

RULES OF THE GAME: LAND USE & LAND OWNERSHIP ON PRINCE EDWARD ISLAND

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Land, broadly defined, is Prince Edward Island's prime resource. In the absence of minerals, energy or large-scale manufacturing, land has always been the source of sustenance and wealth within this society.

It is not strange, then, that controversy about land issues has been a continuing theme throughout Island history. In the nineteenth century the question was: who should own land, tenants or proprietors? Within the past two decades the question of how land should be used or developed has been added to the ownership question.

A second Royal Commission on Land Use and Land Ownership has now been established. It comes 15 years after the report of the first Royal Commission was released. In this paper I will explore briefly what has been accomplished since the report of the 1972 Royal Commission and outline what remains to be accomplished.

The 1972 Royal Commission made 23 recommendations. By my count, five were adopted by government, three were partially adopted, and 15 remain in limbo. Its major recommendations were not adopted. They included a generalized provincial land use plan, a detailed coastal land use plan, and minimum maintenance requirements for non-resident and corporate lands.

Those assessing the report in 1973 concluded that the level of planning and regulation advocated by the Royal Commission was unrealistic when viewed in the context of a rural society which was unaccustomed to regulation and, at the same time, was struggling with the tensions generated by the Comprehensive Development Plan. The Royal Commission Report was a document well in advance of its time.

[>>>top](#)

Since the major recommendations of the Royal Commission report were not adopted, then what has happened in the intervening 15 years? I suggest that change has occurred in four major areas:

1. Through legislation, government has accumulated adequate power (some would say more than adequate power) to regulate land use and land ownership within the province. The Planning Act, passed in 1974 and reworked extensively this year, enables the Minister of

Community and Cultural Affairs to control almost any conceivable type of development. Similarly, the Lands Protection Act of 1982, preceded by numerous amendments to the Real Property Act, enables the cabinet to control a wide variety of land transactions. These Acts give the provincial government the power it needs to regulate; they do not indicate, except in broad generalities, how that power is to be exercised.

2. There has been a growing acceptance by the public of the need for planning and regulation during the past 15 years. In the early 1970s, many landowners expressed the opinion that their land was their own, and that they alone should determine how it is to be used. Attitudes have changed since those times. Owners have accepted, in general terms, the need for regulation of land in the public interest, although they may often disagree with the intent of specific regulations.
3. There has been a dramatic increase in planning at the community level. In 1972, at the time of the first Royal Commission, no community had an official plan and implementing bylaws; by 1988 the number of communities with plans in place or in progress approaches 40. Within these municipalities people have collectively developed a vision for the future of their community, embodied it in an Official Plan and are attempting to bring it to reality through the application of zoning and subdivision bylaws. This is an impressive accomplishment to have occurred over a relatively short time.
4. The Land Use Commission, originally established as an advisory body, has come to play a major role in the decision-making process. As an appeal body, it has become the final arbiter in disputed land use decisions. Although there are bodies similar to the Land Use Commission in other provinces, the Commission has played a more visible role here, in large part because of the vague and discretionary nature of the regulations that the Commission must interpret on appeal.

[>>>top](#)

To summarize, then, adequate enabling legislation has been passed at the provincial level, citizens have accepted the need for planning and regulation, communities have made rapid progress in managing their own affairs, and the Land Use Commission has, in most cases, effectively resolved disputes within the system.

We have made measurable progress since the completion of the first Royal Commission. Although its major recommendations were not adopted, it did set in motion a planning process which continues today. Much remains to be done. Increasing pressure on shorefront lands and the possible coming of the fixed link provide a strong justification for taking new major steps toward improving our land planning system.

In my view there are two broad, interrelated issues that should be a focus of concern for the recently appointed Royal Commission. These are:

1. A lack of coherent land use and ownership policies at the provincial level.
2. Stemming from that lack of policy, a set of regulations that are vague, contain too much discretion, and are difficult to apply in any consistent manner. This applies both to use and ownership legislation.

[>>>top](#)

First, I shall consider the lack of coherent provincial policies on land issues. I do this by comparing provincial policy making with municipal policy making. At the municipal level, the provincial government allows a community to regulate the use of land within its boundaries only if the community fulfills certain conditions. The community, through a process of public participation, must develop a coherent set of policies relating to all aspects of land use. These interrelated policies are called an Official Plan.

Once an Official Plan has been agreed upon, the community must then devise a set of bylaws that will translate the general Plan policies into a form in which they can be applied to specific situations--the issue of building permits or the creation of new subdivisions. In broad terms, what the community must do is to develop a vision of the future that it wishes to achieve, and then to work out methods that will transform the vision into reality.

I recognize that there are many problems with the Official Plan process. Usually the final plan represents a compromise among diverse competing interests. It may satisfy no single interest group but may be tolerable to all. As circumstances change, the plan itself must be reviewed and altered. Often there are problems of interpretation and administration, especially in the case of smaller communities with limited resources. Despite its imperfections, however, the Official Plan process represents the most effective method that we have devised in this province for developing land policies and putting them into effect.

