:
 - heritage bylaws;
 - a heritage registry, if available; and
 - heritage sites designated as part of the official community plan;
- contacting the provincial BC Archaeology Branch for:
 - information on a specific site; or
 - a map identifying the registered sites in the area;
- putting the onus on the client, in writing, that they need to investigate the property with respect to its heritage value.

The most recent form of the Property Disclosure Statement, discussed in Chapter 11: “Contracts for Real Estate Transactions”, includes a question asking whether the seller of the property is aware if the property is designated as a heritage site. While a licensee may rely on this information, and while a buyer may have grounds for a possible claim against a seller who misrepresents on the Property Disclosure Statement, it is

important that licensees become familiar with the heritage scheme for their local area to the extent that they are able to educate clients about potential restrictions and costs associated with heritage properties. When dealing with designated or potential heritage sites, licensees are encouraged to speak to their managing broker and advise the client to seek legal advice.

Mackay v. British Columbia, 2013 BCSC 945

Mackay is an example of the application of the *Heritage Conservation Act* to an undesignated heritage site and the potential costs related to the heritage site's redevelopment.

The buyer, not knowing that the property was an undesignated heritage site, purchased a property in Victoria to build a new house. Prior to construction, the buyer's architect contacted the Archaeology Branch and learned that the property was an undesignated heritage site. In order to start construction, the buyer needed to obtain a site alteration permit, which required a heritage inspection and report that cost over \$51,000. Additional delays, loss of value of the property, and costs associated with obtaining the alteration permit resulted in the buyer claiming \$600,000 in losses against the Branch. Although the Court found in favour of the buyer on other grounds, the Court did note that the *Heritage Conservation Act* protects undesignated heritage sites and provides the authority to require an owner to obtain a heritage alteration permit. The information needed by the Branch to consider the permit application can involve the owner having to obtain, at their own expense, various heritage reports.



As a Licensee...

Recently, several local governments such as the City of Vancouver have become concerned with the loss of older homes. To encourage the retention of houses with "character" (which includes homes which may not necessarily be on a heritage register), certain local governments have bylaws which discourage the tearing down of a property with heritage value by allowing less floor space ratio for a new build but allowing for greater floor space ratio for renovations to the heritage structure, add-ons to the main structure, or the construction of infill housing. It is important that as a licensee, you understand the bylaws relating to building on a property with heritage value in the area you work because this will be useful information for buyers and in particular, those looking to build.

Local Government

As stated previously, the province has the power to create *local governments* and delegate some of the provincial powers to them. Local governments have the power to pass laws, such as zoning bylaws. Local governments also have the powers of a natural person, such as the power to enter into contracts or the power to buy and sell land. With a few exceptions, the creation, structure and powers of local governments are set out in the *Community Charter*, the *Local Government Act*, and the *Vancouver Charter*. As these pieces of legislation are creations of the provincial legislature, so are local governments, and the province may revoke or expand upon any of the powers granted to local governments by simply amending these statutes. Since local governments derive their powers from the provincial legislature, they may only exercise the powers granted to them by the province and may not go beyond those powers.

The *Local Government Act* serves as the principal *enabling legislation* for regional districts, although several parts of the legislation (notably those dealing with incorporation of municipalities, local elections, improvement districts, regional districts, and the land use planning and heritage conservation powers of local governments) continue to apply to municipalities as well. Since 2004, the *Community Charter* contains the core enabling provisions for municipal governments – cities (other than Vancouver), towns, district municipalities, and villages. As discussed earlier, the province has retained some oversight in certain matters, such as building regulation and public health.

The City of Vancouver is the only municipality in British Columbia that does not derive its powers under the *Community Charter*. The City of Vancouver is regulated by a separate statute called the *Vancouver Charter*. While there are a number of distinctions between the powers granted to most municipalities by the *Community Charter* and the *Local Government Act* and the powers granted to the City of Vancouver by the *Vancouver Charter*, the resulting differences do not warrant special reference for the purposes of this chapter.

local government
includes regional districts,
municipalities, and
improvement districts

enabling legislation
a statute that grants an
entity authorization or
legitimacy of power to
take certain actions

The *Local Government Act* creates three different levels of local government:

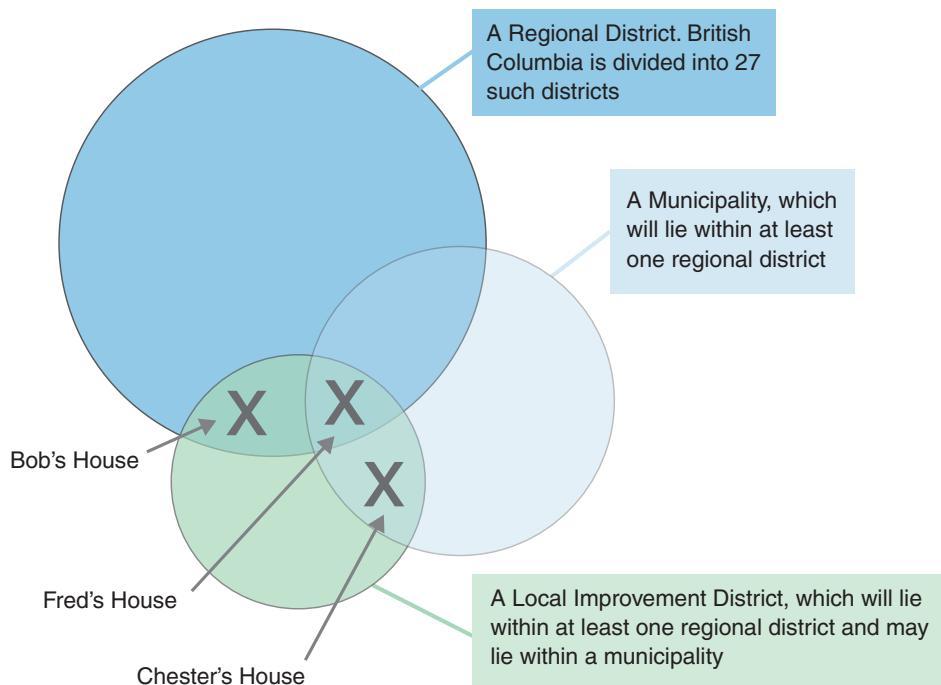
1. regional districts;
2. municipal governments; and
3. local improvement districts.

These three levels of government have overlapping jurisdictional powers and geographical territories and while the situation varies significantly from locality to locality, a general pattern has developed which will be discussed in this chapter.

In the example shown in Figure 18.1, Bob's house is located within both a regional district and a local improvement district. Chester's house is located within a local improvement district and a municipality (and a regional district but not the one depicted). Fred's house is located within a regional district, municipality, and local improvement district.

There are several examples of these overlapping jurisdictions. For instance, the Sechelt Fire Protection District lies, in part, within the Village of Sechelt which in turn is part of the Sunshine Coast Regional District.

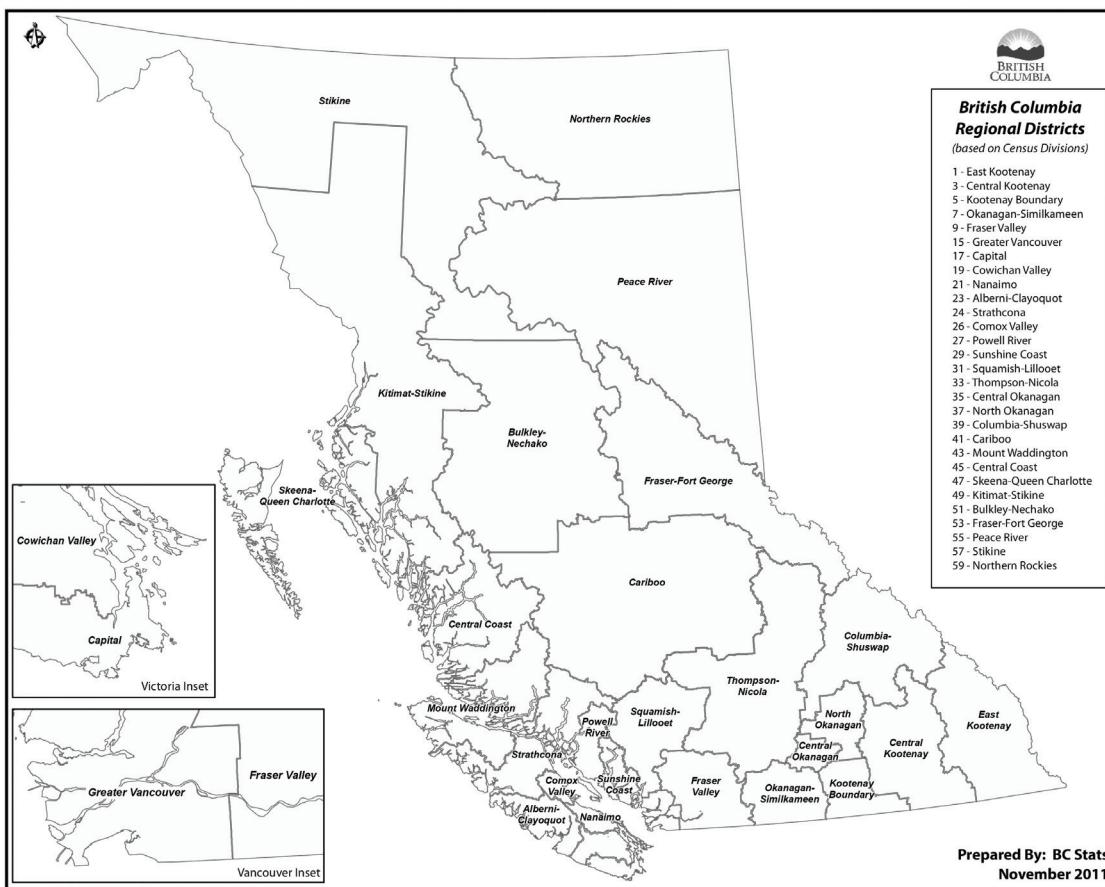
FIGURE 18.1: The Three Levels of Local Government



Regional Districts. The whole area of the province, with the exception of a small area in the extreme northwest corner of the province, has been divided into a number of regional districts (see Figure 18.2). Each regional district is further divided into smaller areas, called electoral areas. The role of regional districts varies, depending largely upon the extent of development within its boundaries. In many sparsely settled areas of the province, there are no municipal governments – these areas are generally referred to as unorganized areas. In unorganized areas, it is the regional district that assumes many of the roles that would otherwise be handled by a municipal government.

