THE POTENTIAL OF REPLOTTING TO IMPROVE THE SUSTAINABILITY OF CITIES IN WESTERN CANADA

Peter T Spurr

Spurr Research Associates
Saanich, British Columbia

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Page	Contents

Page Contents (Cont'd)

This research project examines the potential of replotting to improve the sustainability of cities. The sustainability of cities in Western Canada will be improved if their growth is redirected from energy-consumptive suburban sprawl to intensification, by redeveloping land within existing urban areas. Overall, redevelopment will be improved if it takes place at locations where public policy is directing that growth is desired, and public resources are being invested in infrastructure capacity. In order for such public objectives to be realized, landowners must agree to redevelop at these locations, or to sell their property to or otherwise cooperate with, developers. When a landowner in such a location does not consent to, or cooperate with redevelopment projects, public policy and private or public redevelopments cannot achieve optimal results. The research question can be stated as "has replotting the potential to improve urban sustainability by assisting private owners and public policy to bring about socially-desired redevelopment at publicly-defined locations?".

The research explores the potential of replotting in several ways. Information is presented from the literature about replotting, internationally and in Western Canada. The problem of blockage in the assembly of land for urban redevelopment is considered, as are two measures that could be used to deal with blockages, replotting and the expropriation of property. Lastly, the views of key informants from Western Canada about the potential of replotting to aid urban redevelopment are presented. A summary of the findings of these examinations completes the report.

What is Replotting?

Replotting is an urban planning term. A replot is an authorized process of resubdividing land that has already been subdivided, into a different configuration. It is undertaken for various purposes in many parts of the world. It was legislated four generations ago in Western Canada, where its use is illustrated by the following description:

> "*Under these schemes [replotting schemes] a number of individually owned parcels are put into a "common mass", that is, the existing boundary lines are eliminated. The total area is then re-subdivided and equivalent parcels distributed as far as possible to the original owners.*"[1]

The legislation was used by some municipalities to sort out ineffective patterns of land ownership. It was not intended for use in urban redevelopment situations, nor was it designed to resolve conflicts between land owners. This research proposes that it has capabilities to make a positive contribution in both contexts.

[1] Todd, Eric E.C., The Law of Expropriation in Canada, 2nd Edition, (Scarborough: Carswell,1992), p. 11.

What is the International Experience with Replotting ?

There has been wide international experience with replotting, primarily as part of socially-mandated reconstruction projects. Originating in Germany in the late 19th Century, it has taken various forms in France, Eastern Europe, the Middle East, India, Southeast and East Asia, Japan, South Korea and Australia. In addition to the term replotting, it is known as land readjustment, land reparcelling, land pooling and Kukaku-Seiri (Japan). Its greatest application has been in Japan where nearly one-half of all cities have used it, and it is said to have re-planned thirty percent of the urban area of the country since 1900. Land readjustment has been promoted in Asia by a United Nations' agency, UNESCAP, as a tool to reorganize land for modern urban development.

The international literature describes general characteristics of these many programs, and observes strengths and weaknesses. Replotting programs have in common the function of reconfiguring existing parcels of land in shapes that are better suited to current circumstances. They have been found useful to replan and rebuild cities in the wake of destructive events, whether manmade calamities like wars, or natural disasters like earthquakes or hurricanes. In some cases replotting activity is initiated by public authorities, while in others it is begun by private owners and public/private partnerships. Some replotting laws are more suited to dealing with land than with improvements to land. Like most land development activity, replotting is more likely to succeed in rising markets than declining ones, and tends to favour large landowners over small ones. In some replotting laws the minimum proportion of private owners that must approve the reconfiguration is specified, and in others individual landowners can effectively veto projects. In general, the literature indicates that landowners find replotting preferable to the most-likely alternative land control measure, expropriation.

What is the Experience with Replotting in Western Canada?

Replotting laws were created in British Columbia and Alberta in the 1920s, and in Saskatchewan in the 1940s, and each province revised the laws over the years. The replotting provisions have not received extensive use, however some replotting was undertaken by municipalities to reconfigure land that had been previously subdivided, in order that it could be developed economically. In British Columbia the use was scattered across the province, and occurred sporadically for seventy years. The most recent replot project was in the District of North Vancouver during the 1980s. In Alberta extensive replotting occurred in Edmonton following World War Two, then the activity declined after the housing boom of the 1970s. During the latter years of replotting in Alberta, all landowners involved had agreed to all projects, so there were no non-consenting owners involved. In both Alberta and Saskatchewan replotting activity was concentrated

in one urban region, in Edmonton and in Saskatoon respectively. In Saskatoon, the City's Land Development Department and local developers use replotting when opportunities arise, as an efficient method of integrating land held by several owners, including the city, in order to plan and service it, create roads and public facilities, and prepare it for development by the various owners. In the mid 1990s, when Alberta revised its Planning Act into the Municipal Government Act, replotting provisions were not included.

No examples were found in Canada of replotting being used to reconfigure land following a disaster. Calamitous events have occurred and could reoccur in this country, such as earthquakes, floods, tsunamis, major fires and explosions. Such events usually damage improvements on land, and following such devastation it is often decided to rebuild the affected area in a different manner. In these circumstances the reconfiguration of land parcels is a valuable function. Replotting legislation provides this capacity now, and if it was not available, the only tools for public policy to re-organize devastated districts would be purchase or expropriation.

What Urban Redevelopment Issue Could Be Addressed by Replotting ?

The potential of replotting to improve urban redevelopment depends on the needs of urban redevelopment, the capacities of replotting and the availability of alternative measures.

As society employs measures to create more compact and integrated cities, growth forces become focused at limited locations, and the landowners at those locations hold an element of monopoly power. These are usually locations where the infrastructure exists to support added development, where facilities exist to transport large numbers of people, and where public investments are being made so land use changes can be successful. The following are typical situations in which public policy commonly supports intensification at a specific location:

- Neighbourhoods surrounding junctions and key stops on mass transit lines (subways, LRTs, Skytrains, busways);
- Locations identified for mixed land uses. Examples are existing shopping centres selected for upgrading to nodes of residential and commercial use, and concentrations of residential density identified as needing neighbourhood retail and other services;
- Places identified as "Main Streets" where intensification is to be encouraged as linear concentrations of density and mixed use that is supportive of mass transportation;

- Precincts where major public investments are concentrated, such as:
    - Medical districts;
    - University or college precincts;
    - Areas surrounding major arts investments, museums, performing arts venues, sports and recreation facilities;
    - Military precincts;
    - Areas near entrances to major parks, places with high scenic or other functional amenities;
- Growth nodes designated in official plans, regional or district development studies and plans;
- Locations identified as “blighted” or functionally obsolete to the extent that development becomes a social goal.

As public policy directs that growth should occur at these locations, developers formulate projects that will realize the public goals. Property owners in the designated locations may participate to support society in its objectives, or they may use their control of the land to resist change, or they may overstate the value of their land and attempt to exact a premium in return for their agreement to change. Owners who do not participate with the developers can obstruct the public’s intensification goals. Governments, industry and society in general need tools to deal with such non-consenting landowners, other than just ignoring them or paying excessive prices for their property.

Two public policy measures are available to intervene and coercively take control of land where it is socially desired to do so. One of these, expropriation, has been criticized for intruding in private ownership without first establishing a public interest. Replotting appears capable of accomplishing the same objectives as expropriation, while employing a better process of establishing the public interest.

How Could Replotting Overcome this Urban Redevelopment Issue?

Overall, the replotting legislation in British Columbia and Saskatchewan, and the former legislation in Alberta, provide frameworks that could support a role for replotting in urban redevelopment. The basic activities required in most urban redevelopment projects are the same activities described in the replotting legislation. These may be summarized as assembling a site from multiple owners and seeking municipal approvals for a redevelopment plan. In situations where a proposed redevelopment is impeded by a non-consenting owner (or owners), it could be beneficial to propose that the entire redevelopment, including the non-consenting owners’ parcels, be treated as a replotting project. Where replotting has always been initiated by municipalities in Canada, it appears possible for private owners to propose that a replot be initiated. The proposal would have to

be in the specified format, and it would have to meet the criteria for the proportion of project ownership that is supporting the replot. Most redevelopment proposals would better be presented in terms of the values of the properties involved, rather than merely the land areas. If the required majority of the owners of a proposed redevelopment are agreed, and the proposal is seen to be in the public interest as determined by city council, the authority of the replotting legislation is sufficient to force the compliance of minority, non-consenting owners.

Why Replotting, Why Not Expropriation?

There are parallels and differences between replotting and expropriation, and both measures are evolving, perhaps converging.

There is a trend, albeit controversial, in both Canada and in the United States that expropriation in support of private redevelopments is allowable under certain circumstances. The limiting requirement is that the project must have a public purpose or be in the public interest. The usual measure of this public interest is the extent to which the expropriation purposes were approved by the council of the relevant municipality.

The advantage of replotting is that it is a superior process for ensuring that the public interest is being served. Unlike expropriation, in a replotting process the public interest is openly debated and established through a public municipal approval process before the power of eminent domain is exercised. The entire process must be fair, in the sense that stakeholders must have a real opportunity to air their views and influence the process, and appeal deemed improprieties, and approved projects must secure a widely-perceived, significant public benefit.

The present replotting legislation, as it has been employed, is falling into dis-use. There is relatively little Canadian experience with replotting, compared to expropriation, and it is likely that expropriation laws and practices are more advanced than replotting. Replotting provisions are less developed in relation to interests beyond the mere ownership of land, such as mortgagees, leasehold improvements, business disturbance and goodwill, tenants, value to owner, moving costs, etc.

Non-consenting owners should be treated equitably under either legislation. This would require that replotting provisions regarding compensation of non-consenting owners must match the provisions in expropriation.

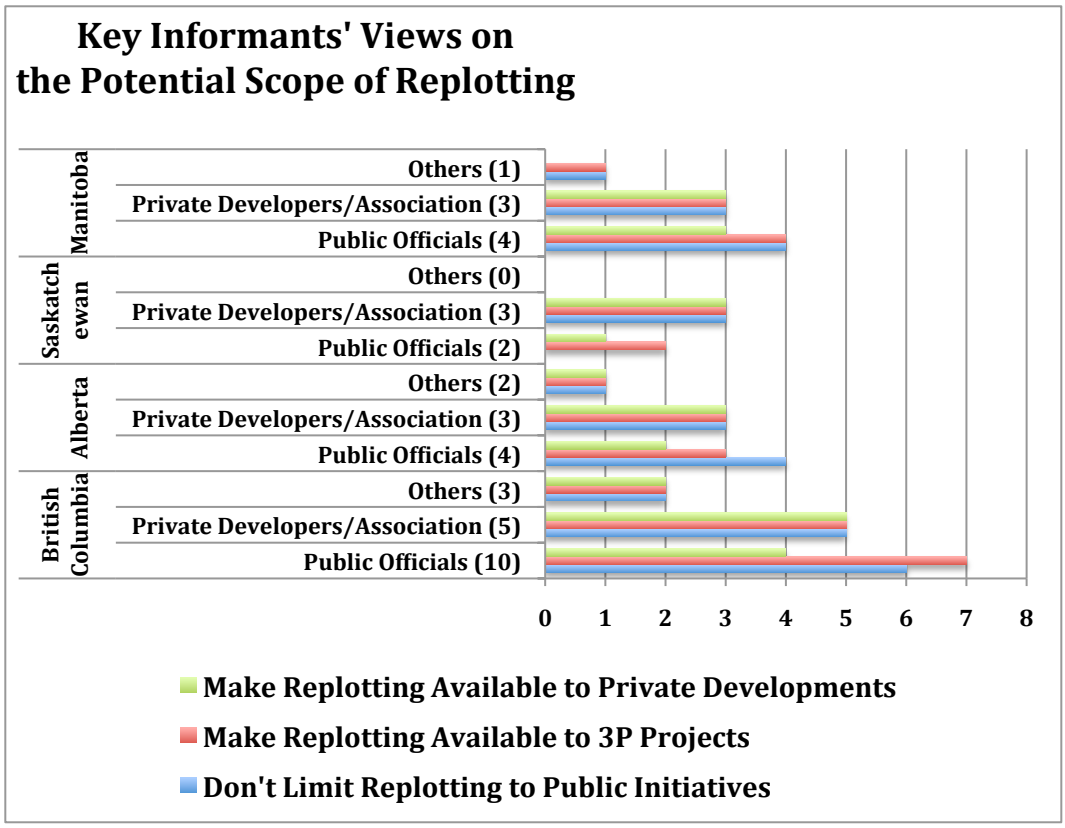
There is potential, conceptually, for replotting and expropriation to meld together into an integrated, first stage, urban redevelopment mechanism. The participatory aspects of initiating and authorizing a redevelopment scheme could be based on

replotting, coupled with more financially-equitable compensation measures seen in expropriation.

In the future, as urban redevelopment assumes more importance, it is likely that there will be a role for more, and improved, replotting.

Who Has Considered this New Use of Replotting?

A series of interviews were conducted with forty "key informants" in Western Canada, including public officials at provincial and municipal levels, private developers, and academics and lawyers specializing in urban planning. Through screening questions it was determined that they were experienced with land assembly, non-consenting owners, and to a lesser extent, replotting.



These experienced experts in land use planning and development felt strongly that replotting has potential to improve urban redevelopment. They feel that replotting should not be limited to public sector initiatives, and that it should be available to public-private partnerships. These were majority views of the key informants in each province. All developers and most public officials felt that replotting should be made available to private developments. Public officials in

the prairie provinces had mixed views on this proposition, while in British Columbia the majority of them opposed it.

