LAND USE REGULATION

SECTION 25

Legislative Framework

Parts 13, 14 and 15 of the *Local Government Act* (LGA) contain most of the legislative provisions for local governments that relate directly to planning and land use management. Part 14 is the core section, which provides the framework and tools for the local government planning system. Heritage conservation provisions are in Part 15 and Part 13 contains the enabling legislation for Regional Growth Strategies (RGS).

The *Community Charter* provides municipalities with most of their powers to regulate buildings and other structures, as well as other powers related to planning, such as tree protection authority and concurrent authority for protection of the natural environment. Municipalities cannot use the fundamental powers provided by the *Community Charter* to do anything specifically authorized under LGA Part 14 [CC s. 8(7)(c)].

Summary of Permits

Part 14 of the *Local Government Act* also provides local governments with a range of permitting powers in relation to:

Division	Topic	LGA Section
9	Development permits	484-491
9	Development Variance Permits**	498-499
9	Temporary Commercial & Industrial Use	492-487
9	Tree Cutting	500
Part 27	Heritage Alteration	617

***Issuance of these permits may not be delegated to staff.*

Summary of Bylaw Powers

Part 14 of the *Local Government Act* allows local governments to adopt a wide range of planning and land use bylaws within their boundaries:

Division	Topic	LGA Section (CC=*Community Charter*)
2	Official Community Plans	471-478
4	Public Hearings	464-470
5	Development Approval Procedures*	460
5	Advisory Planning Commission	461
6	Board of Variance*	536-544
7	Zoning and Other Development Regulation	479-483
7	Phased Development Agreements	515-522
7	Parking	525/CC 188(2), 189, 65
7	Drainage	523
7	Signs	526/CC 8(4)
7	Screening and landscaping	527
7	Floodplains	524
8	Farming	551-555
9	Development permit areas	488
9	Development approval information	484-487
10	Development Costs Recovery	558-570/CC 188(2)
11	Subdivision and dedications	506-514/CC 188(2)

* *If a community has adopted an Official Community Plan or zoning bylaw, it must adopt these bylaws.*

Regional Growth Strategy

Part 25

Regional districts have authority to prepare a regional plan or Regional Growth Strategy (RGS) for the purpose of guiding both municipal and regional district decisions on growth, change and development. The Province can require a regional district to prepare a RGS if a region is experiencing rapid growth. The RGS normally covers the whole regional district, however the Minister can authorize preparation of an RGS at a sub-regional or multi-regional level.

An RGS covers a period of 20 years or more and is intended to focus on key issues that are best managed at a regional scale. Section 429 outlines five essential elements: housing; transportation; regional district services; parks and natural areas; and economic development. The RGS must also include: social, economic and environmental objectives; population and employment projections; targets for GHG emissions in the regional district; and a list of actions required to meet the projected needs for the population. The board has the flexibility to include additional matters.

Consultation with affected parties is required in accordance with section 434. Before the RGS can be adopted it must be referred to affected local governments (member municipalities and adjacent regional districts) for acceptance. Minister's approval is not required, however in the event that there is a conflict in acceptance of the plan the Minister can instruct the parties on the method used to reach agreement.

Once an RGS is adopted, each municipality has 2 years to add a "regional context statement" (RCS) to its official community plan [LGA s. 446]. The RCS sets out the relationship between the RGS and the OCP, and shows how they will become consistent over time. The municipal council refers the RCS to the regional board for acceptance, and the same processes for resolving differences apply as they do for the RGS.

Regional Growth Strategies are implemented in a variety of ways. "Implementation agreements" [LGA s.451] are partnerships between the regional district and other levels of government and other organizations which specify how certain aspects of the RGS will be carried out. For example, the agreement may relate to the construction and funding of new or upgraded highways, sewers, hospitals or regional parks.

Official Community Plan

A municipality or regional district may adopt, by bylaw, one or more Official Community Plans (OCP). The local government can decide the area the plan applies to and the number of plans it wants.