All regional districts have some general long term planning powers, and may request from the province the power to establish public housing, trunk sewer lines, sewage and garbage disposal facilities, and library facilities. These are only a few of the extensive powers that may be exercised by regional districts. With respect to governance of the regional district, each is managed by a board of directors composed of appointees from the municipalities within the regional district and a director elected from each electoral area within the regional district.

FIGURE 18.2: Regional Districts of British Columbia



Source: gov.bc.ca

Municipal Governments. Most settled parts of the province are governed by one of four similar forms of municipal government: villages, towns, cities, or municipal districts. Which form of government is in effect generally depends on the population of the *municipality*. All of these forms of municipal government have virtually identical powers with respect to the adoption and enforcement of planning regulations, and all are governed by an elected mayor and council consisting of four to eight councillors who hold office for four year terms. The planning and land use regulation powers of municipal governments will be dealt with later in this chapter.

municipality
a village, town, city, or
municipal district to whom
authority over local affairs
has been delegated by the
provincial government

Improvement Districts. The provincial government may establish improvement districts and grant them a wide variety of powers. Generally, their powers are restricted to the construction, operation or maintenance of utilities such as water works, sewer or drainage systems, and electrical distribution systems in generally rural areas.

Public Services

Who provides services such as water supply, sewers, and waste management to residents of British Columbia: regional districts, municipalities, or improvement districts? In more populated areas that have been incorporated, municipalities often provide these services to their residents, while regional districts often do so in unincorporated rural areas. Both municipalities and regional districts, however, are merely permitted by the legislation to provide these services – they are generally not required to do so. Where these services are not provided by a municipality or a regional district, then an improvement district may be established to provide services like water supply, sewers, or garbage collection to community residents.

The province usually establishes improvement districts after residents have petitioned the Minister of Municipal Affairs for the incorporation of such a district, so that the district may establish and operate some desired service. Improvement districts have the power to levy taxes, borrow money, expropriate land, and do anything else necessary to carry out their objectives; such districts are governed by elected trustees (rather than a mayor and council) who may pass bylaws to carry out the district's objectives.



As a Licensee...

Licensees can obtain a lot of information about a property by a visit to the municipal offices (i.e., "City Hall"), the regional district offices, or by visiting the relevant office's website. Officials in these offices are accustomed to dealing with inquiries from licensees and the public at large and will, in several cases, also provide information on any applicable regulations not directly within their jurisdiction. It is useful in many situations to make a request in writing and request a written response. The various matters that a licensee will be able to obtain information on from municipal offices are discussed throughout this chapter, but will primarily relate to zoning and the permitted uses that may be made of a property, as well as building regulations including siting, setbacks, and size of buildings that may be constructed on the land.

A municipal office is also a good source of information on the risks of natural disasters within the municipality. Municipalities produce reports, studies, and other documents regarding flood zones, areas prone to landslides, and the potential effects of earthquakes within different areas. As risks from natural disasters rise due to climate change, licensees should obtain such documents in order to stay knowledgeable about climate change and protect their clients and themselves against the impacts of climate change.

Licensees should make it a practice to inquire with the municipal office for each listing or potential purchase. The most frequented departments will be planning and building where staff should be able to provide the most useful and applicable information, and may also be able to direct a licensee on how to obtain further information on regulations from other jurisdictions.

Different local governments may have different practices and policies regarding property research and information requests. For example, some municipalities may require a licensee to speak to several different departments to gather information instead of one department, or may impose fees for property information that a neighbouring municipality would give for free. Licensees should take the time to understand the policies of the municipalities in their area, as this will make it easier to know what information to ask for, which department they should speak to, the expected turnaround time, and whether there will be a cost involved.

Conscientious and successful licensees will, over time, become increasingly familiar with the regulations in the area in which they work. Copies of these regulations, including the amendments that are made from time to time, should be obtained and studied carefully. In this way, sound advice can be given to sellers and buyers.

THE RATIONALE FOR THE REGULATORY SYSTEM

There are several reasons for local governments to adopt planning controls. Some are based almost exclusively on technical considerations, such as the desire for the safe construction of buildings. Others are based more on social considerations such as the preservation of single-family neighbourhoods. In most cases, however, there is a combination of both technical and social considerations.

The principal regulations that licensees will encounter are zoning *bylaws*, subdivision bylaws, and building bylaws. Before discussing any of these, it is helpful to have some understanding of why this regulatory system exists. Planning controls and, in particular, zoning and subdivision regulations, frequently become contentious political issues. They are often a matter of negotiation between an applicant for rezoning or subdivision and municipal staff and councils. When representing a party seeking rezoning or subdivision approval, it is vital that the licensee understand the rationale behind the planning regulations so that they can anticipate and deal with the requirements established by municipal officials.

bylaw

a law made by a local authority, sometimes known as an ordinance

Public Health and Safety

This is the most fundamental aspect of planning controls. Some examples are building code regulations to prevent the spread of fire, subdivision regulations to prevent health hazards created by improper water or sewer installations, and zoning regulations to control building in areas subject to flooding.

Protection of Property Values

Planning controls which prevent substandard development generally serve to maintain existing property values. Zoning controls are expressly intended to ensure that the use of land is compatible with the uses on nearby or adjacent lands, and to prevent the use of property that will have an adverse effect on the enjoyment of surrounding property and thereby lower property values, such as the establishment of an industrial use in a residential area.

Efficiency, Convenience, and Appearance

Both zoning and subdivision controls are intended to ensure that the community is convenient to the residents and arranged so that costly municipal utility systems and services can be efficiently installed. Examples of this type of regulation include:

- subdivision regulations that prohibit development in areas where there would be excessive costs to the municipality in installing sewer lines;
- zoning regulations that encourage commercial development in the form of compact centres; and
- zoning regulations that require landscaped areas around certain land uses such as parking lots to improve their appearance.

Conservation of Natural Resources

The best example of planning regulations with this objective are the agricultural land reserves established under the *Agricultural Land Commission Act*. Other examples are zoning and subdivision controls requiring the preservation of stream banks and ravines and the prevention of urban development in other ecologically sensitive areas. For example, stream bank protections will impact how and where an owner can build on a property, often as much as 10 metres from the bank.

Figure 18.3 illustrates the various ways land use may be regulated by local government in furtherance of the rationale for land controls discussed above.

THE PLANNING PROCESS

The planning process in British Columbia involves several steps and the interaction of three distinct groups: the public, the elected representatives, and the professional planners, as shown in Figure 18.4.

FIGURE 18.3: Local Government Regulation of Land Use

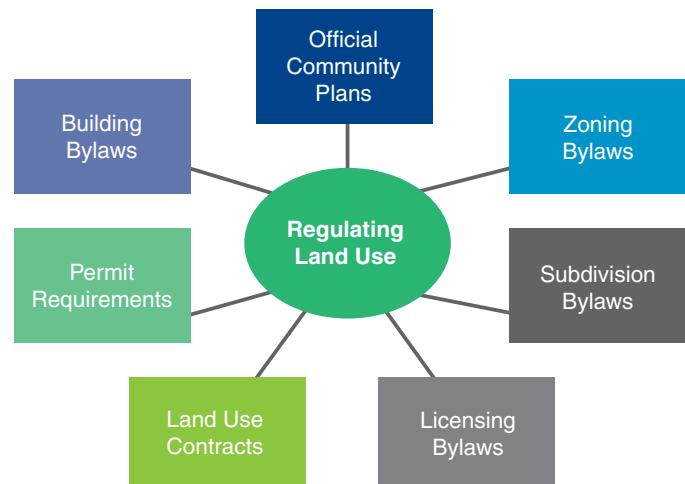
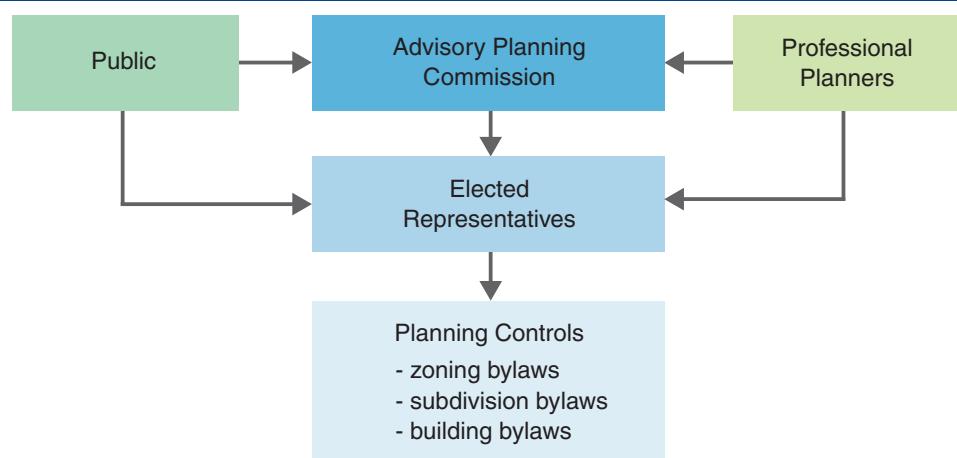


FIGURE 18.4: The Planning Process



The professional planners' role is to act as advisors in analysing problems, studying alternative solutions, and recommending a course of action and a means of implementation.