When asked if municipalities should allow or encourage private developers to propose replots, 20 of the 31 responses were affirmative. Most informants in Alberta and Saskatchewan felt replotting and expropriation should be merged, while in British Columbia and Manitoba the majority held the opposite view.

Conclusions

This research explored the potential of replotting to improve sustainability in western Canada. In order for these urban areas to become more sustainable, it is essential that sprawl be abated and growth be redirected to intensification. Redevelopment must be focused in nodes of increased density where homes, jobs, services and infrastructure can be brought together in efficient concentrations so that travel is minimized. A list of these types of redevelopment nodes was identified. The private and public developers that will bring about this redevelopment can be stymied, or at least have their projects compromised at the land assembly stage, by property owners who will not participate in or consent to, development proposals. The examination of replotting has shown that while this Canadian legislation was not intended for the purpose, it has the potential to allow private developers, public authorities and the community in general to interact together to resolve the problem of non-consenting owners blocking redevelopment, in a fair and equitable manner.

This information and these ideas about replotting were exposed to forty key informants with expertise in urban planning, development and law from across western Canada. There was broad and thorough agreement among these knowledgeable informants that replotting has the potential to resolve situations where a non-consenting owner is impeding the public interest in redeveloping a specific location. Consequently, the research has established that replotting, when used in this innovative manner, would contribute to improving urban sustainability.

In Western Canada's cities of the future, as redevelopment assumes more importance, there are roles for more, and improved, replotting**.**

This is an examination of an urban planning tool, replotting, and a consideration of its potential to improve the redevelopment of cities.

The term replotting has at least three meanings. It has a generic meaning, a particular meaning within the context of urban planning and international development, and a highly specific meaning in legislation enacted in several provinces of Western Canada.

The term does not appear in the Oxford English Dictionary, but replotment is defined as "*the act of plotting out again*"[2], and a replotter is "*something that plots again*"[3]. One of the many definitions of plot is "*to lay out land in plots*".[4] Within the broad field of urban planning, the term replotting is used as an abbreviated manner of saying "land replotting". In Canada the usage of the term is illustrated by the following description:

> "*Under these schemes [replotting schemes] a number of individually owned parcels are put into a "common mass", that is, the existing boundary lines are eliminated. The total area is then re-subdivided and equivalent parcels distributed as far as possible to the original owners.*"[5]

In general, then, replotting is a term used in urban planning to describe a process in which land that has already been subdivided into parcels is resubdivided in different configurations. Why this is done, where it is done, how it is done, and even when it is done, are the characteristics that define the various specific replotting programs that have been created in various places.

Replotting is an urban development activity that has been used for various purposes in many parts of the world. Legislation authorizing replotting was approved in Western Canada four generations ago. Three provinces included provision for replot schemes in their planning or municipal acts, and two still have them. Employing the provincial legislation, replotting was used by some municipalities to sort out ineffective patterns of land ownership. The legislation was not intended for use in urban redevelopment situations, nor was it designed to resolve conflicts between landowners, but it does have capabilities to make a positive contribution in both of these contexts.

This is an opportune time for improving tools that can aid urban redevelopment. Redevelopment is emerging as the predominant method of urban change. The

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[2] Oxford University Press, The Compact Edition of the Oxford English Dictionary, Volume II , (London:1981), p. 2496.
[3] Ibid., p. 4050.
[4] Ibid., p. 2210.
[5] Todd, Eric E.C., The Law of Expropriation in Canada, 2nd Edition, (Scarborough: Carswell, 1992), p. 11.

sprawl that characterized the postwar era of urban growth is gradually declining in favour of infilling and reusing the land within cities. As the population ages, households are shedding excess space and belongings in the suburbs and moving closer to services, amenities and transportation facilities. Whereas the late 20th Century saw urban planning focused on regional coordination and placing roads and pipes to accommodate greenfield growth, now intensification and the improvement of urban efficiency are becoming priorities. The pursuit of efficiency leads public policy and private developers to focus their attention on locations that are "ripe for redevelopment" – particular intersections, blocks, nodes and districts. The intensification of cities includes in-fill, brownfields, greyfields and other redevelopment projects, and these are often large ventures that produce multiple unit residential complexes and mixed use developments. Many redevelopments involve multi-corporate financial structures, including complex public/private partnerships that bring together the interests of both sectors. The skeleton of the city, its network of connectors and nodes, is taking on renewed significance as the organizing structure for future growth. The development industry that had been concentrating on low density suburbs is moving to the more diversified operations and broader skills of overall urban development. Redevelopment is the new focus in urban change.

However, it is not apparent from the urban literature that the significance of redevelopment is fully recognized, or that public policy is directing appropriate energy to encourage and improve it.

One aspect of urban redevelopment that could be improved is land assembly. The first phase of a redevelopment,[6] land acquisition, is critical to the overall functioning and success of a project. The creation of a site for redevelopment typically requires the assembly of multiple properties, and these properties are usually expensive to acquire and may not be in ideal configurations for the intended land use. High land assembly costs, problematic configurations of the sites that can be assembled, and the unwillingness of landowners to sell or redevelop their property, all circumscribe what can be done in a redevelopment, even in prime urban redevelopment locations. Both the economics and the overall effectiveness of land development in are vulnerable to the blockage created when some owners do not participate in the development process.

A landowner's unwillingness to sell property for a redevelopment can cause the developer to proceed with a sub-optimal land assembly. When developers have

[6] Land development involves four essentially sequential phases: land acquisition and holding; development planning; physical development; and marketing and sales. See Peter Spurr, A Profile of Canada's Residential Land Development Industry, (Saanich, BC and CMHC Canadian Housing Information Centre, Ottawa, 2007), p. 10.

to pay price premiums to purchase property from uncooperative sellers, they may have to make up for the added expenditures by producing buildings for lower costs than they would otherwise create. High acquisition costs can cause developers to reduce features, and these lost qualities may ultimately prove to have been central to the projects' final viability. Developers may go ahead with projects involving lower qualities in their project, such as inferior building design, less open space on the lot, or less suitable access. When this occurs the new development cannot achieve the degree of completeness or amenity that would be most effective. A constricted land assembly results in a reduced quality of housing (or other types of building) than would be optimal in that location. Private developers have limited abilities to overcome such blockages when they arise.

Replotting appears to have potential to allow public policy to influence or force holdouts to cooperate with redevelopment projects at the land assembly stage.

The exploration of this potential of replotting is the central purpose of this report. The report is organized to examine various aspects of replotting in a manner that produces a thorough consideration of the potential. It begins with sections that consolidate information from the literature about replotting internationally and in Western Canada. Next, the problems of blockage in the assembly of land for urban redevelopment are considered, and two related measures that could be used to deal with blockages, replotting and the expropriation of property, are discussed. The paper then presents the outcomes from a survey of key informants from across Western Canada, who were asked to consider the potential of replotting to aid urban redevelopment. The report concludes with a summary of all of these findings.

This is a unique and valuable exploration in many respects. Redevelopment is a subject of growing importance, and the concept of using replotting to improve redevelopment is unusual. This study is not a proposal to create a new regulatory measure in Western Canada, and it is not an evaluation of the performance of existing legislation. It is a consideration of the capability of using Canadian replotting legislation in a different manner than it ever has been used. As part of the study, specialists in many aspects of urban development across Western Canada were interviewed, and most expressed strong interest in this unusual potential. During the course of these interviews, relative strengths and weaknesses of the idea were considered, and situations were identified that would be aided by replotting. In all of these novel aspects, this investigation will contribute to the body of urban literature in Canada.

This is a preliminary study with the limited objective of consolidating information about the subject and exploring the potentials for the use of replotting in urban redevelopment situations. It is intended to introduce these potentials so the

concept can receive wider exposure, and the viewpoints of a greater range of people involved in the future of our cities can be sought.

An examination of the international experience with replotting outlines the context for, and provides an introduction to, this urban planning measure in Western Canada. There is no real literature concerning Canadian replotting, merely some references in studies of other subjects. There is minimal Canadian data about the extent, pattern or trends in this activity, nor systematic evaluations of its qualities, whether positive or negative. The international literature introduces some of this missing information, providing a base of understanding about the many measures like replotting that are used in other countries. It affords an appreciation of the variety of international contexts and purposes in which this type of measure has been used, and this, at least, points to hypotheses and questions about replotting in Canada.

A Different Term for Replotting - Land Readjustment

Replotting is undertaken in many parts of the world, and a variety of terms are used to describe it. The term that is most commonly used for such activity in the international literature is "land readjustment". This was determined by a British lawyer and Professor of Land Management, Robert Home, in his recent survey of activities around the world that he describes as "land readjustment" or "LR".[7] LR originated in Germany,[8] then was adopted in Japan and other countries of the Far East, and later has appeared in the Middle East and Eastern Europe. It was prominent during the reconstructions of Germany and Japan after the widespread destruction of urban property in the Second World War. It helped with postwar rebuilding in Beirut, with post-earthquake redevelopment in Japan, and with modernization projects in India and Australia.

> *" Land readjustment evolved out of rural land consolidation as a legal instrument to assist in urban growth situations. It seeks to facilitate development in three ways: combining the assembly and reparcelling of land for better planning; financial mechanisms to recover infrastructure costs; and distribution of the financial benefits of development (sometimes known as betterment) between landowners and the development agency. While LR is the usual term, it is also known as land pooling, replotting, land reassembly, parcellation, repartition, kukaku seiri (or KS, in Japan), and Umlegung (Germany)."*[9]

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[7] Home, Robert, "Land Readjustment as a Method of Development Land Assembly: A Comparative Overview", pp 459-483 in Town Planning Review , Volume 78, No. 4, (July 2007), p. 461.

[8] It may also be considered that the first major example of land readjustment occurred in the late 18th century, when Washington, D.C. was redesigned, its land was reorganized and the new federal capital was established. This was recounted in Professor R. W. Archer's paper "Urban Land Pooling/Readjustment, USA, 1791: The Use of the LP/R Technique to Implement the L'Enfant Plan for Washington, DC in 1791", Paper presented to 9th International Seminar on Land Readjustment and Urban Development, Bangkok, 12-14 November 1997.

[9] Home, Loc. Cit..

Another survey article, published by the Lincoln Institute for Land Policy's *Urban Land* magazine in 1988, provides a summary of the activity involved in land readjustment:

> *"After an area is selected for a land readjustment project, a development plan is prepared, based on current and projected market conditions, and taking into consideration environmental and aesthetic factors. However, the plan disregards existing lot ownership. An area's parcels of land are pooled into a single entity, and the parcels will be replatted to fit the development plan.*
>
> *The deplatting and replatting process is carried out according to designated standards for valuating land and for determining the owners' percentage of shares in the replanned development in relation to their shares in the original parcel. These determinations are subject to review and comment."*[10]

The redevelopment plan can be implemented by an individual, a private corporation, a landowners' association, a public corporation, an administrative agency, or another public entity.

> *"Because it usually makes unnecessary land condemnation for public facilities, land readjustment limits the public sector's financial burden. In fact, replatting through the manipulation of land titles rarely requires more than small exchanges of cash, an attractive feature to local governments whose resources are often insufficient to finance infrastructure or project costs for desired redevelopment."*[11]

Professor Home concludes that it is a useful, popular, low-cost tool for land planning in growth situations:

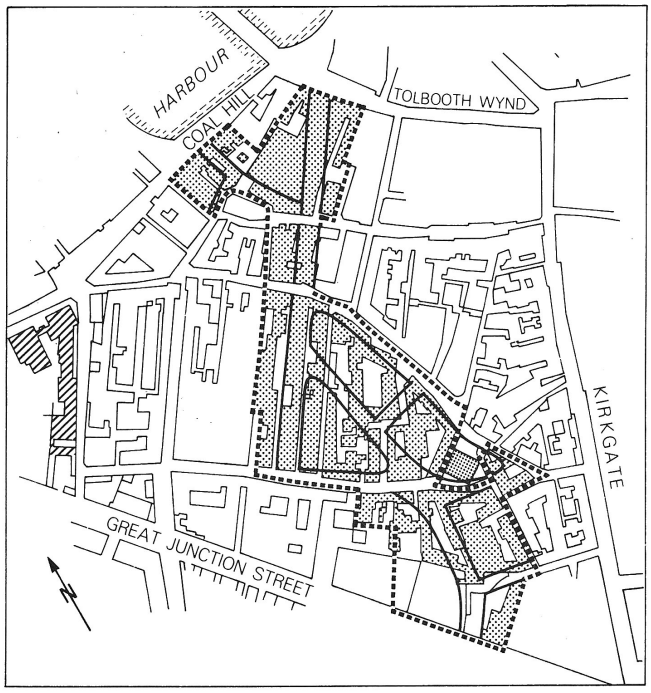
> *"…In many countries land readjustment is a preferred legal instrument for development land assembly, especially when public funds for compulsory purchase and infrastructure provision may be lacking."*[12]

The Emergence of Land Readjustment

Replotting or land readjustment emerged in many countries in the late 19th Century as a measure that integrated some of the urban improvement activities that were beginning to take place. A well-known illustration of such an activity was the comprehensive program implemented by Georges Haussmann in the 1850s-1860s, that created the Paris that is widely admired today. Major portions of the inner city were expropriated, redeveloped as networks of modern roads and boulevards, and recreated as a different pattern of land titles and higher

[10] Schnidman, Frank, "Land Readjustment", pp. 2-6 in Urban Land, (February, 1988), p.2.
[11] Loc. Cit..
[12] Home, Op. Cit., p. 459.

densities.[13] Similar types of activities were being undertaken during that era in cities throughout France, Germany, England, Italy and North America.[14]



A particularly clear illustration of one of the urban improvement activities of that era is the pioneering urban redevelopment project that cleared unhealthy slums in the City of Leith, Scotland, in the 1880s. The hovels and health hazards were removed, a new street pattern was created, and public facilities and private buildings were constructed.[15]

[13] This is described generally in Chapter Five, "France: the Reluctant Planner" in Sutcliffe, Anthony, Towards the Planned City, (Oxford: Basil Blackwell Publisher, 1981).
[14] See generally, Sutcliffe, Anthony, editor, The Rise of Modern Urban Planning: 1800-1914, (London: Mansell, 1980).
[15] Copied from P.J. Smith "Planning as Environmental Improvement: Slum Clearance in Victorian Edinburgh", pp 99-133 in Sutcliffe, Ibid., p.116.