Keeping the example of community planning in mind, let us shift our sights to the provincial level. The provincial government is responsible for the direct administration of land use in that large rural portion of the province that is not included within municipalities with Official Plans. This area includes more than half the province. In addition, the provincial government sets the conditions under which communities operate, so indirectly it bears a responsibility for providing guidelines for the regulation of land within municipal areas. As well, the provincial government is the sole agent able to regulate land ownership within the province. The bulk of the responsibility for the regulation of use and ownership rests ultimately with the provincial government.

Where, then, at the provincial level, are the coherent set of land use policies that could be compared to the Official Plan at the community level? What document sets forth provincial goals and objectives for use and for ownership? Where is the collective vision of what the province should become in five years time or at the turn of the new century? At present it is lacking. We have no vision for the future.

[>>>top](#)

The province has, in the Planning Act and the Lands Protection Act, more than enough power to regulate land at the provincial level. The problem is that the province has yet to determine in any systematic fashion how that power should be used. We have put the cart before the horse in this province. We have a mass of detailed regulations to accompany the Planning Act, but we do not have any clearly enunciated body of policy that the regulations are trying to put into effect.

We have failed, at the provincial level, to do the homework that the province requires a community to perform before it can manage its own affairs. This is a situation that must be rectified. The Royal Commission of 1972 may have been premature in calling for a provincial land use plan. It is now an idea whose time has come.

What is needed is a vision of what we want the Island to become. Different groups have different visions--developers, environmentalists, farmers; industrialists, all view the world through different lenses. Somehow these Visions must be harmonized in a provincial plan that may please no single group but will be tolerable to all.

I believe the greatest challenge for the new Royal Commission is to produce, for the first time, a provincial plan. The plan would take the form of a set of coherent policies that address issues of both use and ownership. The analogy with municipal Official Plans is obvious. How could such a plan come about? It would start from an analysis of existing trends.

[>>>top](#)

One of the most serious problems in attempting to discuss land use issues is the lack of data, in a readily accessible form, on land use and ownership trends. How many summer cottage subdivisions have been created within the past decade and in what locations? What are the trends in non-resident ownership over the last decade? What types of lands are being taken up?

Without adequate information on current trends, it is difficult to see how good decisions can be made. Informed decisions require good information. Too often in the past, in my opinion, the results produced by Commissions, public inquiries, and legislative committees have been seriously hampered by a lack of data on which conclusions can be based. It is to be hoped that the new Royal Commission will demand the preparation of background studies that will enable both it and the public to assess realistically the problems and produce informed conclusions.

On the basis of the trends, future projections can be made and scenarios can be constructed showing the face of the Island in the future if certain measures are taken, or conversely, if nothing is done.

After the necessary data has been compiled and a variety of scenarios constructed, preparation of the plan would take into consideration submissions from a variety of interest groups and the public at large. Following public input, it would be the responsibility of the Royal Commission to develop a consensus that could be adopted by the provincial government as a basis for its regulatory and development efforts.

[>>>top](#)

The major elements that would make up a provincial land use plan are evident. Here, I can mention only a few. The coastal zone was singled out as a priority area. It remains a priority area. Unfortunately, our vision of what is desirable in the coastal zone is still not clear. Should we allow subdivision to proceed until all the choice locations have been converted to summer cottage lots, with no guarantee that the lots sold will ever be built upon? Is there room in the

coastal zone for varying densities of use, or must we accept a form of development based upon a minimum lot size of 15,000 square feet? Is it possible to designate certain areas, such as offshore islands and natural areas, as zones to be kept clear of development, although they may not necessarily be slated for public acquisition? Hard choices have to be made now if we are not to follow the example of many other coastal areas in North America where the shoreline has been stripped off indiscriminately for private gain.

A second area of concern is the type of residential development occurring outside urban boundaries. Most new growth now occurs as strip development along public roads, based upon individual services, a well and septic tank, and, again, a minimum lot size of 15,000 square feet. Is this to remain the preferred type of development until, at some point in the next century, most of our secondary roads near urban centres have been converted into village streets? What effect will continuing strip development have on the efficiency of our system of roads which, with the elimination of the railway and an increase in traffic generated by the completion of the fixed link, will be increasingly overloaded? To what extent can we continue to rely on development based on on-site services, when problems of contaminated wells are occurring at an increasing rate?

In addition to developing goals for the use of land we must also consider ~ the ownership issue. What is the desirable pattern of ownership that should prevail within this province? What types of transactions should be denied as contrary to the public interest? For what types of land is resident ownership essential? There is widespread agreement that land ownership should be subject to regulation. How that regulation is to occur has never been effectively addressed. In the absence of policy it has never been clear which applications to cabinet are to be approved and which denied. Much rhetoric is directed towards the preservation of farms and farmland, yet this province remains as one of the few places left in the country where farms can be broken up at the whim of the owner, as long as the parcels created exceed 10 acres in size. Ownership legislation without a clear set of objectives and guidelines leads only to a bureaucratic jungle of paperwork.