The planning process usually proceeds through several stages of testing and revision of alternatives until the elected officials (e.g., the mayor and councillors) are satisfied that what is proposed properly reflects the public interest. At many stages, the public will be consulted and their opinions obtained; however, it is often the municipal council (or equivalent), that is responsible for finally adopting planning regulations. The administration of the controls that are finally adopted through the planning process is then left to various paid officials including the planners who are authorized to issue permits or give other approvals. When something is done without the required permit, or contrary to it, the local government involved has various means available, including court action, to require compliance.

advisory planning commission
a committee made up of volunteer members of the public who advise the local government on planning and land use related matters

To formalize the process of consulting with the public, an "*advisory planning commission*" is sometimes appointed by the municipal council. These commissions are intended to be a representative group of civic-minded residents who devote their time to careful review of planning proposals and give advice to the elected decision-makers.

The extent to which planning is undertaken varies considerably throughout the province. Community planning is dealt with in Part 14 of the *Local Government Act*; however, as the *Local Government Act* is generally permissive rather than mandatory, local governments can, but are not required to, adopt the powers available to them. You will often find very different planning controls when comparing one area to another.

OFFICIAL COMMUNITY PLANS

A municipality, and in some circumstances a regional district, may, but is not obligated to, adopt an "*official community plan*" (OCP) for any land within its area of jurisdiction. These plans are called OCPs in all areas of British Columbia, except in Vancouver where there are "*official development plans*" in addition to neighbourhood community plans.

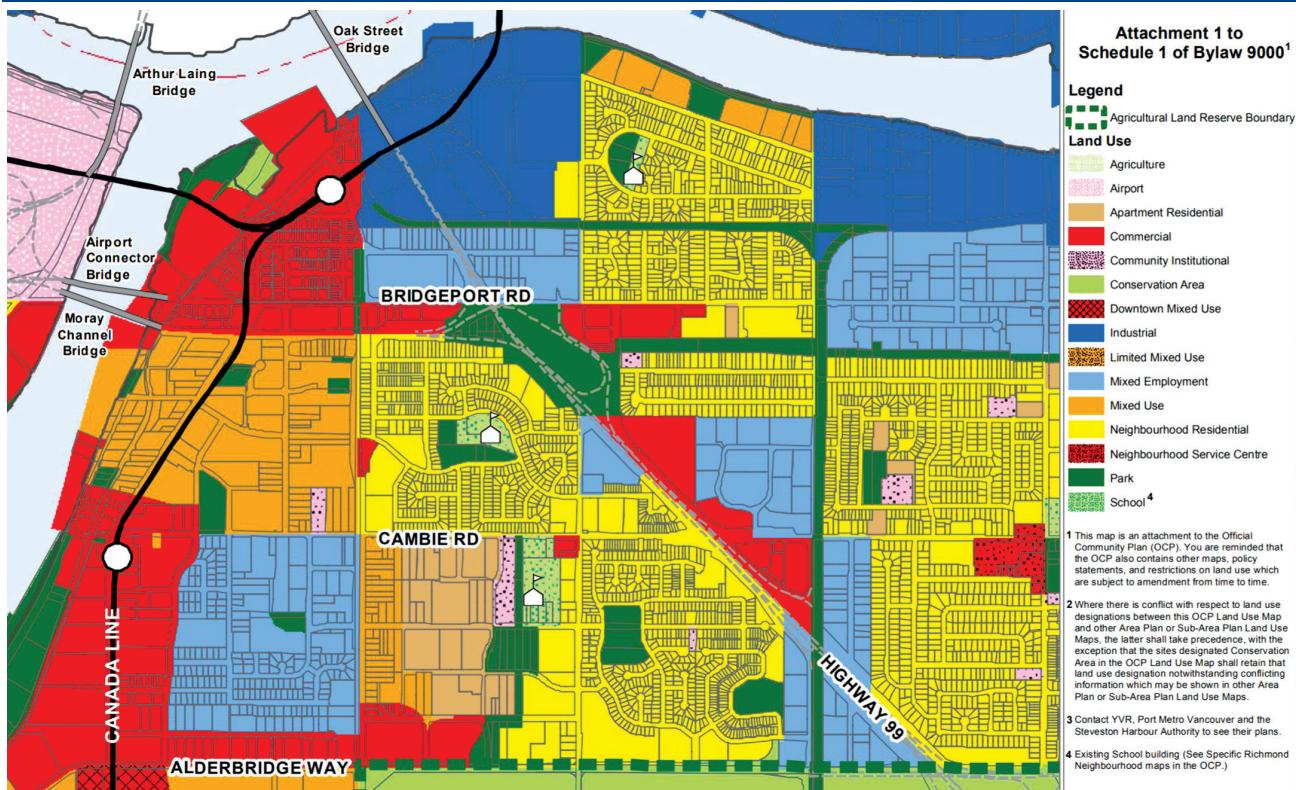
official community plan
a high level, long-term plan intended to guide the direction of development and growth of a local government

The purpose behind an OCP is to encourage local governments to prepare long range plans dealing with future development of their area. OCPs require local governments to plan their future growth and their financial ability to handle such growth. OCPs also provide property owners with guidance as to the long term plans of local governments. An OCP defines the policy of a local government in terms of existing and proposed land use and servicing requirements, and must contain policies on the following specific topics:

- the location, amount, type, and density of residential development required to meet anticipated housing needs over a period of at least five years;
- the location, amount, and type of present and proposed commercial, industrial, institutional, agricultural, recreational, and public utility land uses;
- restrictions on the use of land that is subject to hazardous conditions such as rock slides or is environmentally sensitive to development;
- location and phasing of major highways, trunk sewers, and water lines; and
- location and type of present and proposed public facilities.

The OCP will include one or more maps of the local government which designate all property to a specific land use designation, such as residential or commercial. Some of the designations will reflect how the lands are currently used, while other designations will be for the intended use of the land in the future. The figure below shows an example of one of these maps. Each of the colours indicate a different land use designation, such as residential, industrial, commercial, or institutional. See Figure 18.5 for a sample of excerpt from an OCP.

An OCP is usually prepared by the municipal or district staff at the request of the council or regional board. There are a number of procedural steps that must be taken before an OCP is adopted. Once adopted, OCPs are usually reviewed every 10 or so years, though this is not a legislative requirement. For the purposes of this chapter, the most important step is the holding of one or more public hearings where members of the public have an opportunity to express their opinion on the draft OCP, after which the OCP may be adopted by bylaw.

FIGURE 18.5: Sample Excerpt From the City of Richmond 2041 OCP Land Use Map

Source: richmond.ca

Adoption of an OCP does not commit or authorize a municipality or regional district to proceed with any project specified in the plan, nor is the OCP a zoning bylaw; however, all bylaws enacted, permits issued, and work undertaken by the local government subsequent to the enactment of an OCP, must be consistent with that plan. For example, if the OCP designates certain lands as agricultural, a municipality may not rezone the lands to permit a residential development. That rezoning bylaw would be inconsistent with the OCP. If a municipality wishes to rezone lands to a use inconsistent with its OCP, it must first amend the OCP so that the proposed rezoning is consistent with the OCP as amended.



As a Licensee...

Depending on the circumstances, a prudent licensee may wish to find out if there is an OCP, and if so, the designation of the subject property. For example, if a buyer expresses an interest in building on the property, renovating the property, or using the property for a specific purpose, knowledge of the long term plans for both the particular property and the neighbourhood in general is essential. Many local governments list their bylaws, including OCPs, on their website, which will include a map showing designations. Alternatively, a licensee can visit the local government's website or visit the municipal hall and ask the staff at the planning department for assistance.

In-depth knowledge of OCPs can be very useful to a licensee. Local governments often adopt OCPs which include future plans for increased density in certain areas or along particular corridors. Properties located in these areas often increase in value significantly as a result of the development potential caused from the change in designation. Licensees with knowledge of changes to the OCP can use this knowledge to the benefit of their clients. For example, in 2013, the City of Vancouver passed a new official community plan for the City's West End neighbourhood, which signalled that the City was planning for significantly increased density along one of the main streets in the area. Units located in older, low-rise buildings which could be replaced with much higher residential towers became more valuable.