This was the type of activity that became formalized in land readjustment programs.

Land Reparceling in Germany - Umlegung

Land readjustment for urban development is considered to have started in Frankfurt.[16] Land redevelopment was occurring in various German cities, particularly where fires had destroyed the formerly medieval urban fabric. Frankfurt was particularly constrained in its ability to adapt to modern circumstances because ancient inheritance laws had created long, narrow strips of land that were difficult to convert for development. In 1891 the German Surveyors' Association called for legislation to facilitate voluntary regroupment and exchange of property, and the new Mayor of Frankfurt, Franz Adickes, championed the concept, termed *Umlegung,* or land reparceling. Under this procedure, the city would expropriate all the land in an area in which the holdings were too splintered for modern housing development, take a portion of the land for streets, and redistribute the rest to the former owners as usable building lots along the new streets.[17] In 1893 Adickes introduced a proposal in the Prussian parliament to give the cities the power to enact *umlegung* and in 1902 he was able to move this legislation through the Prussian Parliament. It included a provision that:

> "…*when property lines were redrawn for previously undeveloped land, up to 35% of the property could be expropriated for streets and public squares without compensation to the owners. The assumption was that the owner's loss would be made up by the gains that would accrue from the improvements built by the town*"[18]

The first readjustment scheme covered 21 hectares in Frankfurt in 1910, then the method was taken up elsewhere in Germany, and after the First World War the Prussian Housing Act of 1918 allowed it in all towns. Professor Home reports that it made a large contribution to the reconstruction of Germany after WW II, and in 1954 it was incorporated into new legislation.[19]

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[16] It is also said that land readjustment began in Japan in the late 1860s. However, it was not legalized in Japan until 1919, with the passage of the City Planning Act. See Shultz, Michael M. and Frank Schnidman, "The Potential Application of Land Adjustment in the United States", pp. 197-243 in The Urban Lawyer, Vol. 22, No. 2, (Spring, 1990), p.224.

[17] Ladd, Brian, Urban Planning and Civic Order in Germany 1960-1914, (Boston: Harvard University Press, Harvard Historical Studies, 1990), p. 200.

[18] See Diefendorf, Jeffry M., In the Wake of War: The Reconstruction of German Cities After World War II, (New York: Oxford University Press, 1993), p. 222.

[19] Umlegung continues to be part of planning law in Germany. See Rabe, Klaus and Detlef Heintz, Bau- und Planungsrecht [Building and Planning Law], (Stuttgart: Kohlhammer, 2006), Sections 5.1 and 5.2, pp. 202-213.

It is notable that while *umlegung* helped the rebuilding of urban Germany after World War II, the immediate postwar period saw a national, decade-long discussion about critical features of urban redevelopment planning. This discussion was centered on public interests in redevelopment (particularly in comprehensive plans) and private property rights (particularly in obtaining the highest value for property owners). Complicating the discussion were great imperatives: the need to rebuild the countries' wrecked urban centres as part of restoring Germany's economy and society; the need to create a new constitution and set of legislation so the country could govern itself and operate effectively across the span of concerns of a modern state; and the confusion of priorities of city, state, and federal levels of government overlain with the varied interests of the four postwar occupying powers. In this cauldron of interests, needs and other imperatives, Germany had to produce a constitution that defined and allocated powers over property and planning among federal, state and local governments, and get its fractured cities rebuilt for the future.

Several aspects of the redevelopment context in postwar Germany seem particularly relevant to contemporary redevelopment in Canada today:

- when land parcels are too small or poorly-shaped for modern reconstruction, it is useful to have the city consolidate the land and replot property lines to make space for wide streets and large, economically viable buildings;[20]
- in redevelopment there are complicated social/political decisions to be made in at least two important and inter-related dimensions, and in both cases the decisions occur along a continuum:[21]
    - while planning is essential to the creation of an effective urban space and must be comprehensive, society must position its planning along a spectrum that ranges from authoritarian central planning, as occurred in the Third Reich or communist states, to a polis wherein the formulation of public policy is dependent on an actively participating citizenry;
    - while private ownership of property is essential to a democracy, the rights of a land owner impacted by a public redevelopment plan must be positioned along a spectrum from an ability to reject the societies capacity to plan, to a guarantee of complete and comprehensive compensation in the event of an expropriation.
- It is interesting that the German Land Procurement Law, originally

[20] Diefendorf, Op. Cit., p.109.

[21] These ideas reflect the examination of the 1945-1955 period in the development of planning and building laws in Germany, in Diefendorf, Op. Cit., Chapter 8 - Reconstruction and Building Law, pp. 221-245.

passed in 1952 to promote the construction of housing on already improved property, allowed that:

> *"…three kinds of land could be expropriated as long as the proposed project fitted in with approved city planning:*
> - *vacant land;*
> - *land where earlier buildings had either been destroyed or badly damaged; and*
> - *land that was minimally and insignificantly used.*
>
> *Perhaps the most important provision was that anyone – individuals, private organizations or corporations, or public agencies – could initiate expropriation proceedings. The law assumed that private land owners lacked the ability to carry out such projects."*[22]

Professor Home reports that *umlegung* is still used in areas of fragmented land holdings, although in recent years its use has declined in favour of planning agreements.[23]

In their review of land readjustment internationally, Shultz and Schnidman summarize the activity in modern Germany as:

> *" Today, West Germany uses compulsory land readjustment primarily in peripheral areas for town expansion and renewal. These projects are always carried out by the local government and do not require landowner consent. Land readjustment projects can also be undertaken by owners or developers, if the local authority approves the project."*[24]

Land Readjustment in France

In France, unlike Germany, land readjustment is mainly undertaken by landowners. A proposal to reconfigure land can be initiated by local authorities, or it can be initiated by private owners, normally acting together in an association (*Association foncière urbaine autorisée).* Once a proposal has been submitted to a local authority, including proper survey, ownership information (before and after), and estimated costing, the locality is able to conduct a public review process. If the project follows accepted land use plans, is supported by the municipality, and has the approval of two-thirds of the landowners who possess two-thirds of the land area involved, then it can be approved.[25] If minority owners

[22] Diefendorf, Op. Cit., p.239.
[23] Summarized from Home, Op. Cit., pp. 464-465.
[24] Shultz and Schnidman, Op. Cit., p. 231.
[25] Larsson, Gerhard, "Land Readjustment: A Tool for Urban Development", pp. 141-152 in Habitat International, Vol. 21, No. 2, (UK: Elsevier Science, 1997), pp. 143-145.

disagree:

> *"Reluctant owners have the right to announce within 1 month that they wish to give up their property, and the price is determined by agreement or according to the rules of expropriation"*[26]

In form, this French measure has many similarities to the provisions of the replotting legislation in Canada (discussed later), although the perception and practices surrounding the measures differ.

Reparcelling in Eastern Europe (Czech Republic, Zagreb, Moldova)

Reparcelling activities occur in various parts of Eastern Europe, instituted as public measures to address different situations. The evolution from central planning to private enterprise entailed reorganization of both the pattern of land titles and the ownership of property. This applies in quite different ways in cities, to agricultural land and in forested areas. In cities new urban plans are emerging and in some cases state-owned land, such as parks and major public institutions, are being reconfigured for private ownership. Also, there are situations where property that had been privately-owned was appropriated for state use, and is now being made available for resumption of private ownership, sometimes termed restitution. While the specifics of the activity vary, the term reparcelling is used to describe these land projects.

In the Czech Republic, reparcellation is described as

> "…*a main instrument to assure real and identifiable ownership, it finalises the restitution process and the restoration of private land ownership*".[27]

This program is primarily in rural areas, but it is not a conventional agricultural land reform. Trnka and Pivcova report that over one-half of the country is agricultural land, 4.3 Million hectares in 15.1 Million parcels with 4.9 Million different titles. Farming is performed by various entities: 30 percent by co-operatives (which are gradually being privatized); 26 percent by private farmers (emerging as a new form of agricultural enterprise); 22 percent by joint stock companies (growing rapidly); and 22 percent by limited liability companies. Overlaid on this complex pattern of ownership is the fact that 92 percent of all agricultural land is farmed under lease. Complicating the situation 230,000 claims

[26] Larsson, Op. Cit., p.143.
[27] Trnka, Jiri and Jana Pivcova, "The Situation of Land Management and Reparcelling in the Czech Republic", Case Study prepared for United Nations Food and Agriculture Organization (2007). http://www.fao.org/REGIONAL/SEUR/events/landcons/.

for restitution were lodged between 1991 and 2003.[28] There are significant and numerous land issues that Czech reparcellation is directed to address.

In order to deal with the volume and complexity of this work, reparcelling is a major budget item for the Czech Republic. It has been buttressed with financial support from the Council of Europe's Special Accession Programme for Agriculture and Rural Development (SAPARD). Reparcelling is carried out by 1,400 officers in 77 land offices within the Czech Ministry of Agriculture.[29] The programme is said to be successful:

> *"…reparcelling can be considered as one of the most important tools of land law in the CR. It … …. helps not only to renew ownership relations to restored agricultural property but also to solve many other factual and legal problems connected with land ownership including renewal of boundaries of parcels in the landscape, a renewal of reliable statutory registration of parcels… … The Minister of Agriculture stated that 'Reparcelling represents now and in perspective for at least the next 15 years an answer to an intensive pressure of the society on a real termination of the restitution process, clearance and stabilization of ownership'".*[30]

In Croatia, reparcelling provisions were added to the Act on Spatial Planning and Construction in 2007.

> *"According to the Act, urban reparcelling is a means of reshaping parcels together and solving ownership issues and other legal matters, in order to enable construction. Urban reparcelling also allows expropriation of land and it should ensure a proportional level of construction of roads, green areas and facilities of public importance as well as housing units, but also prevents possible speculative management of real estate used for maximizing profits."*[31]

This appears to have more commonality with German and French land readjustment programs than the reparceling activities in the Czech Republic.

In Moldova a large pilot project involving land reparcelling in six villages was begun in 2007, supported by the World Bank and Sweden's Development

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[28] Paraphrased from Trnka and Pivcova, Op. Cit., pp. 1-2.
[29] Trnka and Pivcova, Op. Cit., pp. 3-7.
[30] Bartůšková, J., J. Homolka, and O. Škubna, "Function and Significance of Reparcelling in Czech Republic", paper developed by the Faculty of Economics and Management, Czech University of Life Sciences, Prague, (September, 2010). See http://ageconsearch.umn.edu/bitstream/96871/2/agris_on-line_2010_3_bartuskova_homolka_skubna.pdf.
[31] Slavuj, Lana, Marin Cvitanović and Vedran Prelogović, "Emergence of Problem areas in the Urban Structure of Post-Socialist Zagreb", pp. 76-83 in SPATIUM International Review, Vol. 21., (December, 2009), p. 82. See http://www.doiserbia.nb.rs/img/doi/1450-569X/2009/1450-569X0921076S.pdf

Agency.[32] Other Eastern European countries reported to be active in reparcelling include Bulgaria, Romania and Finland/Russia (Karellian land reforms).[33]

It is clear that the terms reparcelling and readjustment in Europe encompass a variety of measures. They all involve altering the configuration of parcels of land, or features of land ownership, or both of these qualities.

Land Readjustment in Turkey

Land readjustment is widely used in Turkey to create new residential areas.[34]

The method was authorized in 1985 as *The Land Readjustment Act* to take rural or unplanned urban land, usually irregularly subdivided, and re-allocate it in the required balance for public and private use, according to town planning requirements. Local government has complete authority to apply zoning plans within a district without the consent of landowners. In an area zoned for LR, any landowner has to give up 35 per cent of their total land area for public use. The municipality develops a new plan for all the land within the LR district, including all public lands, and reallocates the new private lands to the original owners in a manner that gives each the same proportion of the total as they held before the scheme. If more than 35 percent of the total area was taken for public purposes, the landowners have to be compensated for the excess. This Turkish version of LR brings together features of urban development planning, infrastructure planning and implementation, public land development and public/private partnership.

It is said that the Turkish practice has rapidly produced suitable land for urban expansion, accompanied by the needed public land, at greatly reduced cost for the municipalities. Overall, LR is providing a regular land development process where it had not previously existed.[35] In addition, the following benefits for landowners are reported:

- *"After the project, land values increase very rapidly and land becomes more valuable. This provides an economical gain to the landowners;*

[32] See Hartvigsen, Morten, Implementation of Land Re-Parceling Pilots in Six Villages (Moldova Land Re-Parceling Pilot Project), (Moldova: Ministry of Agriculture and Food Industry, November 2006). www.terraininstitute.org/pdf/Moldova%20Inception%20Report.pdf.
[33] See Home, Op. Cit., pp. 257-263.
[34] Yomralioglu, T. and T. Tudes, B. Uzun and E. Eren, "Land Readjustment Implementations in Turkey", pp. 150-161 in XXIVth International Housing Congress, (Ankara, 1996), p.151. See http://www.gislab.ktu.edu.tr/yayin/PDF/96TYB01.pdf.
[35] Reported in Yomralioglu et al, Op. Cit., p. 159.