While OCPs do not require the Council or Board to proceed with any project contained in the plan, all bylaws or works undertaken by local government must be consistent with the plan. The plan is a statement of policy and does not directly regulate the use of private property; this is the role of regulatory bylaws such as the zoning bylaw (see below).

An OCP is a statement of objectives and policies to guide planning and land use decisions within the area covered by the plan. The legislation provides a list of purposes and goals that OCPs (and regional growth strategies) should work towards (s. 471 and s. 428). OCPs must contain the content listed in section 473 (s. 429 for Regional Growth Strategies) which includes approximate location, amount and type of land uses. OCPs *may* contain any of those matters listed in section 474 including policies relating to social needs, enhancement of farming and the natural environment. Section 446 provides a requirement for a regional context statement in OCPs where a Regional Growth Strategy is in place.

In addition to topics identified in the Act, the Minister can require or authorize that policies be developed on other matters.

A local government can include statements in an OCP on matters over which it does not have jurisdiction. Such statements are referred to as "advocacy policies". Advocacy policies may only state the local government's broad objective for areas within provincial jurisdiction [LGA s.474] and their context should clearly indicate that such statements differ in kind from within-jurisdiction policy statements in the plan.

Local governments can enact zoning bylaws without having an OCP in place, however an OCP is required if a local government wants to use development permits. Development permits are discussed below. They are: arguably, the second most important tool available to local government for regulating development (after zoning). The special conditions or objectives that the development permit area is intended to address, must be described in the OCP.

Section 475 requires local governments to provide one or more opportunities for consultation with persons, organizations and authorities that it considers will be affected when adopting, amending or repealing an OCP. This is in addition to the public hearing requirements. Also, at the time of preparing or amending the plan (and not less than once a year) the local government must consult with school boards regarding the planning of school facilities.

To adopt or amend an OCP, a local government must follow the procedures outlined in section 477 of the Act. For regional districts, there is no longer a requirement for Ministerial approval of Regional District OCP, zoning, subdivision servicing, and temporary use bylaws. Ministerial approval is still required for the Resort Municipality of Whistler, the Resort Municipality of Sun Peaks, and Islands Trust. The *LGA* does provide discretionary authority for the Minister to require approval of regional district bylaws (LGA s. 585). An OCP that applies to land in the Agricultural Land Reserve must be referred to the provincial Agricultural Land Commission.

Zoning Bylaw

The principal land use regulatory bylaw, the zoning bylaw divides the area it covers into zones (and can also divide the area above sites into "vertical zones"). For each zone, local government can regulate:

- the use of land, building and structures (including prohibiting uses);
- the density of use, buildings and structures;
- the siting, size and dimension of buildings and structures; and
- the area, shape and dimensions of parcels created by subdivision (including strata title “bare land” subdivisions) [LGA s. 479].

The regulations may be different for different zones, uses within a zone, standards of works and services provided, (e.g., different parcel sizes when on sewer or on a septic tank) or siting circumstance, (e.g., different setbacks for residences along a watercourse). Like uses must be treated similarly within a zone, (e.g., the rules for single family dwellings in the same zone and in similar circumstances must be applied uniformly).

The zoning bylaw can include incentives for the provision of amenities or affordable housing by establishing higher levels of density if the conditions are met [LGA s.482]. This is sometimes called “bonus zoning” or “density bonusing.” The bylaw can only use density as an inducement; it cannot provide for additional uses if the conditions are met.

Rezoning can be initiated by a property owner or by the local government. Rezoning of individual properties, including creating a new zoning category

for an individual property, is permitted. If a local government has zoning it must also have a procedures bylaw that establishes the process for owners to apply for rezoning [LGA s. 460] and it must establish a board of variance to whom property owners who face particular hardship can apply for minor relaxations of full compliance with the regulations [LGA s. 536]. A fee to cover the cost of processing the applications may be charged [LGA s. 462]. The council or board must consider any rezoning applications that they receive, but they are not obliged to introduce a bylaw before turning down an application.