RURAL LAND USE BYLAWS

A regional district may adopt rural land use bylaws for areas designated by the minister responsible for municipal affairs as rural planning areas. The purpose behind a rural land use bylaw is to consolidate, in a single bylaw, guidelines similar to an OCP along with regulations governing zoning and related matters. A rural land use bylaw will generally not be as detailed or comprehensive as an OCP or a zoning bylaw, but upon adoption it has the same effect as an OCP and zoning bylaw. The reason why a rural land use bylaw may be used rather than an OCP or zoning bylaw is because it is simpler and less costly than the more common planning regulations.

ZONING

OCPs divide the area within a local government's boundaries into land use designations, which designate current or intended future use of a property. *Zoning* bylaws regulate only current land use (i.e., how the land

zoning

the division of a region into separate districts with different regulations for land use

may be used now) and divide the local government into land use zoning districts, commonly referred to as zones. Virtually every parcel of real estate in the province will be affected by a zoning bylaw which places some restriction on the use of that property, the location of buildings on the property, and the form or shape of buildings that are permitted. The fact that a property happens to be used in a particular manner does not necessarily mean that such use is in accordance with the zoning.

It is necessary in every case to determine whether the property intended to be sold or purchased does in fact conform to the relevant zoning bylaw.

The Zoning Bylaw

Zoning bylaws usually consist of three parts:

1. the official map which shows the location of each zone;
2. general administrative and interpretation sections applicable to all or most zoning districts; and
3. regulations applicable to each particular zoning district, such as what uses are permitted.

The official zoning map depicts the location of each zone, similar to how an OCP map depicts different designations. The zoning districts are usually identified on the map by symbols that abbreviate the name of the district. For example, residential single-family districts may be designated (R.S.). Where there is more than one district under a major land use classification, for example, different density zones for multiple-family residential district (R.M., from “Residential, Multiple Family”), additional subscripts will be used (e.g., R.M.-1, R.M.-2, R.M.-3, etc.). While there are no mandatory standardized naming conventions for zoning districts in B.C., in practice, naming of zones is fairly consistent across jurisdictions. Generally (although with numerous exceptions), “A” refers to agricultural use, “R” is the basis for various residential uses, “I” is for institutional uses such as hospitals, and “M” is for industrial use. “CD” zones refer to “Comprehensive Development” zones which are site-specific zones for that particular parcel or parcels of land. Zoning district boundaries will usually follow property lines or the centre lines of streets and lanes.

Appendix 18.1 includes an excerpt from a zoning bylaw, illustrating some of the regulations specific to properties located in a Single Family Dwelling Zone (RS1) particular to that municipality. The first part of the excerpt specifies what uses may be made of the land (single family dwellings, child care, secondary suites, and the keeping of chickens, among others). Subsequent sections regulate how the lands may be built upon (site coverage, setbacks, and floor area ratio). These concepts are explained below in greater depth.



As a Licensee...

Where a buyer expresses a plan to build on or renovate a property, or to use it for a specific purpose, a licensee may need to be familiar with the zoning bylaws of the area, or be able to refer to outside expertise on the matter. Zoning bylaw maps can often be located online, or available through municipal staff. Keep in mind that online zoning maps and other bylaws may not be 100% up-to-date if recent amendments have been made. Discussions with municipal staff may be helpful to gain insight on zoning regulations that may be applicable to a particular property.

To avoid confusion, each municipality or regional district will usually have only one or two copies of the official zoning maps that are certified as being correct and up-to-date. To ascertain the correct zoning, it is necessary to refer to the official map(s) typically available online or contact the planning department.

In addition to restricting land uses, most zoning bylaws include a large number of other regulations. Some of the more frequently encountered restrictions are:

- **Restrictions on the number of buildings on a lot:** In most cases, the zoning bylaw will not permit more than one building on a lot but some allowance will be made for accessory buildings such as a garage or greenhouse. In the last 10 years, it has become more commonplace in urban municipalities for a zoning bylaw to permit a secondary house, known as a “laneway” or “coach” house to be constructed on the same parcel as a single family dwelling.
- **Set-backs and yards:** Zoning bylaws will usually provide that buildings must be set back from the property lines and will contain the specific dimensions for these set-backs or side yard requirements in the different zones. The method of measurement of the set-back will usually be covered in the general regulations and will usually exclude projections such as bay windows, balconies, steps, etc.
- **Height:** Zoning bylaws usually limit the maximum height of buildings either in metres or in number of storeys.
- **Density:** Zoning bylaws will sometimes limit the density of buildings or use on a parcel. In such cases, density is frequently measured in terms of the total floor area of the building in relation to the size of the lot. Various terms are used for this ratio, the most common of which is “floor area ratio” or “*floor space ratio*”. Another way of measuring density is by the number of dwelling units per hectare or by prescribing the minimum lot area per dwelling.
- **Home occupations:** These are generally permitted in residential areas to allow for incidental income producing activities that are not a nuisance to the neighbours. They are frequently regulated by prohibiting advertising, outside storage, or the employment of anyone who does not reside within the dwelling.
- **Off-street loading and parking:** Almost all zoning bylaws contain general regulations for off-street parking and loading. The first part of the regulations establish the required number of parking spaces or loading bays that must be provided. The number is in terms such as spaces per 1,000 square metres of floor area in a commercial building, per suite in an apartment, or per seats in an auditorium. The second part of the regulations establish the minimum dimensions for parking bays. The zoning bylaw will contemplate “off-street” parking, which occurs on private property. On-street parking may be regulated through other bylaws of the local government, and may include a parking permitting scheme.
- **Signs:** Zoning bylaws often regulate the size, design, and location of advertisement signs in the municipality.

floor space ratio

a measure of density commonly used to regulate building on lands. A floor space ratio of 0.5 applied to a lot with an area of 1,000 square metres would mean that a total floor area of 500 square metres could be built on the property, regardless of the number of storeys of the building

What's the Difference – OCPs v. Zoning Bylaws

On the face of it, OCPs and zoning bylaws may appear to do the same thing; however, while there are similarities, they each serve different and unique purposes. OCPs are higher level, more strategic, and less prescriptive than zoning bylaws. They set out both policies for current land use and a framework to manage future growth and change within the local government. In contrast, a zoning bylaw is one of a number of specific regulatory tools that is designed to implement the policies set out in the OCP by regulating current land use. The difference between OCPs and zoning bylaws may best be understood with an example. The OCP for a given local government may designate an area of land to be used as a future growth area for high density housing. The local zoning bylaw will be more prescriptive and may state that no new building within the block of land may be taller than 12 metres; cover more than 45% of the parcel of land on which it sits; or be closer than 4 metres from any road that abuts the parcel. As mentioned earlier in this chapter, zoning bylaws cannot conflict with the OCP.



As a Licensee...

There often is a lot of confusion about the difference between infill, laneway, coach and carriage homes. Generally, laneway, coach and carriage homes are all forms of infill housing. Coach and carriage homes are often the same thing. They may be strata titled, in which case they can be sold separately from the main house and must adhere to the *Strata Property Act*. Laneway homes often cannot be sold separately from the main house as both the laneway home and main house are within the same legal lot. It is important to recognize that the legal structure rather than the name given to the various types of infill homes will determine whether or not they can be sold separately from the main home. Local government bylaws provide for certain floor space ratio, setback and other building requirements for all types of infill housing. As a licensee, it is useful to understand the bylaws for infill housing as buyers looking to build will appreciate this information.

Specific Regulations

In addition to the above commonly-regulated matters, a zoning bylaw may also provide for regulation of specific issues. These include secondary suites and short-term tourist accommodation, such as Airbnb.

The regulation of secondary suites is common in zoning bylaws, and is one of the more sensitive issues in zoning regulation in British Columbia. Many homes include “mortgage helpers” in the form of secondary suites to help owners address the high cost of housing in the province. In some provinces, secondary suites are permitted everywhere, but in British Columbia, local governments retain the ability to regulate this use through the zoning power. In most instances, secondary suites occupied by extended family members (also known as “in-law” suites) are permitted. However, secondary suites, which are entirely self-sufficient from the principal single family home and which are occupied by unrelated individuals, might not be permitted under the zoning bylaw. Furthermore, an existing secondary suite may have been constructed without proper building permits and inspection. In these cases, the property is said to contain an “illegal suite”; however, one might see terms such as “unauthorized accommodation” or “non-conforming suite”.

Many local governments, recognizing the utility or necessity of secondary suites, have taken a non-enforcement approach to secondary suites which are not permitted under the zoning bylaw, provided that such suites are not the subject of complaints by neighbours. Illegal suites, where concerns over health and safety are present, may attract greater attention of a municipality’s bylaw enforcement officers. The key risk in owning a property with an illegal secondary suite is that, upon discovery by the local government, the property owner may be required to do what is necessary to bring the suite into accordance with the current building codes and bylaws, demolish the suite, and/or pay monetary fines. Clearly, if a buyer purchased property with the expectation that the secondary suite would provide financial support to them, having to do any of the above could be devastating. A buyer should never be led to believe that the income from an illegal secondary suite is guaranteed.

The simplest method that a licensee can use to determine the legality of a secondary suite is to make an inquiry to the relevant local government. While the standard form Property Disclosure Statement contains an item relating to whether the premises contains unauthorized accommodation, a licensee should take the time to independently verify the legality of the secondary suite. In particular:

- When acting as a listing licensee for the seller, section 41 of the Rules states that a “licensee must not publish real estate advertising that the licensee knows, or reasonably ought to know, contains a false or misleading statement or misrepresentation concerning real estate...” Aside from being a breach of the Rules, a licensee may also face legal action relating to negligent or fraudulent misrepresentation.
- When acting for the buyer, section 30(h) of the Rules states that a licensee must “use reasonable efforts to discover relevant facts respecting any real estate that the client is considering acquiring”. Clearly, it is not unreasonable for a licensee to make a simple inquiry with the local government about the legality of the secondary suite.