- *Because of LR project affects landowners in the same way [sic], disputes about land planning are reduced, so that the problems which are created by the zoning plan are eliminated;*
- *A cadastral parcel is re-shaped and transformed into a sufficient site lot that can be used in an economic way;*
- *Boundary conflicts are also minimised between landowners, due to re-organisation of land parcel boundaries;*
- *Fragmented small parcels are consolidated into a new housing parcel. Landowners, therefore, can get an opportunity to use of their land more actively;*
- *At the end of the project, basic public services are supplied to new lots by municipalities, therefore LR project brings new social services to the project area;*
- *There is no extra charge to landowners for the project expenses, except that they forfeit part of their land. All project expenses are met by the municipalities."*[36]

It was also noted that some landowners are dis-satisfied, particularly because the process deals only with equitable treatment of land areas. In most circumstances it would be more equitable to address land value rather than area. Other issues that were noted were weakness in the management of land information, and delays in launching projects and making decisions once projects were underway.

Replotting in Lebanon

The redevelopment of central Beirut after the civil war (1975–1990) entailed extensive replotting. Professor Home reports that in the 160-hectare central area, of the 1,630 separate parcels nearly half were less than 250 square metres and there were an estimated 100,000 claimants, ranging from individual householders to foreign companies. Property rights were extremely fragmented with multi-generational family ownerships and complex tenancy structures, and these situations were compounded by absenteeism, abandonment of properties, and squatting during the war.[37] In one extreme case 4,700 claims were lodged for a single plot in the *souk* (market area).

In 1991 the central authorities, acting in concert with a wealthy major developer and international financial support, put forward a master plan to assemble most of these small holdings into large sites, demolish 80 per cent of the old city, and increase densities as much as four times.

[36] Yomralioglu et all, Op. Cit., pp. 158-159.
[37] Stewart, Dona J., "Economic Recovery and Reconstruction in Postwar Beirut", pp.487-505 in Geographical Review, Vol. 86, no.4 , (October, 1996).

> *"Redevelopment implied the restoration and construction of 4.4 million square metres of built up space and the installation of modern infrastructure in the historic core of the city."*[38]

This plan would have had the effect of eliminating much of the ancient land ownership mosaic.[39]

The replotting and redevelopment of central Beirut is not proceeding without controversy and resistance. While new developments are emerging, the planning is encountering opposition rooted in the history and culture of this famous metropolis. Beirut's central district has been continuously inhabited for over 5,000 years by many civilizations (Phoenicians, Canaanites, Romans, Ottomans, French). All have left their mark on an ever-growing, culturally rich and sophisticated city, and for redevelopment to succeed it will have to accommodate many of these diverse influences.[40] At present, many of the replotting proposals are on hold awaiting the emergence of agreements between the redevelopment authorities and various local communities.

In the Beirut example, replotting is a rubric for a wholesale urban renewal and redevelopment program, and is associated with postwar reconstruction.

Land Readjustment in Israel

Land readjustment in Israel and Palestine originated during the British Mandate administration in the 1920s, and continues in Israel. The Town Planning Ordinance enacted in 1921 included LR provisions and these were carried forward in subsequent revisions, including Israel's 1965 Planning and Building Law. As reported by Rachelle Alterman, an authority on Israeli planning:

> *"…public planners in Israel have the authority to undertake reparcelations, if necessary, without the landowner's consent. This power is an important positive (rather than negative, or regulatory) implementation tool and has been used to open up areas where development was inhibited by fragmented ownership."*[41]

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[38] Sagalyn, Lynne B., Land Assembly, Land Readjustment and Public/Private Redevelopment, 18-page paper for Lincoln Institute of Land Policy Conference, (2002), p.1. See https://www.lincolninst.edu/pubs/dl/644_sagaylan.pdf.

[39] From Home, Loc. Cit., and the UNESCO MOST Programme, MOST Clearing House Best Practices, The Development and Reconstruction of the City Center of Beirut, Lebanon, at http://www.unesco.org/most/mideast5.htm.

[40] Ackerman, Ruthie, "Rebuilding Beirut", Newsweek, November 3, 2010.

[41] Alterman, Rachelle and Morris Hill, "Land Use Planning in Israel", pp. 119-150 in Nicholas N. Patricios, ed., International Handbook on Land Use Planning, (London: Greenwood Press, 1986), p. 137.

Sometimes known as repartition, Professor Home reports these provisions have been used in the densely settled coastal zone (Tel-Aviv, Netanha, and Haifa) to organize land for redevelopment.[42] Professor Alterman reports that local authorities can expropriate up to 40 percent of privately owned land for public purposes, in the course of implementing detailed plans or local outline plans.[43] It is not clear how much the state's ability to appropriate land is used in conjunction with the LR activity, and whether either the LR or expropriation play a role in the encroachment by Israeli settlements on neighbouring land.

This is a complex and conflict ridden situation, and the scant research reported here has not provided enough information to constitute an assessment of Israel's land readjustment practices.

Kukaku-seiri in Japan and Land Readjustment in East Asia

The greatest application of land readjustment in any country occurs in Japan, and it has been called the "mother of Japanese urban planning".[44] Known as "Kukaku-seiri" (KS), it is a standard practice employed by municipal planners, and may involve mandatory reconfiguration. It started as a method for developing residential land in the suburbs, and evolved into a technique for improving the use of land and infrastructure in built-up areas.[45] The Land Readjustment Act (1954) provided guidelines for its use in both urban renewal and new town development, and it is one of the methods of urban development in the new City Planning Law (1968).[46] By the 1980s, nearly one-half of all Japanese cities had used it.[47] Between 1900 and 2007 some 30 per cent of the urban area of Japan was re-planned employing Kukaku-seiri (10,878 projects totaling 361,132 ha).[48]

An illustration of the positioning of KS among government urban policies is seen in the reconstruction of Kobe following the 1995 earthquake. The central government imposed an immediate, two-month moratorium on any postquake reconstruction to allow the local governments to prepare plans. This moratorium was later extended to up to two years in priority restoration districts, most of which involved KS projects:

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[42] Home, Op. Cit., pp 469-472.
[43] Alterman, Op. Cit., pages 131 and 137.
[44] Sorensen, André, "Land Readjustment and Metropolitan Growth: An Examination of Suburban Land Development and Urban Sprawl in the Tokyo Metropolitan Area", pp. 217-330 in Progress in Planning 53, (2000), p. 220.
[45] Home, Op. Cit., pp. 465-466.
[46] Schnidman, Op. Cit., p.3.
[47] Anglia Ruskin University, "Land Consolidation and Rural Development", Paper #10 in series Papers in Land Management, (Cambridge: October, 2007), p. 25.
[48] Home, Op. Cit., pp. 465-466.

> *" Land readjustment projects used central government funds to widen roads, add parks, and construct public facilities Each property owner in the project area received a new parcel that was proportionately smaller than the original parcel. Property rights were complex and required considerable time to negotiate... …These projects were designed to create new urban subcentres. The wide-scale rebuilding took time to accomplish… … Today, all of the projects have been built, although some are not fully occupied."*[49]

Private development has a major role in Japanese KS. Schulz and Schnidman report that almost one-half of all land readjustment projects in Japan are completed by private associations.[50] Other initiators are local governments, public and private corporations, and the national Ministry of Construction. An initiating association must obtain the agreement of two-thirds of the area's landowners and leaseholders, who must own more than two-thirds of the owned land and lease more than two-thirds of the leased land. Schnidman reports readjustment is supported due to strong landowner opposition to the alternative method of reorganizing title for redevelopment, expropriation.[51]

Professor André Sorensen's widespread research on LR in Japan provides further perspective. His paper in *Habitat International*:

> *"… examines the model of the Japanese LR method presented by Japanese scholars and development experts to the international audience, and argues that in the context of attempts by several developing countries to adopt the method, there are several crucial shortcomings of the description of Japanese LR in the existing literature. Most important is that the history of opposition to LR in Japan is virtually ignored, and there is very little mention of the enormous commitments of local planning resources necessary to organise consent to projects."*[52]

Sorensen finds that developing a successful LR program is more complicated than merely establishing the necessary laws and incentives. Local governments invest a great deal of time and energy into organizing projects. It is necessary to have an activist local government, with sufficient staff and other resources to sustain an active organizing program over many years. Few LR projects are started autonomously by local landowners and it would be surprising if they could do so, except in exceptional cases. He notes that this important fact, the amount of public effort entailed in starting LR projects, is seldom included in the literature.

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[49] Olshansky, Robert, Ikuo Kobayyyashi and Kazuyoshi Ohnish, "The Kobe Earthquake, Ten Years Later", p. 36 in Planning, Vol. 7, No. 9, (October 2005), p.36.
[50] Schulz and Schnidman, Op. Cit., p.225.
[51] Schnidman, Loc.Cit.
[52] Sorensen, André, "Conflict, consensus or consent: implications of Japanese land readjustment practice for developing countries", pp. 51-73 in Habitat International, Vol. 24, (2000), p. 51.

Professor Sorensen also observes that the extent of cooperation between landowners and local authorities should not be exaggerated:

> *"However, the heavy commitment of time and energy required to launch projects should be better understood by those countries considering adopting the system. The emphasis in the LR literature on LR as based on 'consensus' among landowners is perhaps unfortunate. In English the concept of consensus normally includes some notion of a process of decision making which involves the participants in a process of discussion meant to arrive at a mutually agreed decision. The possibility of the process of decision making affecting the eventual decisions taken is an important part of the concept. The organising of LR projects seen in the case study areas does not fit this idea of consensus. It would be more accurate to describe the process as one in which local government organisers design a project, then work intensively for 5-10 yr to achieve consent to that project, making use of a wide range of persuasive techniques. It is also an essential feature of LR that projects can be carried out over the objections of landowners, so in some sense there is always a coercive aspect to LR organization. While the achievements of the organisers are often impressive, it is misleading to call this a consensus based process."*[53]

Further, Professor's Sorensen's research found that LR in Japan did not produce a comprehensive pattern of development in urban fringe areas, because it has the effect of granting landowners a veto over projects. He observes that:

> *"It is perhaps not an overstatement to suggest that in other countries where landowners have similarly strong rights and incentives to oppose LR projects, it would be unwise to rely on LR as a central element of an urban fringe development strategy."*[54]

Another review of land readjustment activities observed that Kukaku-seiri may be quite coercive with landowners:

> "*…there is a need for better legal protection for the landowners, as in Europe*".[55]

Japan has aided the spread of the land readjustment method across much of Asia by direct transfer to countries it has occupied, information transfer, and the provision of technical assistance as part of its foreign assistance program.[56]

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[53] Sorensen, Op. Cit., p.69.
[54] Sorensen, Loc. Cit..
[55] Anglia Ruskin University, Loc. Cit..
[56] Doebele, William A., "Foreword" in Hong, Yu-Hung and Barrie Neeham, eds., Analyzing Land Readjustment – Economics, Law and Collective Action, (Cambridge: Lexington Press, 2007), p. x.

Land Readjustment in South Korea

Land readjustment was introduced to Korea during the period of Japanese occupation (1905-1945).[57] Since LR was instituted in the Korean Land Adjustment Act of 1934, 84 percent of all cities employed it as part of modernizing urban areas and coping with the burgeoning postwar growth.[58] The rapid post-war growth of the capital city of Seoul was enabled by widespread application of the measure, and by 2000 South Korea had completed 654 LR projects covering 43,814 hectares.

The Municipality of Seoul has reported that whereas LR was used for postwar reconstruction in inner city areas, during the 1960s and 1970s its use shifted to fringe areas where it was associated with providing basic services and serviced land for housing. In the 1980s it was used in both of these sectors of the urban region and additional roles were emerging for land readjustment, including urban renewal and providing land for low-income housing.[59]

Its use has declined in recent years.[60] The boom and decline were referenced in a report by the Human Settlements Office of the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP):

> *"During the 1960s and 1970s the country experienced rapid urbanization and economic development. Several very large and more comprehensive readjustment projects of typically 300-400 hectares were implemented mostly in the urban fringe (Lee, 1987). As much as 64 per cent of all completed projects in Seoul until 1987 had been developed during the time period 1960-1980 (Park, 1991). In the 1980s several factors contributed to a shift towards outright purchase and development by public corporations such as Korea Land Development Corporation and Korea National Housing Corporation."*[61],[62]

The UNESCAP paper described some different problems in Korea's experience with land readjustment. It requires large numbers of skilled participants because it is based on public-private cooperation and negotiation, and this becomes a problem for local governments when there are many projects.

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[57] Shultz and Schnidman, Op. Cit., p. 227.
[58] Schnidman, Op. Cit., p.4.
[59] Based on "Land Readjustment" in UNESCAP Human Settlements, Municipal Land Management in Asia: A Comparative Study, Chapter 10. Selected Initiatives on Access to Land for the Urban Poor, p.3. See http://www.unescap.org/huset/m_land/chapter10a.htm#10.8.4%20%20Land%20readjustment
[60] Home, Loc. Cit..
[61] "Land Readjustment", Op. Cit., pp. 2-3.
[62] The references are to: Lee, Tae-ll, "Land readjustment in Korea", paper for Lincoln Institute of Land Policy course entitled: Tools for Land Management and Development: Land Readjustment, held from March 21-22, 2002; and Park, Heon-Joo (1991), Housing Land in Government Intervention, Meddelande Serie B 76, Department of Human Geography, University of Stockholm.