[>>>top](#)

These examples, I suggest, are sufficient to indicate the necessity of developing a set of provincial land policies which, collectively, will make up a provincial land plan. The construction of such a plan is long overdue; its development by the new Royal Commission would be a major achievement.

A second major source of problems at the present time is the Planning Act Regulations, the legal instruments used now to control development in areas of direct provincial jurisdiction. In effect, they are the rules of the game for any rural area or municipality that does not have an Official Plan. The present Regulations are deficient in three major aspects:

1. Since they were first developed in the mid 1970s, the Regulations have been amended in an ad hoc manner so many times that they now resemble a patchwork quilt. In many cases the original intent can only be guessed at.

A preamble to the present Regulations does outline a number of planning principles that the Regulations were to incorporate. In many cases, as a result of amendments or changed interpretations, the planning principles are no longer discernible. Under these circumstances the rationale underlying the regulations is hard to comprehend.

[>>>top](#)

2. The present Regulations are, in many instances, far too vague and contain almost unlimited discretion. For example, building permits and subdivision applications can be denied if their approval would:

--endanger the health, safety or convenience of adjacent residents;

--be detrimental to adjacent land uses;

--result in undue damage to the natural environment.

These grounds for denial are so broad and subject to such a wide range of interpretations that a person considering a use other than a single-family dwelling is in a state of total uncertainty until the application has been processed. Nor is the person trying to assess the application in any better state.

If the types of development occurring across the province are now seen by some to be inappropriate or environmentally damaging, the fault does not lie with the developer. Developers are businessmen and, as such, will take everything the law allows them. The fault lies with the rules of the game, which are so vague and imprecise that almost anything can be permitted. If types of development are occurring that are seen by the society to be detrimental, the solution is to change the rules of the game, not blame the developer.

The high profile of the Land Use Commission in this province is due in large part to the nature of the regulations that the Commission is being called upon to interpret. Reasonable people can reach totally different conclusions when they attempt to interpret what constitutes undue damage to the environment or what constitutes a detrimental effect on neighboring properties.

Many are concerned about the length and cost of recent Land Use Commission hearings. This is a legitimate concern. The solution is not to abolish the Commission, or banish lawyers from its hearings. The solution is to make more precise the rules of the game so that developers applying for a permit will know in advance, with a reasonable degree of certainty, what they can build and where they can build it. Better rules of the game would reduce the number of situations in which the Land Use Commission is called upon to exercise the wisdom of Solomon.

[>>>top](#)

3. A third major problem with the Planning Act Regulations is a failure to recognize a need for different approaches in different parts of the province. Consider again the case of communities. Sherwood is a mature community, with few empty areas to be developed. West Royalty is a growing community, struggling with the problems posed by rapid growth. Warren Grove is a rural community, trying to stem the tide of urban encroachment. Each has different problems, different goals, and consequently a need for different methods to resolve their land use conflicts. Different types of areas pose different problems, and these are reflected in their separate Official Plans and bylaws.

If we turn to the area under direct provincial jurisdiction we find a great variety of areas all subject to a single set of regulations. Fishing communities like North Rustico and Murray Harbour, farming communities like Malpeque or Lot 16, sparsely settled areas in western Prince, suburban areas on the outer fringe of the Charlottetown region--all are subject to the same set of regulations. This is an unsatisfactory state of affairs. There is a need for regulations tailored to the type of area within the areas administered by the provincial government.

Many of our most serious land use problems are concerned with locations. Where should development occur, and in what form? Should a time-shared condominium be permitted in Greenwich, a summer cottage subdivision on Boughton Island, a fish meal plant in Kinross, an asphalt plant at Brackley or a big blue tent at Cavendish? Questions about the where of things are best answered by maps. I suggest that we can no longer resolve land use conflicts in the unorganized parts of the province with a simple set of vague regulations. What is needed is a zoning map for the whole of the province outside those communities with Official Plans.

[>>>top](#)

The idea of rural zoning is not a new one. The Royal Commission of 1972 recommended zoning within an area half a mile back from the shoreline. Some existing rural communities, such as New Haven-Riverdale and Eastern Kings, have developed their own zoning maps.

I believe that if we are to come to grips with the issue of what types of development are to occur in different types of location, the eventual solution must be a provincial plan, i.e. a coherent set of land policies, which is put in place through a zoning map and accompanying regulations.

I recognize that zoning is not popular among rural dwellers. The technique itself has many critics. Preparing the map would require time, personnel and a large input from local residents. Nevertheless, without the development of a provincial plan and provincial zoning, I believe that the province will continue to see more acrimonious, time-consuming and expensive debates, similar to the one now occurring over the Greenwich development.

In my opinion we have delayed far too long developing appropriate land use policies at the provincial level. Many community efforts at planning far surpass anything that has been accomplished at the provincial level. The recommendations of the 1972 Royal Commission were

largely ignored. Let us hope that the same fate does not befall the recommendations of the newly appointed Commission.

Future generations will judge us on how well we have managed those lands that have been under our care during the last quarter of this century. Let us hope that they do not judge us as we now judge Esau, who frittered away his birthright for a mess of pottage.

[>>>top](#)

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