As a Licensee...

When acting as a listing licensee of a property containing an illegal secondary suite, keep in mind the following:

1. The advertisement of such suites as a possible source of revenue or a “mortgage helper” for homeowners breaches section 41 of the Rules which prohibits false and misleading advertising. Instead, licensees are encouraged to include a clause in the contract of purchase and sale that contains an acknowledgement from the buyer that the property contains unauthorized accommodation.
2. Since “a lack of appropriate municipal building and other permits respecting real estate” is part of the definition of a material latent defect under the Rules, under section 59, a listing licensee must disclose illegal secondary suites, if known, to all other parties to the trade in real estate.

Another form of regulation through the zoning bylaw that has recently attracted attention is short-term tourist accommodation, such as Airbnb or VRBO. Historically, zoning regulations could relatively easily distinguish between residential uses and uses which accommodated travellers, such as hotels. However, the distinction has become less clear in recent years as home-owners utilize the “sharing economy” by renting their homes to travellers on a short-term basis. In response to public pressure, many local governments have implemented zoning rules which prohibit short-term accommodation, usually defined as stays less than 30 days. Licensees acting for clients seeking investment or rental opportunities are advised to determine whether short-term rentals are permitted in a particular municipality. While beyond the scope of this chapter, other considerations include:

- **Strata issues:** A given strata corporation’s bylaws may limit short-term rentals and provide for fines for contraventions.
- **Insurance issues:** A simple homeowner’s policy may not provide for adequate coverage for such activity.
- **Tax issues:** Owners conducting such activities may have goods and services tax (GST), provincial sales tax (PST), and income tax obligations.

1120732 B.C. Ltd. v. Whistler (Resort Municipality), 2020 BCCA 101

Whistler is an example of how municipal zoning bylaws may restrict an owner’s use of their property. As the municipality of Whistler grew as a resort destination, strata ownership of new hotels was utilized to finance this growth. Independent owners purchased units in hotels, which meant a single investor did not need to provide all the capital necessary to finance the project. At the same time, Whistler wished to ensure beds were available to visitors, and that these visitors had a consistent resort experience, despite independent ownership of hotel units.

A solution was “rental pool covenants”; covenants on the title of owners’ strata lots in favour of Whistler, which required owners to rent their units through a rental pool. The system ensured that all rentals were handled through a central system in order to provide vacationers with a consistent resort experience. In 2017, Whistler adopted the Zoning Amendment Bylaw, which incorporated the purpose of these covenants into Whistler’s bylaws. Specifically, the bylaw required all hotel-type properties subject to rental pool covenants to be made available to the public through a single professional rental pool manager.

The petitioners in this case purchased numerous strata units in one such hotel, but they declined to sign rental management agreements with the building’s rental pool manager. Instead, the petitioners sought to rent the units on their own, rather than through the pool. Litigation commenced between the parties, resulting in this case.

The petitioners challenged the validity of the zoning bylaw and specifically argued that the bylaw exceeded Whistler’s statutory authority under the *Local Government Act* to regulate the use of land and buildings. They argued that the bylaw regulated users, not uses. The BC Supreme Court (the “Court”) held that it is not settled law that a bylaw may not regulate users in any way. Therefore, the Court reasoned that Whistler’s council could have reasonably concluded that it had the authority to adopt a bylaw that regulated users, so long as it was not unreasonably discriminatory in effect. The Court decided that the requirement for a single professional rental pool manager was not discriminatory. Further, the Court held that the bylaw had a valid land-use rationale within Whistler’s zoning powers. As the standard of review to be applied by the Court was reasonableness, and the actions of council were deemed reasonable, the bylaw was held to be valid.

Licensees should be aware that, as emphasized by this case, unique restrictive zoning bylaws may exist which affect the rights and obligations of property owners, especially in small resort towns. Further, this case is confirmation that these bylaws may be valid and enforceable. Licensees must therefore be aware of potential restrictions posed by zoning bylaws and be able to explain any restrictions to clients. Specific bylaws can be found on municipal websites, so licensees should be familiar and up-to-date with any restrictive bylaws in the areas in which they work.

Rezoning

A zoning bylaw may be *amended* by a municipal council or regional district by passing a bylaw amending the existing bylaw. A council or regional district may begin the rezoning process on its own initiative or, as is usually the case, upon receiving an application from a property owner.

amendment

a change to an existing regulation, such as a zoning bylaw, authorized by a majority vote of an elected council or board

An applicant for rezoning will generally have to show that they either own the land which is being rezoned or have been authorized by the owner to make the application. In addition, most local governments charge a fee for this application, based on the number of lots being rezoned. A staff member will review the application and will provide the applicant with informal comments as to the acceptability of the proposed rezoning. The staff member may require that

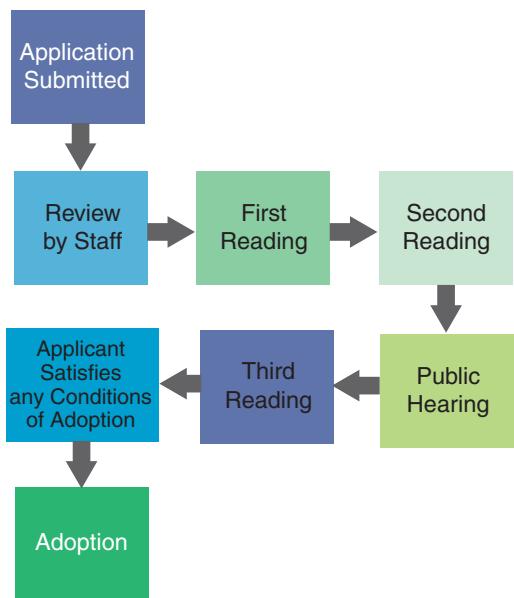
additional information be supplied such as architectural plans, traffic studies, market studies and so forth, depending on the nature and complexity of the proposed rezoning.

Any rezoning bylaw must be given three readings by the elected officials before final adoption, or in other words, the council or regional district board must vote in favour of the bylaw on four separate occasions. The staff member responsible for any particular rezoning will generally prepare a report commenting on the proposed rezoning and will submit it to the council or board for a first reading or first vote. If the elected officials are supportive of the rezoning in principle, the elected officials will vote in favour, also known as “first reading”, and by voting in favour of it, authorize staff members to proceed with their negotiations with the applicant. If they vote against the bylaw, the application will not proceed. After a favourable first reading, and before the third reading, local governments must hold a public hearing about the bylaw. Typically, a written notice of the public hearing will be mailed to neighbouring properties.

At the public hearing, the applicant will usually give a short presentation and will be asked questions about the proposal by the elected officials. After the hearing, the council or regional district board may pass the bylaw as originally proposed, they may change it to reflect the representations that have been made at the public hearing, or they may refuse to pass it at all. The public hearing is the opportunity for members of the public to have their say and provide their input on the proposed rezoning. Public hearings can sometimes be quite contentious, depending on the nature of the proposal and the perceived impacts.

Assuming the council or board is in favour of the rezoning proposal, they will vote in favour of the proposal, subject to the applicant meeting a number of requirements; including, for example, giving the municipality some land to allow for the widening of a road or for park purposes and requiring the developer pay for the widening of roads and the installation of new utility lines.

FIGURE 18.6: Typical Rezoning Process



It is only after the developer has either complied with all of these requirements or posted security with the local government to ensure that they will comply (generally by a letter of credit), that the council or board gives the bylaw its fourth and final reading. The timeframe for a successful rezoning may vary by property and across jurisdictions. In some rare cases, a rezoning could be granted in as little as four months from submission of the application, whereas more complicated rezonings may take two or three years to complete. Figure 18.6 demonstrates how a typical rezoning process may occur; however, circumstances may vary from local government to local government.

Under the *Local Government Act*, a municipality or regional district is not liable for any claim for compensation by a property owner as a result of passing, amending, or repealing a zoning bylaw (or OCP). If a municipality rezones land from commercial use to single family residential, the property owner cannot claim compensation, even though the land may have become less valuable.

LAND USE CONTRACTS

From 1971 until 1978, the *Municipal Act*, but not the *Vancouver Charter*, contained a provision for the adoption of a special type of zoning bylaw amendment known as a land use contract. The bylaw took the form of a contract made between the property owner and the local government and would often provide detailed plans showing what the property owner could build on the lands. The land use contract concept was designed to give traditional zoning site-by-site flexibility. A land use contract may apply to only one property, or may apply to many different properties (e.g., a land use contract on each parcel that a developer developed through the subdivision of a larger parcel of land).