Another problem is its voluntary, and therefore, uncontrolled nature:

> *"It provides an opportunity for landowners to develop their land but present systems do not force the development of land. In many countries with very high demand for land, such as Japan and the Republic of Korea, it has become increasingly common that landowners use their land as a savings and investment instrument and this has contributed to increases in land values and land speculation. Furthermore, another major incentive for landowners to encourage high land values is that the provision of infrastructure and services is financed by the sale of land. In fact, the use of the land readjustment technique in Japan and the Republic of Korea has virtually stopped since rapid land value increases took place in the 1980s."*[63]

Lastly, LR has been criticized because it does not contain a mechanism for holding property values down.

Land Pooling in India and South Asia

In India land repooling and replotting have occurred since the era of British India in the 1910s and 1920s. Following Indian Independence in 1947, the methods continued to be applied in the states of Maharashtra, Gujarat and Kerala, [64] and there are over 60 schemes in Bombay (Mumbai) and Poona alone. At a national conference in 2003, the Chief Planner of India's Town and Country Planning Organization reported it is used in the three states mentioned above, as well as Tamil Nadu, Punjab and other states.[65]

An illustration of Indian replotting is seen in the Town Planning Scheme (TPS) of the State of Gujarat:

> *"The concept of TPS is akin to land pooling technique in which lands of different owners is pooled together and after proper planning the same is re-distributed in a properly reconstituted plots after deducting the land required for open spaces, social infrastructure, services, housing for the weaker section and street network.[sic] The process enables the local planning authority to develop the commonly pooled land without compulsorily acquiring the same. It facilitates the freedom of planning and design and the control on the growth and development. The practice of TPS is extensively in use in the Gujarat State. …*

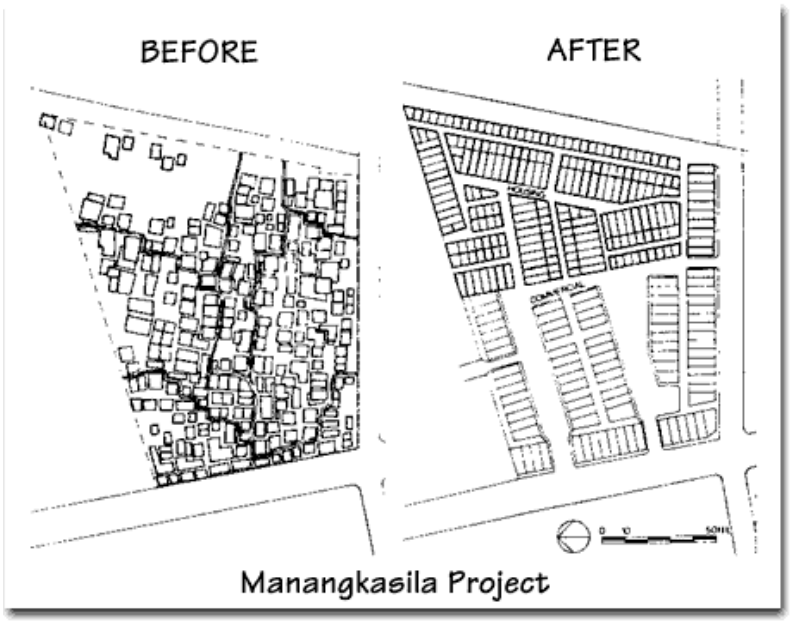
[63] "Land Readjustment," Op. Cit., p.3.
[64] Home, Op. Cit., pp. 467-468.
[65] Gurumukhi, K.T., Land Pooling Technique: A Tool for Plan Implementation – An Indian Experience, presentation at Map India Conference, 2003. See http://www.gisdevelopment.net/application/urban/products/mi03215.htm.

> *… Town Planning Schemes are prepared at micro level for an area of about 100 hectares particularly in those pockets which are under pressure of urban development and need priority attention. The concept behind taking 100 hectares is that TPS becomes manageable and viable scheme for preparation and implementation at local level. The scheme is conceptualized as a joint venture between the local authority and the owners of land who voluntarily agree to pool their land, redistribute the reconstituted plots of land among themselves and share the development cost."*[66]

Clearly this practice occurs at scale and is a common part of local planning implementation.

Elsewhere in Asia, LR has been applied in Taiwan, Indonesia, Nepal, Thailand and Malaysia, often supported by the promotional activities of Japan.[67]

The followng figure, copied from a study of an LR measure in Thailand[68], provides an illustration of the reconfiguration of parcels entailed in a suburban Asian replotting scheme.



[66] Gurumukhi, Op. Cit., Sections 4.3 and 4.4.
[67] Home, Loc. Cit., Schnidman, Loc. Cit..
[68] Copied from Angel, Shlomo and Somsook Boonyabancha, "Land Sharing as an Alternative to Eviction", pp. 107-134 in Third World Planning Review, Vol. 10 , No. 2, (May, 1988), p. 107.

Land Pooling in Western Australia

Professor R.W. Archer has written extensively about land pooling, the Australian form of replotting, that he summarizes as:

> " *Land pooling is a technique for managing and financing the land development stage of new urban development. It is also known as land re-adjustment, land redistribution and land consolidation, because it involves these processes."*[69]

Land pooling was authorized in Western Australia by successive Town Planning and Development Acts from 1928 through 1985, although the first pooling project was not undertaken until 1951.

> *" Local governments in Western Australia began using land pooling in 1951, first to redesign and service old, undeveloped subdivision estates (development projects), then to install special infrastructure works in new suburban areas, and later for the progressive development of their municipalities. By 1982 a total of 56 pooling projects ranging from 1.5 to 250 hectares had been undertaken in metropolitan Perth." "*[70]

Professor Schnidman provided a succinct description of land pooling projects in Western Australia as part of his paper on worldwide land adjustment practices:

> *" Projects involve compulsory landowner partnerships, with local municipal councils as project managers. The councils temporarily consolidate landholdings, redesign and subdivide the land, and reallocate parcels to landowners. Landowners dissatisfied with the valuations assigned may proceed to arbitration."*[71]

Councils can undertake pooling projects to implement land use planning schemes, and each pooling project requires the preparation of a separate supplementary "planning scheme" (i.e., a pooling scheme).

Most of the land pooling in Western Australia is undertaken in metropolitan Perth, where 12 of the 26 local government councils undertook 56 pooling projects between 1951 and 1982. They were mainly in residential areas and ranged from a project of 1.5 hectares that produced 20 house sites, to a project for 250 hectares involving about 105 separate landholdings to produce 1,934 house sites. While land pooling is well established in Western Australia it is not used in

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[69] Archer, R.W., A Bibliography on Land Pooling/Re-Adjustment/Redistribution for Planned Urban Development in Asia and West Germany, (Monticello: Vance Bibliographies), September 1981, p. 1.
[70] Archer, R.W., "Land Pooling for Re-subdivision and New Subdivision in Western Australia", pp 207-221 in American Journal of Economics and Sociology, Vol. 47, No. 2, April 1988, p. 207.
[71] Schnidman, Op. Cit., p.5.

the other Australian states.[72]

Professor Archer concludes the land pooling projects have been particularly successful for local governments:

> *" Land pooling is a technique for the unified subdivision of separate private landholdings in urban fringe areas. Pooling projects are self-financing and the costs and profits of each project are shared between the participating landowners. It provides local governments with a powerful tool for implementing their municipal land use plans and for ensuring an adequate supply of urban land."*[73]

Another of Professors Archer's conclusions, also advanced by Professor Schnidman,[74] is that land readjustment could be useful in North America:

> *" The West Australian experience shows that land pooling could be adopted to improve urban development and land supply for housing in the U.S.A. and Canada, and in other mixed-economy countries."*[75]

Land Readjustment in the USA

Through the 1980s there was a "movement" to adopt land readjustment in the United States.[76] Several prominent academics and a few institutions had become aware of the success of LR in Europe and Asia, and while studying and reporting on these international activities, they advocated that it be adopted in American urban growth situations. The institutions included the World Bank, the Lincoln Institute of Land Policy, and the United Nations Development Program (UNDP).[77]

The movement began in 1975-1976 with an attempt to feature LR at Habitat I, the first global conference on cities, in Vancouver.[78] The suggestion was late arriving on the agenda and only achieved secondary references. A few years later, in 1979, an international conference on LR was held in Taiwan, sponsored by the

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[72] Archer, Loc. Cit..
[73] Archer, Loc. Cit..
[74] Schnidman, Op. Cit., p.6.
[75] Archer, Loc.Cit..
[76] This movement was outlined by Professor Yu-Hung Hong in "Bringing Neighbours In vs. Buying Them Out", 27-page paper for Lincoln Institute of Land Policy Conference, (2002), p.1. See http://www.lincolninst.edu/pubs/dl/639_hong.pdf. It is also described in Professor William A. Doebele's Foreword in Hong, Yu-Hung and Barrie Neeham, eds., Analyzing Land Readjustment – Economics, Law and Collective Action, (Cambridge: Lexington Press, 2007), pp vii – xi.
[77] The individuals included professors: William Doebele, Orville Grimes, Harold Dunkerley, Raymon Archer and Frank Schnidman.
[78] Doebele, Op. Cit., p. x.

Lincoln Institute of Land Policy and the Land Reform Institute. The proceedings were published as a book, "*Land Readjustment: A Different Approach to Financing Urban Development*".[79] Some LR activity emerged across the United States in the later 1970s and early 1980s, reorganizing inefficiently subdivided land in Florida, and other situations in California, Colorado and New Mexico. In 1982 another major conference was held on the subject, at Nagoya, Japan. In 1986 the Lincoln Institute of Land Policy co-sponsored the first U.S. gathering of international land readjustment experts, in Fort Myers, Florida.[80]

While the advocacy of LR in the United States has continued, its momentum diminished through the 1990s. Professors Schnidman and Shultz published a lengthy paper in 1990 describing typical misuses of land in U.S. cities, and asserting that land readjustment could remedy many of them without contributing to the fiscal problem of local governments.[81] There were attempts to pass enabling legislation for LR programs in Florida and California.[82] The Lincoln Institute conducted a retrospective workshop in 2002 which it termed, "Tools for Land Management and Development: Land Readjustment". The proceedings were published in 2007 as "*Land Readjustment: A Different Approach to Financing Urban Development*".[83],[84] The situation was summarized by Professor Yu-Hung Hong, one of the early advocates of LR in America:

> *" The 'movement' in the 1980s did not make any headway either. … …Despite their efforts, LR remains virtually unknown to policymakers and practitioners in the U.S. today."*[85]

Despite the recurring initiatives, land readjustment or replotting has not taken root in the USA, and the literature does not explain the limited interest.

The International Experience with Replotting – Some Assessment

This examination of the literature concerning land readjustment activity internationally has described an established, varied range of urban redevelopment planning and control measures that are carried out under a

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[79] Doebele, W.A., Land Readjustment: A Different Approach to Financing Urban Development, (Cambridge: Lexington Press, 1982).
[80] Ibid., p. 43.
[81] Shultz and Schnidman, "The Potential Application of Land Readjustment in the United States", Op. Cit..
[82] Doebele, Analyzing Land Readjustment, Op. Cit., p. xi.
[83] Hong and Neeham, Op. Cit..
[84] It is notable that in the 1990s there was also an impetus to promote LR activity in England, under the rubric of land pooling. This is described in Owen Connellan, Land Assembly for Development: Something Borrowed, Something New?, 12-page paper for Lincoln Institute of Land Policy Conference, (2002), p.1. See https://www.lincolninst.edu/pubs/dl/635_connellan.pdf.
[85] Hong, Loc. Cit..

number of terms: LR, land pooling, land reparcelling and replotting. The literature has also provided some assessment of strengths and weaknesses of these measures.

It is important to observe that regardless of the term applied to the activity, these varied international examples of replotting can be described as one of three broad types of measures:

- Small-area urban redevelopment projects were the original replotting activities, and this remains the type of LR seen in Germany, France and probably Israel and Lebanon (although the later may be at a larger than project scale);
- The planning, re-organization and rebuilding of cities in the wake of disasters, natural or manmade, is a use of replotting that has occurred in many places. This applies to postwar reconstruction in Germany, Japan, South Korea and Lebanon, and post-disaster reconstruction after eartquakes and tsunamis in several Asian countries;
- Broader programs of urban or rural growth or reform are more particular to certain individual countries. These include the urban growth programs reported in Turkey, Japan, South Korea, Australia and India, and the rural land program in the Czech Republic.

While there are features in common among these three types of measures, they are not all the same. Unfortunately, some of the international literature create an incorrect impression, by assessing projects in one country or region, observing some successes and weaknesses, and then suggesting that these findings apply elsewhere, possibly to other types of projects. For example, broad assessments of the widespread LR activity in Japan, Korea and Asia generally, have been concluded with advocacy of something similar in the United States. It is unlikely that a land use planning program in a unitary state like those in Asia, could be replicated quickly in a federal structure like the United States of America. On the other hand, small-area urban redevelopment situations in North America could probably benefit from some of the experiences with small scale replotting in other countries. When reviewing illustrations from the international literature it is important to attend to the types of replotting being discussed, and to take care not to generalize.

Bearing these cautions in mind, it is useful to consider some of the findings in the international literature.