The process of responding to an application for a rezoning frequently involves negotiation regarding the nature of the development that the owner intends to build. If the council or board believes that it is in a strong bargaining position it might anticipate that the owner will be willing to voluntarily offer to include design features or contribute amenities to the community that are not legally required if that might help ensure a "yes" vote on the rezoning application. Great care must be taken in the wording of these discussions with developers. There is no provision in the legislation for "selling zoning," and common law tradition forbids the practice. If the provision of voluntary amenities is a consideration in rezoning separate legal contractual arrangements may be required to ensure that they are provided.

A rezoning that narrows the uses that are permitted on a property, changes the permitted use to less valuable ones, or which reduces the permitted density of development, is often called a "down-zoning." Since down-zoning can result in lower property values or loss of development opportunity, from the owner's perspective this may seem like an unfair infringement on property rights. However, in our Common law tradition, "property rights" are subject to whatever laws are duly enacted, and down-zoning is permitted without the owners' consent. Section 458 of the LGA provides that no compensation is payable to the owner for any resulting reduction in the value of the land (provided that the zoning does not restrict the use of the land only to public uses).

Developers of multi-phase projects that may take years before final completion may desire assurance that the zoning will not change in the meantime, especially if they obtained their zoning in consideration of amenities that they have offered the community. Sections 515-522 of the LGA enable phased development agreements which can provide such assurance for up to ten years, or 20 years with the approval of the Inspector of Municipalities.

Other Land Use Regulatory Bylaws

Local government can, as part of a comprehensive land use bylaw or in separate bylaws, adopt regulations and requirements related to development, including:

Parking: to require that specified amounts of off-street parking, loading and handicapped parking is provided. Local government can allow the spaces to be provided on another site or can, if the owner wishes, accept cash in lieu of off-street parking which must be paid into a fund that will be used to pay for local government parking facilities or transportation infrastructure that encourages non-automotive transportation.

Drainage: to require that the runoff from a paved and/or roof areas be dealt with in accordance with the requirements of the bylaw. The bylaw can also limit area of the site that is impervious to water penetration into the soil.

Signs: to regulate the number, size, type, form appearance, and location of signs. Signs can be prohibited unless the sign identifies or relates to the use of a property on which it is located. Note that the *Community Charter* also provides municipalities with general authority to regulate and impose requirements in relation to signs and other advertising. Extra care must be taken when designing sign bylaw provisions to avoid unnecessarily infringing on persons' constitutionally-protected rights to freedom of speech.

Screening and landscaping: to regulate or require that screening or landscaping be included to mask or separate specified types of land uses, protect the natural environment, or prevent hazardous conditions.

Often, these other related regulations are combined with zoning in the same bylaw, in which case it is often called a Land Use Bylaw.

Development Permits

A local government's OCP can designate development permit areas for one of the following purposes: protection of natural environment; hazard areas; protection of farming; commercial area revitalization; form and character of intensive residential, commercial, industrial development; form and character objectives for development in resort regions; promotion of energy or water conservation; and reduction in greenhouse gas emissions [LGA s. 488]. A similar tool is available for heritage area conservation and revitalization [LGA s. 615].

Development permits are, arguably, the second most important tool for land use regulation (after zoning). Besides enabling regulation of the design of a project, and imposing conditions respecting the sequence and timing of construction, a development permit can vary or supplement a regulatory bylaw (except that it cannot vary use or density)[LGA s. 490].

Variances

Sometimes the regulations that are written apply to all general circumstances are not appropriate for a specific situation. While one way to address this would be to rezone the affected property, the legislation provides three more expeditious ways for making site-specific exceptions to the strict application of land use regulations.

The first of these has already been mentioned: a development permit can provide flexibility, provided that it is related to the purpose of the development permit area.

Alternatively, on application of an owner, a local government may, by resolution, issue a development variance permit that relaxes the provisions of a regulatory bylaw (e.g., zoning, subdivision servicing, parking, etc.). A development variance permit may not vary use, density, flood plain specifications, or a phased development agreement [LGA s. 498-499]. Notice must be given to the owners and tenants of nearby properties. Although no public hearing is required, councils and boards usually provide an opportunity for affected parties to express their views on the variance.