Land use contracts had to be registered as restrictive covenants in the land title office after formal adoption (see Chapter 3: “What the Purchaser Buys: Estates and Interests in Land” for a discussion of restrictive covenants). The following is an example excerpt from a land title certificate showing a land use contract:

Sample:	Nature:	LAND USE CONTRACT
	Registration Number:	F85858
	Registration Date and Time:	1977-11-30 12:41
	Registered Owner:	THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER
	Remarks:	MUNICIPAL ACT S. 702A

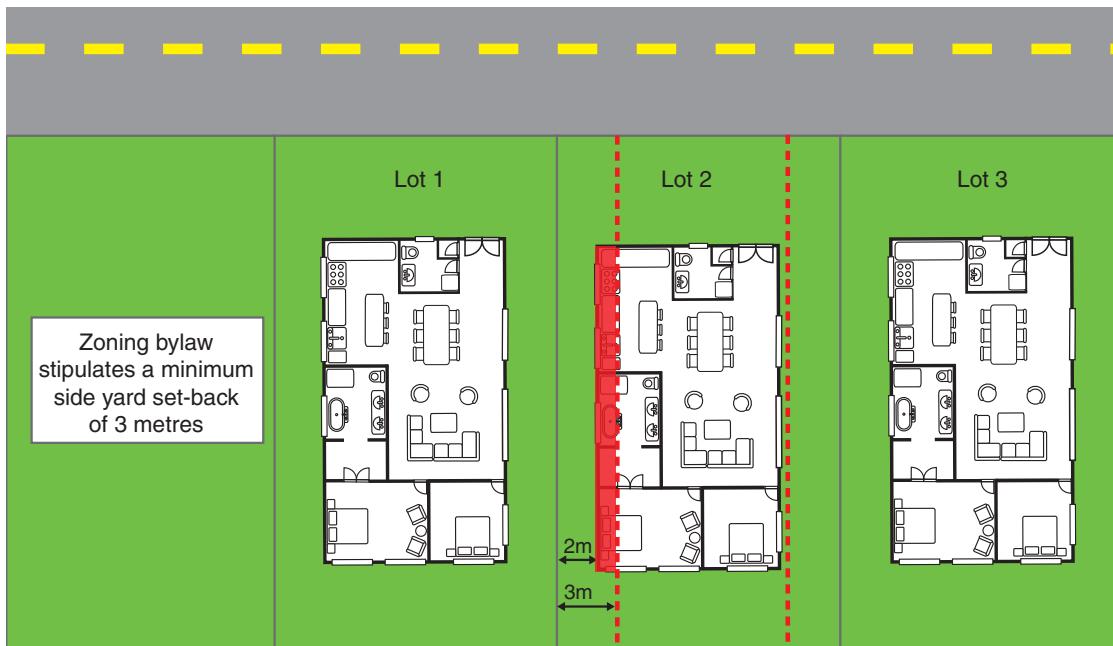
As of 1978, land use contracts may no longer be created, but those adopted prior to that time can still be amended by agreement of the local government and the owner, and in any event, most likely remain in force unless the property owner and the local government agree to termination. If there is any doubt as to the validity or enforceability of a land use contract, a licensee should refer their client to a lawyer for advice on the matter. While a licensee can generally find out from local government officials the details of a given land use contract, the surest source of such information is a land title search of the document itself. The title search will provide a registration number for the land use contract, which may then be obtained by the licensee and reviewed. Municipal staff may be useful resources in interpreting the regulations under the land use contract, but if licensees find themselves dealing with land that is affected by a land use contract, the licensee should advise the parties to seek legal advice.

In 2014, the *Local Government Act* was amended to provide for termination of all land use contracts by 2024, with the power to terminate earlier. Local governments may pass a bylaw to cancel the contract for a particular property prior to 2024. The effective date of the cancellation would be at least one year after the passing of the bylaw. The Act makes it clear that there will be no compensation awarded for loss or damage that results from the termination of a land use contract. However, if the land is lawfully used when the land use contract is terminated, the non-conforming use will be permitted to continue. Recently, many local governments have started the process of terminating land use contracts contemplated by the 2014 amendments, often passing bylaws that will terminate many land use contracts at the same time rather than undertaking the time-consuming legislative task of terminating one land use contract at a time.

NON-CONFORMING USE

When a zoning bylaw or amendment is passed, sometimes the regulations will result in a property that no longer complies with the new zoning regulations. An example might be a junkyard in an area that is to be rezoned to residential use. Under these circumstances, the council may zone such land for residential use but, since a zoning bylaw is not retroactive, the junkyard will become a *legal non-conforming use*, sometimes known as being “grandfathered”. A property may be lawfully non-conforming as to use, in the case of the junkyard, or lawfully non-conforming as to siting or location of a building. In Figure 18.7, a single family home is lawful non-conforming as to siting. This house was constructed 25 years ago in accordance with a zoning bylaw which required a 2 metre setback from the side property line. However, under the current zoning bylaw, the setback is now 3 metres. The house, and specifically that part of the house shown in red, is lawful non-conforming. The house is permitted by the local government, but if an owner chooses to rebuild or complete an addition, the owner will need to comply with the new 3 metre setback requirement.

lawful non-conforming use
land use that is impermissible under current zoning restrictions, but is nevertheless permitted because the use existed lawfully before the restrictions took effect

FIGURE 18.7: Lawful Non-Conforming Use

Under the *Local Government Act*, non-conforming uses may continue in the following circumstances:

- A non-conforming use may continue through successive changes of ownership, but it loses its status if the use is discontinued for a continuous period of six months (90 days in Vancouver);
- A structural alteration or an addition cannot be made to a building used for a non-conforming use unless this is required by law or permitted by a board of variance;
- A use in part of a building non-conforming under the new bylaw may be extended throughout an existing building or structure, but a non-conforming use of land cannot be extended over a larger area of land;
- A change in ownership does not change the status of its use; however, where a building, structure or land is damaged or destroyed to the extent of 75% or more of its value, it cannot be rebuilt without conforming to the new bylaw.

When selling a property with an existing use, it is a licensee's responsibility to determine whether that use is permitted under the various bylaws, is a legal non-conforming use, or is an illegal use of the land. Some buyers will be cautious of buying a lawful non-conforming property, particularly if they plan to rebuild, while most buyers will not be satisfied with an illegal use of the land and will refuse to proceed or will require that steps be taken to make the use a legal one by rezoning the lands. For example, many insurance companies restrict the amount of insurance they will grant on non-conforming properties. The licensee should go to great lengths to obtain all the relevant information from the local government and provide it to the buyer.

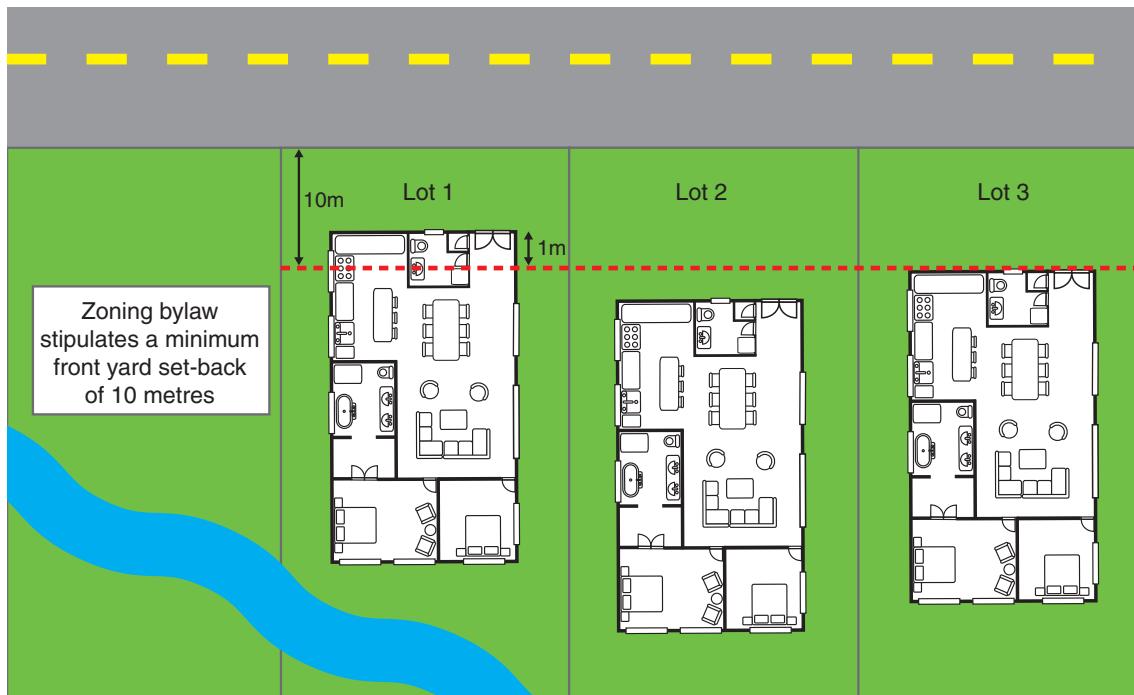
BOARD OF VARIANCE

A board of variance must be established by every local government that has adopted a zoning bylaw. Generally speaking, a board of variance provides site-by-site exceptions to the regulations prescribed by the zoning bylaw. A board of variance can determine if compliance with certain provisions of a zoning bylaw would cause undue hardship. If it would, the board may grant a minor variance provided it will not conflict with the policies of the local government. The most common variances granted are relaxation of set back or side yard requirements for buildings which were not built or cannot be built in compliance with the bylaw. The board may establish a time limit within which construction must be completed.

An example is shown in Figure 18.8. The red dashed line shows a 10 metre setback from the road, prescribed by the zoning bylaw, with which all properties must comply. However, Lot 1 has a water course

through the rear of the lot, which makes it impossible to maximize permitted density under the zoning bylaw while still complying with the 10 metre setback requirement. The owner of Lot 1 could apply to the local Board of Variance and if the Board considers this situation to constitute an “undue hardship” for the owner (and other conditions are met), it may issue an order permitting the owner to construct a building with a specified reduced front setback.