After reviewing the experience with land readjustment and land pooling in Asia,

the United Nations agency, UNESCAP, identified five advantages:[86]

These are paraphrased as:

1. Asian countries often have a problem because plots in the urban fringe are small, irregularly shaped, and lack access to public roads. As many of these plots are not for sale, it may be difficult to assemble adjacent plots and, thus, development becomes scattered. Land pooling provides for planned development of the land and infrastructure network and avoids "leap-frog" development where different land uses and densities become mixed.
2. Because it is becoming increasingly difficult to obtain public support for the use of expropriation for land development and the provision of infrastructure, land pooling is an attractive method to influence the location and timing of new urban development. The method is typically supported by, and sometimes even initiated by, landowners in order to obtain profit. Unlike expropriation, it returns a major part of the land to the landowner. It is particularly successful when partnerships for development are formed between the public sector and the landowners.
3. It affords an opportunity for the provider of infrastructure and services to get access to land for this purpose as well as to recover costs. As cost recovery is a major obstacle for municipal governments in most Asian countries, this is an important feature.
4. A welcome side effect is that land readjustment requires that the land ownership situation is clarified and an accurate land registration system provided. This can lead to increased public revenues from property taxation.
5. It can provide increased equity in land distribution. The equity is not only among the landowners within the area, but LR can also be a means of providing access to land for low-income housing.

The UNESCAP analysis also identified certain difficulties with land readjustment[87]:

1. The present systems do not force the development of land. In situations with very high demand for land, it is common that landowners use their land as an investment instrument, and this has contributed to increases in land values. Landowners have an incentive to encourage high land values if infrastructure and services will be financed by the sale of land. The use of land readjustment virtually stopped in Japan and the Republic of Korea when rapid land value increases took place in the 1980s.
2. LR has not been effective in reducing the huge shortage of low-income housing in most Asian cities. There are no incentives to maintain low land prices and no other built-in mechanism for obtaining inexpensive housing. It can be argued that the profit margins achieved are unreasonably high and that the role of the public sector as partner should be recognized in sharing the profit. The public sector

[86] UNESCAP Human Settlements, Urban Land Policies for the Unitiated, (Bangkok, 1985), see http://www.unescap.org/huset/land_policies/#_1_14. These advantages and disadvantages are paraphrased from the paper

[87] These observations are paraphrases, based on the UNESCAP assessment.

should therefore aim for more than cost-recovery.

3. As it is based on private-public cooperation and negotiation, it requires considerable human resources both in terms of numbers and qualifications. In particular, skilled negotiators and valuers must be available. In most Asian countries, there is a shortage of skilled government staff, especially at the municipal level.

The foregoing views are oriented to the rural and suburban applications of replotting in urban growth situations, and may not be as relevant to smaller urban redevelopment projects.

Professor Sorensen provides other notes of caution in his assessment of Japanese land readjustment:

> *" Praise for the genuinely positive attributes of LR should therefore be balanced by a better understanding of some common difficulties experienced in its use, particularly in the context of the ongoing project to export the Japanese method of LR to developing countries in South East Asia. No one benefits from sweeping Japan's valuable experience in these matters under the rug. It is precisely that LR is such a potentially valuable land development technique, and that the Japanese experience of LR has been so long and so rich that it is worth understanding the reality of conflict over LR in Japan, how those conflicts have shaped current LR practice, and how the organising of projects actually works."*[88]

Other issues that were seen in the literature include:

- In Turkey, it was observed that the replotting legislation would be improved if it was written to deal with real property, and not merely land;
- The experiences in Germany and France brought out parallels and relationships that link replotting and expropriation. Because of these close relationships, it is clear that replotting should be attuned to expropriation so owners impacted by either measure are treated equitably;
- Around the world many variations were seen in the initiation of replots. This was one of the subjects of controversy in Germany during the debates about redevelopment that followed World War Two. In Japan, initiation is split between the public and private owners, although there is always extensive public preparation. In Australia, Korea and India the initiator is always the public, while in France replots are privately initiated.

Professor Home's observations about LR provided a focus on property issues.

> *" There are two standard methods of development-land assembly – voluntary cooperation between landowners, or compulsory purchase by a public authority (or a mixture of the two). With private rights to property generally protected under the law (including human rights law), any state expropriation has to be justified as*

[88] Sorensen, Op. Cit., p.70.

> *in the public interest and subject to due process, with compensation paid in accordance with an accepted valuation code".*[89]
>
> *" large projects can achieve economies of scale, and land speculation is reduced by discouraging 'hold-outs' (landowners withholding land to get a higher price).*[90]

As a final note, Professor Home's conclusions are particularly relevant to the consideration of the potentials of land readjustment:

> *" It would be premature, however, to conclude that LR is an outdated relic of state control, superseded in an era of privatisation. Flexibly applied, it still offers advantages: a choice of development agency (whether public authority, urban corporation, or private real estate company), an opportunity for local community involvement, a less drastic approach than complete expropriation, and a stronger role for planning. It accords with current neo-liberal philosophies of partnership between stakeholders. In a world of increased population upheaval and pressure upon scarce land resources, a management tool for reorganising land for urban development will remain relevant, especially one which allows some retention of existing property rights. Much depends, however, upon availability of the necessarily specialist expertise and implementation capability, and the willingness of institutions to adapt and innovate".*[91]
>
> *"With public control over land use and development, and state-guaranteed titling of private property rights, LR can be seen as a useful component in the land management capabilities of the modern nation state."*[92]

Concluding Observations

There has been wide international experience with replotting or land readjustment during the last 150 years, primarily in situations of socially-mandated reconstruction. The various replotting programs have in common the function of reconfiguring existing parcels of land into new shapes that are better suited to current circumstances. The literature reviewed here has described general characteristics of these varied programs, and has observed some strengths and weaknesses.

Replotting has been found useful all over the world to deal with replanning and rebuilding cities in the wake of destructive events, whether manmade calamities like wars, or natural disasters like earthquakes or hurricanes. Some of the replotting legislation is more suited to dealing with land than with improvements

[89] Home, Op. Cit., p.459.
[90] Home, Op. Cit., p. 463.
[91] Home, Op. Cit., p. 479.
[92] Home, Op. Cit., pp. 478-479.

to land, although the success of replotting in practice indicates that capable administrators can overcome legislative shortcomings like this. It appears that replotting, like most land development activity, is more likely to succeed in rising markets than declining ones, and tends to favour large landowners over small ones. In some cases the activity is initiated by public authorities, often “development corporations”, while others are begun by private owners and public/private partnership. In some cases the extent of private consent to the reconfiguration is mandated, and in others the individual landowners can effectively veto projects. In general, it seems that landowners find replotting preferable to an alternative land control measure, expropriation.

As this paper proceeds to examine the potentials for replotting in Western Canada, it will be useful to keep in mind the characteristics, strengths and weaknesses seen in the international experience.

Replotting came to Western Canada in response to different problems than those described in the international experience. This section outlines main features of the history and evolution of replotting laws and practice in the four Western Canadian provinces. It reports some of the limited information that could be found about the actual experience with replotting. The section concludes with summary observations about the main elements of replotting in Canada.

The Introduction of Replotting in Canada

The Canadian experience with replotting emerged from a particular context in the development of cities across the prairies and British Columbia.

Two critical features of that context were the remarkable growth and "land booms" in the cities of the region during the late 19th and early 20th Centuries. Waves of newcomers flooded into the region, railways brought economic prosperity, and great optimism and land speculation abounded. In the booming cities savvy entrepreneurs subdivided land and made lots available to eager buyers, including many in far-away places who wanted to 'own a piece of the Canadian West'. Speculative investors in Toronto, Montreal, Chicago, New York and London took the opportunity to buy into the western expansion. These booms occurred at various times and for different reasons, but the major settlements of the Canadian West, from Winnipeg to Victoria, all experienced booms at some time between 1850 and 1930.

The extent and magnitude of these speculative booms was quite remarkable. For example, in Prince Albert the population increased by 65 percent from 1910 to 1911. Where the city occupied 7,500 acres in 1910, by 1912 it had expanded to 10,559 acres. A year later land up to and beyond these city limits was subdivided.[93] In Edmonton, property assessment grew from $6.6 Million in 1905 to $180 Million in 1913.[94]

Then the booms ended. The newly-grown settlements were sharply impacted by world war, droughts that savaged agricultural production, and the worldwide economic crash of the late 1920s. Western Canada's urban municipalities were left with depressed economies, excess capacity in expensive infrastructure, large inventories of scattered sites, and fractured tax rolls. Between 1913 and 1916 the population fell by one-half In Prince Albert, land values plummeted, and many

[93] Author unknown, A History of Planning and Development in Prince Albert, Saskatchewan, Dated July, 2006. p 2.
[94] Thomas, Ted, "Edmonton: Planning in the Metropolitan Region", pp.245-282 in Rothblatt, Donald N. and Andrew Sancton (eds.), American/Canadian Intergovernmental Perspectives, (Berkeley: University of California, Berkeley - Institute of Governmental Studies Press, 1993), p.257.

houses and businesses were vacated and taken off the tax rolls. In consequence, it was the first Saskatchewan city to default on its debt.[95] Between 1918 and 1920, the City of Edmonton received 70,000 lots from forfeitures due to tax arrears.[96] The Royal Commission on Dominion-Provincial Relations reported that 56,743 parcels of land had been forfeited to the City of Edmonton by 1936, having an assessed value of $10 Million. The total number of lots within the Edmonton boundaries at that time was 110,000.[97]

This was the environment in which replotting legislation emerged in Canada, and then began its evolution to the present.

British Columbia The first Canadian replotting legislation was in British Columbia. This was created in Part II of the Town Planning Amendment Act, 1928, a revision of the province's Planning Act.[98] It allowed municipal councils to decide to initiate[99] a replot by a simple resolution, provided that the owners of three-fifths of the number of parcels within the area to be replotted, constituting fifty per cent of the assessed land value, had consented.[100]

In 1963 an urban planner in British Columbia, Mary Rawson, described salient features of these early replots in a study of a dozen land readjustment schemes by municipalities in the Lower Mainland. One example was Capitol Hill, a 200 acre site in Burnaby that rises abruptly along nearly one mile of shoreline on Burrard Inlet. During the booming 1890s the subdivision of the site was begun in a grid pattern, imposed on a north/south axis, without reference to topography or outlook. Lots were sold throughout Canada and internationally, even though many were only 33 feet wide and were completely unbuildable because they were steeply sloped. Actual residential development began to pick up in the area in the 1920s, however, tax forfeits also ensued and the municipality found itself with scattered land holdings and dedicated road rights-of-way that were impossible to build. That led the municipality to organize a replotting to correct the problems and create a more functional land holding pattern.[101]

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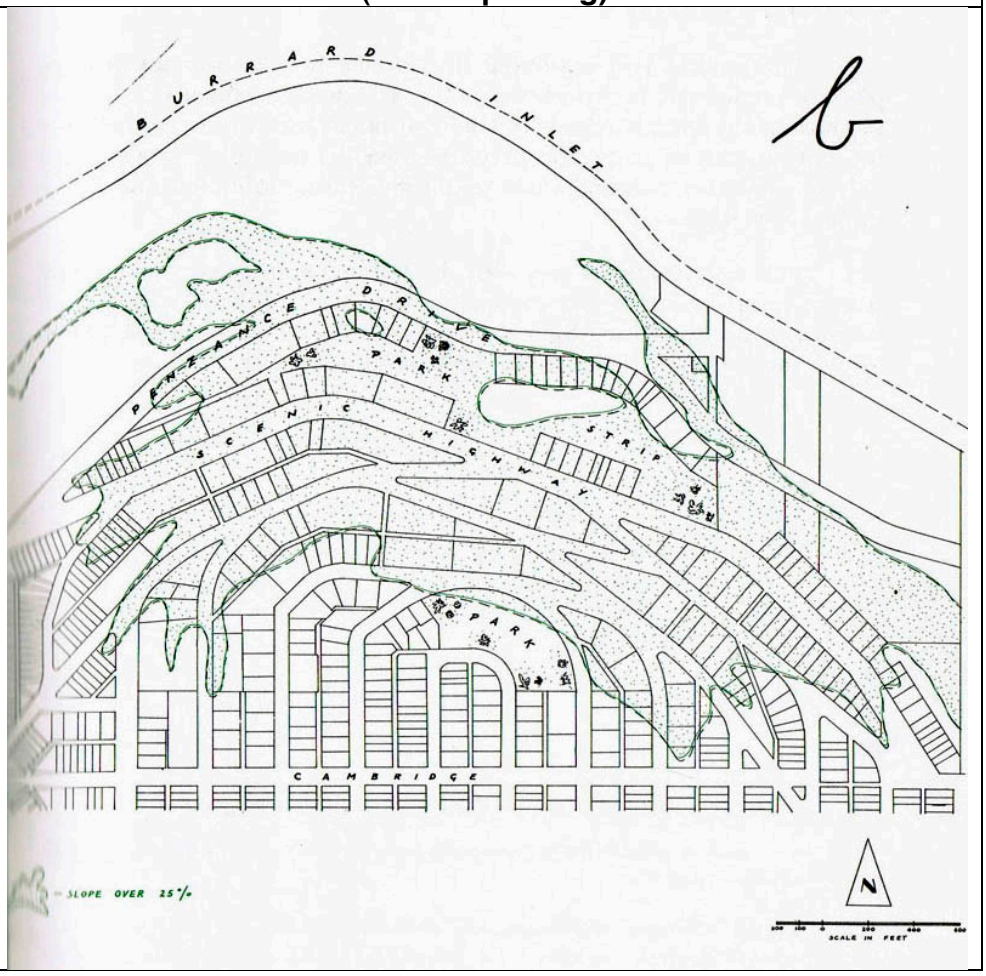
[95] A History of … … Prince Albert, Loc. Cit., p.4.
[96] Bettison, David G., John K. Kenward and Laurie Taylor, Urban Affairs in Alberta, (Edmonton: University of Alberta Press, 1975), p. 22.
[97] The information from the Royal Commission was cited in Thomas, Op. Cit., p. 255.
[98] S.B.C., Town Planning Amendment Act, 1928, c.48, Part II – Replotting.
[99] Initiation is the formal stage at which a replot scheme begins. In most cases initiation follows an earlier stage, in which the municipal council authorizes the preparation of a replotting proposal.
[100] S.B.C., Op. Cit., s.31.
[101] Description summarized from Rawson, Mary, Subdivision Casebook, (Vancouver: CMHC and Planning Institute of British Columbia, 1963), pp. 17-20.