As a third alternative, if site circumstances create a hardship for the owner to comply with the bylaw, the owner can apply to the Board of Variance (BoV) for a variance. All local governments that have zoning must establish a BoV. The types of variances that a BoV can approve are similar to those that the council or board can approve, however, the BoV may only order minor variances that address the hardship. It is possible that as appointed volunteers, BoV members may be more prone to make their decisions based upon the merits of the proposal rather than its popularity with the neighbours.

These two latter approaches to variance are separate from each other. An owner who has been turned down by one body can go to the other for an approval.

Development Cost Charge Bylaw

Development Cost Charges (DCCs) are fees that municipalities and regional districts choose to collect from new developments to help pay for the costs of specific off-site services that are needed to accommodate growth. The fees that are charged must relate to the average actual costs the local government expects to incur in developing the off-site services.

Local governments are limited in the types of services they may fund using DCC revenues. Specifically, DCCs may be used to help offset costs associated with the provision, construction, alteration or expansion of: waterworks, sewer trunks, treatment plans and related infrastructure, drainage works and major roads.

DCCs may also be collected to assist in the acquisition and development of parkland but may not be used to pay for other types of services. DCCs may be imposed on most, but not all, development in a community (e.g., not places of public worship). Monies raised must be placed in reserves and can only be used for the purposes for which they were collected.

The Inspector of Municipalities (Ministry of Municipal Affairs and Housing) must approve DCC bylaws and local government must be able to provide information to the public on how the cost charges were determined.

Subdivision Standards and Dedications

Section 514 of the LGA includes special provisions to allow subdivision of rural lots smaller than their zoning would normally permit to build a residence for a relative. The same section includes ability for local government to establish separate minimum lot sizes for such lots that can have the effect of moderating the provision.

A subdivision servicing bylaw sets out the standards for the infrastructure that the developer builds that will later be maintained by the public. This includes roads, sidewalks, boulevards, boulevard crossings, transit bays, street lighting and underground wiring, water systems, fire hydrants, sewage collection and disposal systems, and drainage collection and disposal systems. Connection to community water, sewer or drainage systems can be required. It may also require services to be provided adjacent to the subdivision or development that is directly attributable to that subdivision or development.

Unless the local government provides otherwise, subdividers are required to dedicate lands for parkland, highways and school sites or provide cash-in-lieu as a contribution to the local government's park acquisition fund. This requirement does not apply if the subdivision would create fewer than three additional lots. By default, the legislation requires that 5% of the land being subdivided is to be dedicated for parks. Local governments can decide to accept a lesser amount of land, may specify what types of land they want included in the parkland dedication, or may limit the subdivider's options regarding provision of cash-in-lieu instead of land. They do this through a parkland acquisition policy in their community plan. In the case of regional districts, they must have the parks function and provide parks services in order to receive cash-in-lieu.

Under section 574 and 577, a local government and school board may enter into an agreement respecting payments or the provision of land for school sites. The charges can apply to development at the time of subdivision or when building permits are issued. School site acquisition charges are set by school boards in accordance with a formula specified in sections 575-576.

Building Regulation

The BC Building Code (based on the National Building Code) sets the standards for the construction of and changes to buildings and applies across BC except on Federal lands and on First Nations reserves, unless a First Nation opts in or a treaty includes provision for the BCBC application. The BC Building Code applies to all construction whether or not the local government undertakes building inspections or requires a building permit.

Community Charter & Local Government Act

The *Community Charter* provides municipalities with general authority to regulate, prohibit or impose requirements related to buildings and other structures [s. 8(3)(l) and 53-58]. Regional district regulatory authority in relation to buildings is provided by the *Local Government Act* [s. 297-300]. Some *Community Charter* provisions also apply to regional districts [LGA s. 302].

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