FIGURE 18.8: Board of Variance Example Scenario



PERMITS

Part 14 of the *Local Government Act* provides for permits which allow a local government to vary the provisions of its zoning bylaw or subdivision servicing requirements on a site-by-site basis. There are many types of permits, but the three kinds of permits that are most useful for the purposes of this chapter are development permits, development variance permits and temporary use permits. Building permits, another common permit that a licensee might encounter, will be discussed later in this chapter.

Development Permits

Development permits are used to manage development in areas with special needs or conditions. In order to use this planning mechanism, the areas with special needs or conditions must first be designated as development permit areas in the OCP. The reason for the designation must fall within one or more of the following categories:

- protection of the natural environment;
- protection of development from hazardous conditions;
- protection of farming;
- revitalization of an area in which a commercial use is permitted;
- establishment of objectives for:
 - intensive residential development;
 - commercial, industrial or multi-family residential development;
 - the development in a resort region;
 - the promotion of energy conservation;
 - the promotion of water conservation; or
 - the promotion of the reduction of greenhouse gas emissions.

If the land is designated as a development permit area, no construction or alteration of land may take place without a development permit. Obtaining a development permit (or “DP”) will often be a condition of issuance of a building permit for the lands. The OCP or zoning bylaw must include guidelines for the issuance of development permits. The development permit will specify certain conditions related to the construction or alteration of the land, which will be directed by the guidelines contained in the OCP for that particular development permit area. A common development permit is for the protection of a water course. Prior to obtaining a building permit, a land owner will need to obtain a DP from the local government. The DP may specify a setback for construction from the top of the bank of the watercourse, or landscaping that needs to be installed and maintained for a specified period of time. Often times, DPs will include schedules showing site or design plans for a property.

As a Licensee...

Licensees can determine whether a permit has been issued for a property designated as a development permit area by reviewing the title certificate for a legal notation referring to a permit under the *Local Government Act*. The following are examples of such notations on title. Note that permits can be non-expiring or expiring and if expiring, will specify the expiry date in the notation.

Sample: THIS TITLE MAY BE AFFECTED BY A PERMIT UNDER PART 14 OF THE LOCAL GOVERNMENT ACT,
SEE A52254

Sample: THIS TITLE MAY BE AFFECTED BY A PERMIT UNDER PART 14 OF THE LOCAL GOVERNMENT ACT,
SEE A52254, EXPIRES 17-03-31

The legal notation may refer to Part 26 of the *Local Government Act* or Part 29 of the *Municipal Act*, as these are the relevant parts of predecessor legislation. The legal notation itself does not provide details of the permit, so a licensee will need to contact the local government in order to obtain a copy of the full permit.

If a permit has already been obtained and noted on title, and where construction of the residential property is fully completed (and an occupancy certificate has been issued) and no renovations or change of use are contemplated, these notices will likely not materially affect a buyer’s decision. However, where real estate development or changes in use of a property are contemplated, these filings should be reviewed.

There is some similarity between development permits and land use contracts discussed earlier in this chapter. When the land use contract provisions were repealed in 1979, some of the site-specific regulatory powers utilized through the land use contract scheme were replaced by the development permit scheme. Both are essentially contracts that are binding on the landowner and the local government, and both contain specific requirements as to what may be built on the subject property, including reference to attached building plans. However, the subject matter of a land use contract may be broader than that of a development permit and will include the uses that may be made of a property, whereas the scope of development permits is narrower and often only concern building and construction requirements. Furthermore, a land use contract could apply to any particular property, while a development permit only applies to land falling within one of the special categories listed above.

Development Variance Permits

If an owner of land applies to a municipal council or regional district board to vary the provisions of a bylaw, the council or board may issue a development variance permit for that specific parcel of land. A development variance permit cannot vary the land use or density provisions in any bylaw. While a council or board may vary the bylaw, they are not obliged to and often refuse to do so, requiring the owner to go through a more formal rezoning process. Development variance permits provide an exception to existing regulations, similar to an order of the Board of Variance. There is a great deal of similarity between development variance permits and orders of the Board of Variance, and it may be up to an applicant how they wish to pursue the variance sought. The main difference between the two schemes relates to the types of variances that may be granted. Development variance permits are issued by the council or board of a local government and can vary provisions of many bylaws, including those related to zoning bylaws, construction, manufactured homes, parking, signs, screening, landscaping, runoff control requirements, subdivision servicing requirements, and minimum parcel sizes. Board of Variance orders, issued by an appointed group of individuals, may only vary those provisions of a zoning bylaw respecting the siting, size, and dimensions of buildings and structures or manufactured homes, and only if the order is a “minor variance”.

Temporary Use Permits

An owner of land may apply to a local government for a temporary commercial or industrial use permit. These permits are for specified uses and generally contain provisions regarding the term of the permit and requiring the restoration of the land on or before a specified date. For example, an owner may apply to the local government for permission to use their single family residence as a vehicle repair garage for a period of up to three years. A person to whom a temporary use permit has been issued may apply to have the permit renewed; however, it may only be renewed once.

SUBDIVISION

The process for subdividing land is governed by both the *Land Title Act* and the *Local Government Act*. The *Land Title Act* creates the position of the approving officer who consents to the *subdivision* of land; this consent is generally given by signing a subdivision plan prepared for the applicant by a British Columbia land surveyor. In municipalities, the approving officer is appointed by the council, and is generally the municipal engineer or planner.

The officer will generally approve a subdivision if, in their judgment, it complies with the municipal subdivision control bylaw. Factors such as parcel size, highway access, or the provision of utilities may all be relevant. Under section 85(3) of the *Land Title Act*, an approving officer may refuse to approve an application for subdivision approval if they consider that the deposit of the plan is against the public interest. When an approving officer rejects a subdivision plan for this reason, their decision is almost indisputable. For example, in the case of *Hlynsky v. West Vancouver (Approving Officer)*, 1989 CanLII 2746, the British Columbia Court of Appeal ruled that there are only three grounds on which a court may review an approving officer's decision. The only concern of the reviewing court, on an appeal by an aggrieved party, is whether the officer made the decision:

- in bad faith;
- with intent to discriminate against any property owner; or
- made the refusal on a “specious and totally inadequate factual basis”.

In *Hlynsky*, Mr. Hlynsky's proposed subdivision plan was rejected by the approving officer because, in the officer's opinion, the proposed lot dimensions and building siting “[did] not fit the remainder of the neighbourhood nor [did] it preserve the character of the existing area”. The officer concluded in his report that the proposed subdivision “... would not be in keeping with the policies enunciated in the community plan, does not conform to the intent of the zoning bylaw, and therefore it would not be in the community interest to approve this subdivision”. Given the court's power to interfere with such a decision only on the three bases outlined above, the Court of Appeal upheld the approving officer's decision even though the proposed subdivision plan met all zoning bylaw requirements for the district.

According to the *Local Government Act*, a subdivision bylaw may regulate the size, shape, and dimensions of parcels of land and the location, width, alignment, and grade of highways. The bylaw may also prescribe the standard of improvements required for roads, sewers, and water lines. These services must be either constructed prior to the granting of approval of the subdivision, or a bond, usually in the form of a letter of credit, must be submitted to the local government to ensure that the work will be completed to the required standard.

The *Local Government Act* provides that subdivision bylaws may require that the subdivider provide roads within the subdivision, as well as street lighting, underground wiring, water, sewer and drainage systems, and fire hydrants, all in accordance with standards established by bylaw. All of these services, if required by the local government, would be installed by the developer at their own cost. The owner may be required to dedicate up to five percent of the land for park purposes and must also protect riverbanks and streams from development.

As with rezoning, an applicant for a subdivision must submit an application form, together with the required fee, to the local government. The planning and engineering staff will review the plans together with the applicant and advise if the plans are acceptable or not. Extensive negotiations with the planning staff may be required, particularly in the case of larger residential or commercial subdivisions. The local government may want additional services installed, roads widened, or lands dedicated for schools or parks as a condition of granting approval of the subdivision. Approval of the subdivision will not be granted unless the subdivider agrees to install those services.

subdivision
the division of land into
two or more legal parcels

Development Cost Charges

Subdivision is one of the triggers for the payment of development cost charges (DCCs). DCCs are charges that may be payable by a developer of land to a local government in order to raise funds for the cost of construction, replacement and expansion of key municipal infrastructure components such as water treatment and storage facilities, sewage treatment and disposal facilities, water and sewer trunk mains, major drainage works, and major collector and arterial highways, and to establish community park facilities. When a property is developed, additional demands are placed on these municipal services, and DCCs are one of the ways in which municipalities can recover those costs. The amount of DCCs are set by a DCC bylaw, which will vary across jurisdictions. Issuance of a building permit (discussed below) may also trigger the payment of DCCs, but in some local governments, residential developments of fewer than four units will be exempt from paying DCCs at the time a building permit is obtained. Instead of imposing DCCs, a local government may instead require a developer to manage and pay for certain infrastructure projects.