The following diagram, copied from Rawson's study, shows the replotted site, while the comparable diagram in Appendix A shows the site before the replot. Rawson summarizes the problem it addressed:

> *"The Capitol Hill replotting in Burnaby in 1930 was the first replotting carried out in British Columbia. It was successful partly because so much of the speculatively-held land had fallen back to the municipality for non-payment of taxes, and partly because the remaining owners stood only to gain from redesign which would give them usable lots and a continuous road system. This case illustrates very well the folly of putting an abstract grid pattern on a dominant and demanding landform."* [102]

CAPITOL HILL REPLOT SCHEME, BURNABY
(after replotting)



[102] Rawson, Op. Cit., p. 20.

In another municipality in the Lower Mainland a replot produced greater efficiency in the use of the land.

> *"The Vinedale area of North Vancouver consisted of a few large parcels, still unsubdivided, on gently sloping terrain. The area was cut by two angular rights-of-way, one road and one power, intersecting at the southern end."*[103]
> *"In making an estimate of the benefits of replotting, the planning department worked out a plan showing the most economical subdivision that could be achieved without replotting, that is, by individual action by each of the owners. The total number of lots that could be obtained was 91, as compared to 103 through the replotting scheme. A school site was provided for in both designs.*
> *A cost estimate of the implications of the replot scheme provided the following: 13% more lots from the replot; 10% less road length in the replot; 5% less servicing costs in the replot; 14 percent more revenues from sales after replot. In total, there was a 23% gain the net value of the project, after the replot".*[104]

In 1957 when British Columbia repealed its Town Planning Act and created a Municipal Act, the legislation placed replotting in its own, separate section, 'Division 2 – Replotting'.[105] The new Act changed the minimum requirement for owners consenting, in writing, to 2/3 of owners with 60 percent of assessed land value, before a council could vote to initiate a replot.[106] Also, before a council could initiate a project it was required to publish numerous, specified details of the proposed replot in local newspapers and serve notice to all owners that would be affected.[107]

In 1960 the Act was further revised to require that municipal councils have a 2/3 vote of all members in order to approve initiation.[108] In addition, it raised the requirement for consenting owners to those having 70 percent of assessed land value.[109] Between 1996 and 2000 British Columbia undertook a major process of legislative change whereby the Municipal Act was repealed and a new Local Government Act was created.[110.] In interviews with provincial officials it was learned that during this process

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[103] Rawson, Op. Cit., p. 41.
[104] see Rawson, Op. Cit., p.44.
[105] Statutes of British Columbia, Municipal Act, 1957, c. 42, Part XXVIII, Division (2) Replotting.
[106] S.B.C., Op. Cit., s.834.
[107] S.B.C., Op. Cit., s.833.
[108] R.S.B.C.,Municipal Act, 1960, c. 255, Division (2) Replotting. S.824.
[109] R.S.B.C., Op. Cit., s.830.
[110] The new Act is R.S.B.C., Local Government Act, 1996, c. 323, Part 28 – Replotting Schemes (s.982-s.1018).

municipalities had not proposed changes to the replotting legislation, and because the staff was focused on overhauling the most used and problematic planning measures, the same replotting provisions appeared in this new Act.

Alberta A year after the first legislation in British Columbia, the first replotting legislation in Alberta appeared, also in the form of a revision of a section of the Town Planning Act.[111] As explained in Professor David Hulchanski's paper on the evolution of town planning in Alberta, the change in the province's 1929 Planning Act authorized:

> *"…'replotting schemes' whereby an inefficiently laid out subdivision could be replanned. By a two-thirds vote a local council could authorize the preparation of a 'replotting scheme for the cancellation of any existing subdivision or part thereof and making a new subdivision thereof and the redistribution of the newly subdivided land amongst the owners of the cancelled subdivision' …"*[112]

> *"Most of the existing subdivision plans were prepared during the pre-1914 boom period, and this provision for replotting allowed them to be replanned along more efficient lines. The subdivision planning problem of the 1920's related much more to the problem of dealing with existing inefficiently planned subdivisions than the subdivision of new land. So much land had been subdivided during the first boom period that much of it was still undeveloped well into the 1950's."*[113]

The basic features of the replotting authorization included: councils were required to have a 2/3 vote in order to authorize preparation of a replot scheme; councils may, with a 2/3 vote and with the prior consent of 60 percent of parcels and of assessed land value, approve a replot.[114] Professor Edmund Dale's exhaustive thesis that examined the role of city councils in the evolution of Edmonton, observed that Edmonton's Council:

> *"… had much to do with the passing of the Act* [with its replotting provisions]".[115]

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[111] S.A., The Town Planning Act, 1929, c.49.
[112] S.A., Op. Cit., Section 45.
[113] Hulchanski, J. David, The Origins of Urban Land Use Planning in Alberta, 1900-1945, (Toronto: University of Toronto Centre for Urban and Community Studies Research Paper #119, 1981), p. 36.
[114] S.A., Op. Cit., s.45.
[115] Dale, Edmund H., "The Role of Successive Town and City Councils in the Evolution of Edmonton, Alberta, 1892 to 1966", unpublished PhD thesis, (Edmonton: Department of Geography, University of Alberta, 1969), p.227.

A year after authorizing replotting the Province withdrew some of the replot authority from municipalities[116] by creating a three or more person Town and Rural Planning Advisory Board, appointed by the Minister, with the authority to:

> *"…make regulations respecting replotting schemes"*

The same 1929 amendment defined the eligible stakeholders whose consent could be considered, as:

> *"… owners thereof and of any other persons having a registered interest therein.*

The original replotting legislation in Alberta was repealed in 1953 in favour of a new Town and Rural Planning Act,[117] in which replotting was changed so a municipal council could authorize preparation of a scheme with a simple majority.[118] In 1963 a new Planning Act was passed,[119] and its replotting section provided requirements that:

> *" A council shall, immediately after authorizing the preparation of a replotting scheme, cause an appraisal to be made …."*[120]
> *… If the replotting has been consented to in writing by the registered owners … appraisals need not be made".*[121]

The next year this requirement changed to:

> *"If replotting has been consented to in writing by at least ninety percent of the registered owners, appraisals are not required, and redistribution can occur".*[122]

In 1977 Alberta's Planning Act and its replot section was significantly rewritten in more simple language.[123] Councils were authorized to approve the preparation of replot schemes, and two types of replots were defined, land and valuation. In a valuation replot appraisals are required, and council can only adopt it if 90% of the landowners and 90% of the appraised land value, have consented.

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[116] S.A., Op. Cit., s.44.
[117] S.A., The Town and Rural Planning Act, 1953, c.113.
[118] S.A., Op. Cit., s.35.
[119] S.A., The Planning Act, 1963, c.43.
[120] S.A., Op. Cit., s.32.
[121] S.A., Loc. Cit., s. 32.(4).
[122] S.A., The Planning Act, 1964, c.43., s.32.
[123] S.A., The Planning Act, 1977, c.89. Replotting is in s.119 – s.134.

In 1994-95 the Planning Act was repealed as part of a process that saw Alberta's Municipal Government Act amended to incorporate most of the provisions of the former Planning Act, however the amended Act had no replotting section.[124] In interviews with Alberta officials it was learned that replotting was removed because it was not widely used, it was considered difficult to use, and it did not have a lot of supporters at that time. An examination of Alberta Hansard during the debate on the new Act found no discussion concerning replotting.

However, the amended Municipal Government Act did provide for replotting to correct some boundary problems in the Municipality of Crowsnest Pass.[125] This was carried forward in the 2000 Municipal Government Act and has since been elaborated in "Crowsnest Pass Regulations", which have been re-passed several times and are currently in force until August, 2012.[126]

Saskatchewan Replotting was not authorized in Saskatchewan until after WW II, and there has been little substantive change in this legislation since it was first created. Replotting first appeared in the new Community Planning Act in 1945,[127] allowing municipal councils to initiate a replot with the following main elements:[128]

> *"Subject to the Council having previously obtained written consent to the replotting scheme from the owners of parcels of land constituting at least two-thirds of the parcels comprising the scheme and the assessed value of the land … …Council may, by resolution passed by a two-thirds vote of the whole Council, approve the scheme without the consent of the other owners."*[129]

In his history of urban planning in Saskatchewan, Doug Charrett reports that in 1946 a 256 acre replotting scheme was approved by the province, west of Saskatoon. In association with the project, he adds:

> *"The Community Planning Branch prepared revisions to the municipal expropriation process to make it simpler to administer, resulting in the*

[124] R.S.A., The Municipal Government Act, 2000, c. M-26.
[125] R.S.A., Op. Cit., Part 16, s. 615.
[126] Crowsnest Pass Regulation, Alta. Reg. 197/2002.
[127] Statutes of Saskatchewan, The Community Planning Act, 1945, c.51. Replotting appeared in s.34-s.54.
[128] S.S., Op. Cit., s.34.
[129] S.S., Op. Cit., s.40.

Municipal Expropriation Act, 1946`.[130]

In 1951 an amendment to the Planning Act made replotting in Saskatchewan fundamentally different from the other provinces:

> *"…plans and specifications of a replotting scheme shall be submitted to the Minister for his approval".*[131]

In 1973 the Community Planning Act was repealed and a new Planning and Development Act was passed, with somewhat abbreviated wording. The requirement to secure the Minister's approval was removed, and otherwise the substance of the replotting provisions were not changed.[132] Since 1973, the Saskatchewan legislation has remained essentially the same.

Manitoba Replotting was never authorized in Manitoba, athough this province experienced the same "boom and bust' conditions that occurred in the rest of Western Canada. No reasons for this different course have been discovered. It might be speculated that Manitoba's urban centres did not experience as much difficulty as other western cities with early grid subdivisions of land and dysfunctional patterns of tax-forfeited land ownership, and that they were able to use other techniques to deal with re-subdivision.[133]

In summary, replotting legislation was established in Alberta and British Columbia in the 1920s and in Saskatchewan during the 1940s. These laws were not static, but evolved through amendments and practice. The changes often improved compensation and governance aspects of the legislation. Today replotting laws are in force in British Columbia and Saskatchewan, and to some extent, in one small municipality in Alberta.

Some Experience with Replotting in Western Canada

The use of replotting by municipalities grew through the postwar period, then dwindled from the 1970s to the present, particularly in Alberta and British Columbia.

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[130] Charrett, Doug, Planners and Planning: the Saskatchewan Experience, 1917 to 2005, (Saskatoon: Association of Professional Community Planners of Saskatchewan, 2005), p. 18.
[131] S.S., The Community Planning Act, 1951, c.50, s.6.
[132] S.S., The Planning and Development Act, 1973., c. 73. Replotting appeared in s. 123- s.157.
[133] Key informants from Manitoba that were interviewed, opined that perhaps problems in the early subdivisions of rural land would have been dealt with by informal arrangements between landowners, and by the use of other legislation such as the Municipal Act, the Land Surveyors Act, and the Boundary Lines and Line Fences Act.

The Edmonton region appears to have been a locus of replotting activity. Professor Dale's thesis, mentioned above, included a map of Edmonton showing the parts of the city that were replotted in each of four eras from 1947 to 1966. About one-half of the total land area of the city was replotted during that period.[134] Dale explains this activity as:

> *"City ownership of most of these lands – up to 90 per cent in many instances, and in others more than the 60 per cent required by the Town and Rural Planning Act – explains why it was relatively easy for the City to carry out replotting schemes."*[135]

Some perspective on Edmonton's more recent views about replotting is seen in Outline Plan documents developed by the Planning and Development Department of the City of Edmonton during the last decade. Outline Plans are sectoral policy studies in which the City defines large development districts, and describes the main elements of land use, transportation arrangements, and institutional uses like parks and open space that it would like to see developed in these districts. Several recent plans (Kaskitayo Outline Plan,[136] South-East Industrial Area Outline Plan)[137] included explicit observations that particular subdivisions require replots, or that particular owners will need to cooperate with other owners or replotting will be required. These are illustrations of the Edmonton planning authorities communicating with property owners and the community generally, that replots are desired.