Community Amenity Contributions

In addition to DCCs, local governments in British Columbia sometimes negotiate community amenity contributions (CACs) with developers seeking rezoning. While DCCs are typically a standard calculation, a CAC is a negotiated agreement under which a developer agrees to make specified amenity contributions in the event that the local government decides to approve the developer's rezoning application. These contributions can include the direct provision of amenities, such as affordable housing, or financial contributions. Increasingly, CACs are being used in British Columbia to help fund improvements to amenities such as parks, libraries, childcare facilities, community centres, transportation services, cultural facilities, and neighbourhood houses. Unlike with DCCs, local governments do not have legal authority to unilaterally require CACs as a condition for rezoning and development. Instead, CACs must be mutually negotiated between developers and local governments.

BUILDING BYLAWS AND INSPECTION

In addition to zoning and subdivision regulations, municipalities and regional districts may adopt a building bylaw. The fundamental purpose of a building bylaw is to protect public health and safety.

Building regulations are administered in two ways. First, anyone intending to construct, alter, repair, move or demolish a building, or install wiring, plumbing, or heating equipment, is required to obtain a building permit. A permit will only be granted if the proposed work conforms to the standard prescribed in the bylaw. If the work complies with the bylaw, the building permit must be issued. Second, building inspectors are appointed by the local government to see that the work conforms to the plans that were approved when the permit was issued. Inspections of existing buildings may also be made to see that they are kept in repair, that wiring and heating equipment is safe, and that the use of the building is not contrary to the zoning bylaw.

Compliance

The *BC Building Code* (the “Code”) requires local governments to ensure that registered professionals (engineers and architects) are employed by the property owner to certify that the plans prepared for complex buildings (such as multiple family residential buildings, larger commercial and industrial buildings, and institutional buildings) comply with the Code, and that the buildings have been constructed in accordance with the approved plans. In these cases, the local building inspector might only spot-check the building plans before issuing the permit, and might visit the building site only occasionally to make sure that the registered professional is performing their field review duties properly. Some local governments are extending this approach to simpler types of construction such as single family residences. In these cases, the local government’s building permit records for a completed building will contain the written certifications of the registered professional employed on the project, that the plans they prepared complied with the Code, and that the building (as constructed) complied with both the Code and the approved plans. These certifications are ordinarily required to be in place before the local government authorizes the occupancy of the building,

ensuring that the certifications will then be available to prospective buyers of the property. The effect of this approach to building regulation is that, if there is a defect in the building, the building owner may have a legal remedy against the registered professional who designed the building and inspected its construction, rather than against the local government.

Contravention and Enforcement

Contravention of the building bylaw may involve the imposition of a fine or, more importantly, an order passed by bylaw requiring the demolition, removal or upgrading of the offending work, or stopping any work in progress. Generally, orders requiring a property owner to spend money to bring a building up to standard will only be made where there is some hazard to the public. The *Community Charter* allows notices to be noted on title, warning potential buyers or mortgagees (i.e., lenders) of Code or bylaw contraventions. However, by simply searching title, one cannot be sure that such an order has not been made. One should always check the local government records to determine whether or not such an order has been issued, and if it has, advise one's clients accordingly.



As a Licensee...

Licensees must review the title of any potential property their client seeks to purchase. If the title includes a legal notation referencing a bylaw contravention, then a notice has been filed against title which likely means that the municipal building inspector has concluded that the construction on the lands does not comply with the Code or a municipal bylaw. The following is a sample excerpt from title:

Sample: BYLAW CONTRAVENTION NOTICE, COMMUNITY CHARTER, SECTION 57, SEE A52254

Details of the contravention should be obtained and discussed with staff at the municipal hall. A licensee should advise a buyer of the existence of the section 57 notice, and recommend the client obtain legal advice on how the notice may impact their rights.

LICENSING BYLAWS

Municipalities have the power to regulate activity in a number of ways other than by regulating the use of land or by levying taxes. Municipalities require that all businesses in their municipality obtain business licences and may also regulate how those businesses are operated. While municipalities generally cannot directly prohibit types of businesses, they often do so indirectly by establishing very high fees for certain types of licences. For example, adult book stores in some municipalities must pay a thousand dollars or more for a business licence, where most licence fees are under one hundred dollars.

Particularly when dealing with commercial properties, a licensee should have a detailed knowledge of the various business and licensing bylaws to ensure that a buyer of property can carry on their intended business. Referring to the zoning bylaw will also provide information as to whether the intended business is permitted under the zoning bylaw.

Example

Tyrel has always dreamed of selling cats and dogs to loving owners. Tyrel hires a licensee to locate a property for him in the City of Burnaby on which he can open a pet store. The licensee locates a suitable property for sale in Burnaby, and checks the relevant zoning bylaws to make sure that Tyrel will be able to use the land to operate a pet store. The licensee finds no issues within the zoning bylaw, and recommends that Tyrel purchase the property. Tyrel buys the property, but when he applies for a business licence with the City of Burnaby, they refer him to the Burnaby Business Licence Bylaw 2017, Amendment Bylaw No. 1, 2018 (Bylaw No. 13893). Section 2.0 of Schedule "E" of this bylaw prohibits owners of pet stores from selling or adopting out any of the animals listed in Appendix 1, which includes all cats and dogs. Tyrel is upset as he now owns the property, but cannot use it for the purpose for which he purchased it.

This example illustrates how simply checking the zoning for a property will not necessarily be sufficient to ensure that a client will be able to use a property for their desired purpose. Licensees should conduct due diligence thoroughly, including checking licensing bylaws, if applicable.



As a Licensee...

It is important to be familiar with all local bylaws that may affect the properties that your clients are interested in buying. In particular, if your client is interested in buying a property that is rented out to tenants, and upon possession, your client wishes to vacate the tenants to complete extensive renovations, you should be aware there may be municipal bylaws in addition to the provincial laws that govern this type of renoviction situation. Municipalities, such as Port Coquitlam and New Westminster, have passed restrictive bylaws relating to renovictions, which go beyond what is required by the provincial law. Some municipalities have implemented bylaws that require owners to provide temporary housing for tenants while their unit is being renovated, or that prevent landlords from charging a higher rent after renovations have completed, unless approval for an additional rent increase has been obtained from the Residential Tenancy Branch. Your client, as the potential landlord of a rental property, could be subject to these bylaws, which can constrain their ability to increase rent or end tenancies because of renovations. As a licensee, it is prudent to ensure your clients are aware of these bylaws before they purchase an affected property.

CONCLUSION

It is impossible in the short space of this chapter to present more than an outline of the various regulations affecting the use and development of private property. The goal of this chapter is to make the licensee aware of the principal forms of local government regulation that they will encounter, particularly:

- the zoning bylaw;
- the subdivision bylaw;
- the building bylaw; and
- the planning process and the overall community plan that guides future development.

The prudent licensee will not assume what may or may not be permitted by way of land use, subdivision, or building without making a specific inquiry to the municipality or regional district office.

It will take several years for new licensees to become familiar with the rules and regulations applicable in the jurisdictions in which they work. For example, while this chapter introduced certain types of permits that apply to land use in British Columbia (e.g., development permits), there are other types of permits that may apply to a given property or project that have not been covered (e.g., soil deposit/removal permits, tree cutting permits, sign permits, electrical/gas permits, heritage revitalization permits). It must be emphasized that even when this familiarity is gained, regulations are constantly being amended. There is always a chance that the licensee will encounter an uncommon circumstance and should, therefore, be alert to the need to make inquiries at the relevant department, or to refer clients to obtain legal advice in complicated circumstances. The best policy is never to make any assumptions – always inquire.

APPENDIX 18.1

Sample Zoning Bylaw Extract (District of West Vancouver)

Zoning Bylaw No. 4662, 2010 District of West Vancouver

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200 - SINGLE FAMILY DWELLING ZONES

201 – RS1 Single Family Dwelling Zone 1

AMENDING BYLAW	SECTION	REGULATION
	201.01	Permitted Uses
#4772		<ul style="list-style-type: none">(a) accessory buildings and uses(b) child care(c) community care(d) detached secondary suite(e) golf courses excluding commercial driving ranges and miniature golf courses(f) home based business(g) keeping of chickens(h) lodgers(i) secondary suites(j) single family dwellings
#4866		

201.02 Conditions of Use

The keeping of not more than 2 lodgers within a single family dwelling

201.03 Site Area

8,094 square metres minimum

201.04 Site Width and Depth

Width 61 metres minimum
Depth shall not exceed 4 times the site width

APPENDIX 18.1, continued**Sample Zoning Bylaw Extract (District of West Vancouver)**

**Zoning Bylaw No. 4662, 2010
District of West Vancouver**

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201.05 Site Coverage

Either:

- (1) 30% of site area maximum, if site area is greater than 885 square metres; or
- (2) 266 square metres maximum, if site area is between 664 square metres and 895 square metres; or
- (3) 40% of site area maximum, if site area is less than 664 square metres

201.06 Floor Area Ratio

Either:

- (1) 0.35 of site area maximum, if site area is greater than 677 square metres; or
- (2) 237 square metres maximum, if site area is between 474 square metres and 677 square metres; or
- (3) 0.5 of site area maximum, if site area is less than 474 square metres

201.07 Front Yard

10.7 metres minimum

201.08 Rear Yard

10.7 metres minimum

201.09 Side Yard

10.7 metres minimum on each side of the building

201.10 Building Height

7.62 metres maximum

201.11 Number of Storeys

2 plus basement maximum

Document # 444166v1

SECTION 200 • SINGLE FAMILY DWELLING ZONES