Another place that had notable experience with replotting is the Municipality of Crowsnest Pass. When the new Municipal Government Act was passed in Alberta in 1994 it contained a section within Part 16 (Miscellaneous) that authorized the "Crowsnest Pass Regulation" (Section 615). This section pertains exclusively to the District Municipality of Crowsnest Pass, and authorizes the Minister to make regulations that enable a form of replotting.[138] After several years of having this regulation in force, the Council of the Alberta Land Surveyors' Association, at its meeting on June 26, 2002, sent an informed, detailed report on its efficacy to the Government of Alberta. This report, reproduced in Appendix C, advocated "…redrafting the former Replotting

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[134] See Dale, Op. Cit., p 338, Figure 33.
[135] Dale, Op. Cit., p.339.
[136] Planning and Policy Services Branch, Planning and Development Department, City of Edmonton, Kaskitayo Outline Plan (Office Consolidation), (Edmonton: the City, December 2006), pp. 12-13. Plan originally approved 23 October 1973.
[137] Planning and Policy Services Branch, Planning and Development Department, City of Edmonton, South-East Industrial Area Outline Plan (Office Consolidation), (Edmonton: the City, July 2007), p. 50. Plan originally approved 18 March 1975.
[138] Crowsnest Pass Regulation, Op. Cit..

Scheme legislation and placing it in the Municipal Government Act, making it applicable to all municipalities".[139]

While replotting has played significant roles in Edmonton's development, and in straightening out title problems in Crowsnest Pass, its use throughout Alberta seems to have been quite limited. There was no mention of replotting in Calgary in the literature examined for this project, and none of the key informants that were interviewed knew of replotting activity there. At the height of the housing boom, the Red Deer Regional Planning Commission published a comprehensive report on land development that addressed both process and practice, and it did not mention replotting.[140] A broad study of land development in Lethbridge, completed in the same period, also made no mention of replotting.[141]

It is also significant to note that replotting in Alberta did not entail conflict among landowners. Discussions were held during the summer of 2010 with several Alberta developers who had been aware of replotting activities from the 1970s onwards. They reported that replotting was always done with 100 percent agreement of the various landowners involved, and that it was seen as a way to re-organize land title and public facilities, particularly roads, so that development could proceed economically.

In Saskatchewan since the beginnings of replotting in the 1950s, it has become a common activity in Saskatoon, but was little used in other places. The province's Community Planning Branch reported that during 1980-81 eight replot schemes were approved, and noted that:

> *"… this was a convenient way to resubdivide previously subdivided land. Replotting could provide a more economic and desirable layout of roads and sites. Another advantage of replotting schemes is its use in the case when some of the land owners do not consent to the resubdivision, and the resubdivision is*

[139] Alberta Land Surveyors' Association, Council Report, June 26, 2002, p.1, http://www.alsa.ab.ca/uploads/files/PDF/agm_reports/CR020626.pdf)

[140] Red Deer Regional Planning Commission, Urban Land Development, (Red Deer: the Commission, April, 1979). The Commission was responsible for planning in a huge area, from the BC border in the Rockies to Coronation near the Saskatchewan border, and from Carstairs north of Calgary to Lacombe south of Edmonton. This area included municipalities that were highly involved in land development, including the banking, development and marketing of land. For example, in its core municipality, the City of Red Deer, the Commission reports "…relatively little of the residential and industrial expansion over the last 20 years has been carried out by private developers." (p. 9).

[141] Oldman River Regional Planning Commision, General Plan Review: City Involvement in Land Development, (Lethbridge: the Commission, September, 1977). The ORRPC was responsible for planning in 41 municipalities in southwestern Alberta, from the BC border to Taber and Brooks, and from the US border to south of Calgary. The core municipality, the City of Lethbridge: "…carried out the servicing of all development land within the City limits" (p. 7); "…initiated the co-ordination of subdivision design functions for private and City-owned land" (p.7); and "Since 1974 approximately 52% of all land developed for residential purposes has been City-owned" (p.12).

deemed to be of overall benefit to the area."[142]

Between February 1994 and June 1996, the City of Saskatoon authorized four different replots.[143] These replotting schemes were often directed to securing more efficiency in the use of land in new development areas, by reorganizing land ownership among several developers and city-owned lands, as well as to improve roads, parks, school sites and other public facilities. Both public and private developers in Saskatoon spoke favourably about the collaborative use of replots to open up land for contemporary developments. However, there was no mention of replotting in Regina or other Saskatchewan cities in the literature examined for this project, or in the interviews.

Even less information was found about replotting in British Columbia. In the District of North Vancouver, several replotting projects were carried out in the 1970-1980 period, to create more serviceable and economically-developable building sites in mountainous terrain. The interviews found a few individuals who indicated that there had been one or more replots in their municipalities in the past, but they had few details. Key informants mentioned a few other municipalities may have been involved in replots, including: Burnaby, Castlegar, Coquitlan, New Westminster, North Vancouver (City and District), and Rossland.

No examples were discovered in Canada of replotting being used to reconfigure land following a disaster. Reconfiguration is a valuable function at such times, as calamitous events that could occur in Canadian cities (earthquakes, explosions, floods, tsunamis, major fires) would destroy improvements on land. The experience from the great fires that wiped out parts of Vancouver (1886), Calgary (1886), Ottawa-Hull (1900) and Toronto (1904), and the Halifax Explosion (1917) is that it is often desirable to rebuild the affected area in a different manner. The Canadian replotting legislation would contribute to this capacity, just as replotting has proven useful in these circumstances around the world. If replotting was not available, our main public policy tools to begin re-organization of the devastated district would be purchase or expropriation, both of which require spending at a time when financial resources are likely to be scarce.

An Examination of Canadian Replotting Laws

The replotting legislation of British Columbia and Saskatchewan, and the former Alberta legislation, are reproduced in Appendix B. The three are presented in a tabular format, in columns, to facilitate the observation of similarities and differences among the laws.

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[142] Charrett, Op. Cit., p. 33.

[143] These were: Lakeridge B (7 February 1994); Silverspring (4 December 1995); Arbor Creek (25 March 1996); and University Heights (3 June 1996).

This section describes main features of the replotting legislation in Western Canada. In this respect, it parallels the consideration of key characteristics Professor Home identified in his study of international land readjustment procedures.[144] The discussion herein departs from Home's by highlighting some commonalities between, and differences among, the laws in the three provinces. Also, it identifies potentials and limitations that are forseen if replotting were to be applied more frequently as part of redevelopment land assembly and land development planning activities.

Initiation In the three provinces, the legislation does not specify who may actually initiate a replot proposal, although in each case in order for a concept to move to the stage of being a formal replot proposal, the municipal council must agree.

The initiation of a replot is a formal stage and procedure entailed in commencing a replotting project. In all three provinces the council cannot initiate a proposal for a replot without first serving notice on all owners who would be affected. In British Columbia this notice must contain considerable detail, including scale drawings, estimated costs and timings. In order to authorize the initiation of a proposal, in British Columbia a council must receive the written consent of the owners of 70 percent of the assessed land value in the proposed replot district, and the council must approve the authorization by at least a two-thirds vote of all of its members. In Saskatchewan a council must have written consent of owners of two-thirds of the parcels in the proposed scheme, and they must have two-thirds of the total assessed land value within the scheme. In the former legislation in Alberta a council could initiate, but it could not move to the next stage of adopting a replotting scheme unless it had the written consent of 90 percent of the owners, having 90 percent of the market value of all of the land in the scheme.

In all provinces, no clauses were observed in the legislation that would restrict initiation to municipalities alone. Consequently, it appears that private owners could submit a proposal to a municipality, requesting that a replot be initiated. The proposal would have to meet all specifications for form, and would have to be submitted by the required majority of owners. It would be advisable for proponents to indicate that they would pay all or most of the municipalities' costs in processing the replotting, as cash-strapped local governments might not otherwise agree. If the proponent did not cover the costs, the municipality would probably prefer that a

[144] Home, Op. Cit., p. 463.

development proposal be processed as a conventional rezoning and subdivision approval.

Initial Notification, Initial Hearings, Required Notification, Public Hearing, Notice of Approval Overall, all three provinces required that councils obtain the views of the directly effected landowners, and secure the formal approval of most of them, before the councils can hold a vote to authorize a replot.

British Columbia provides great detail on the interests eligible to be considered when valuing land, including incomplete purchases, leases and joint tenants. It refers specifically to the interests of tenants under long-term land leases, and also mentions other interests on title (Mechanics Liens, caveats, other interests in fixtures). These references indicate British Columbia is quite aware that there may be interests in the land, other than merely “owners”. Most clauses of the legislation in all three provinces refer only to owners.

All provinces specify “owners” or “registered owners” when describing who needs to be notified about a replotting proposal, who needs to be notified of a hearing or council meeting, who is eligible to speak at a hearing, who can appeal a replot approval, who can apply for compensation, etc. In an urban redevelopment situation, it would seem likely that there will be many more interests in a parcel of land than these specified interests. It is observed that these omissions are significant and these other interests can be expected to seek, and demand, recognition and ultimately, compensation.

Size of Project While none of the provinces specify the size of a replot, it can be observed that the legislation in Saskatchewan and the former legislation in Alberta defined the composition of a scheme in a manner that amounted to the specification of a minimum size. Specifically:

- In Saskatchewan, the specification that two-thirds of owners must agree requires that a project must entail the assembly of at least three parcels of land. The further requirement that the consenting owners must have two-thirds of the project’s land value ensures that several owners of less-valuable land cannot force a replot on the owner of a valuable parcel.
- In the former Alberta legislation, the requirement for the consent of ninety percent of owners requires that the minimum replot must comprise at least ten parcels, and their values must be approximately equal. If the non-consenting owners have parcel(s)

of higher value(s) than the consenting parcels, the number of parcels required to constitute an eligible project would have to be significantly larger than ten.

- In British Columbia, where the requirement for consent is specified as at least seventy percent of land value, the consequent implications for the design of eligible projects are less clear. The number of parcels is not limited or constrained, but it would be less likely for a project to be eligible as a replot if any parcels having non-consenting owner(s) have higher values than the typical parcels owned by proponents.

Types of Replots and Compensation Each province requires that the replotted land be returned to former owners in the same proportion as the area and value they held before the replot, and in approximately the same location. These principles reflect the original context in which replotting began.

In British Columbia, these references to land suitable for compensation are accompanied by a less-restrictive alternative "…or compensation in money". In both the Saskatchewan and the former Alberta legislation, replacement land or property is described but monetary compensation is not mentioned as an alternative.

In Alberta, the former legislation distinguished between two types of replots. In a land replot, the owners received the same proportion of the total land area after the replot as they owned before the replot. In a valuation replot, owners received the same proportion of the appraised market value after replotting, that their land had before the replot. It is notable that these two types of replots demonstrate a central principal in Canadian replotting. They are two alternative methods of accomplishing the same purpose, an equitable, proportionate reimbursement of the value of the property. Owners receive the same proportionate share of the value of the marketable portion of the entire replot, before and after.

- A land replot can accomplish this in situations where the land is undeveloped and the land value is homogenous, such as a bare prairie or an undeveloped hillside. It is notable that several of the legislations refer to moving buildings, in order to maintain the simplicity of the land in/land out methodology.
- A value replot deals with more complex situations, typical of today's urban redevelopment, where adjacent parcels of land can have quite different unit values due to their size, location, the value of improvements on the land, and possibly other factors associated

with the business done on the sites or other aspects of the occupation of the property.

The land and value replots express the same principle, except in the former the value of the land is expressed in land area, whereas in the latter it is defined in terms of money.

Planning In each province the legislation describes the details that are required in the preparation of a proposal for a replotting scheme. The details are extensive and are similar, including specifications for the documentation required and the process to be followed. The legislation does not appear to define who must spend the money to have the various activities performed and the extensive documentation prepared, although in practice, local governments have borne these costs. The legislation does not appear to prohibit others, such as the owners of the land in a replot, from bearing the costs.

Measurement All provinces require that municipalities define schemes, all parcels that go into the schemes, and those that come out of the schemes, in survey detail. The associated infrastructure and infrastructure changes must be shown. Costing, value and ownership information are also required.

Public Land Allocation BC allows land to be taken from the scheme for public purposes as compensation for municipal involvement in the scheme. The equitability or proportionality of this measure is not clear.

Costing BC, and formerly Alberta provide considerable detail on items eligible for compensation, while Saskatchewan provides general statements with less detail. It is not clear which approach is most/least equitable or generous to owners or other interests impacted by replotting.

All three provinces required that the municipality implement the approved replot by filing specified replot/subdivision plans at the Land Titles Office.

Alberta specified that the municipality secures appraisals.

All provinces allowed municipalities to move improvements on or off the site.

Hearings Under the Saskatchewan and former Alberta Acts, a municipal council is required to hold a special hearing at which it must hear the views of any registered owner who received a notice. In British

Columbia a replot proposal is considered at a regular council meeting, not a hearing for this specific purpose, and there is no definition of those who may or may not speak.

Implementation and Timelines Saskatchewan and British Columbia require timely decisions and implementation. In British Columbia the council must either approve or quit a replot proposal within four months of the date it is initiated, and organize a commission to hold a hearing into compensation appeals within one month of completing a scheme. In Saskatchewan the project must be completed within two years of the date it is authorized, or the scheme must be ended.

Hearing for Compensation BC specifies that hearings for compensation must be public. BC also allows the commissioner at a hearing for compensation appeals to hear “any person interested”.

Saskatchewan, and formerly Alberta, specified that registered owners may apply for compensation. This restrictive limitation could deny access to tenants and other interests in the title to the land, and therefore would be less equitable. BC’s approach appears more equitable than limiting hearings to registered owners.

Time for Paying Compensation Alberta specified that, within 3 months after the replot plan/subdivision plan is registered and notice is given, if no application for compensation is received concerning a parcel of land, then the parcel owner ceases to be entitled to compensation. This seems arbitrary.

Concluding Observations – Replotting in Western Canada

Replotting laws were created in British Columbia and Alberta in the 1920s, and in Saskatchewan in the 1940s, and each province revised the laws over the years. Some replotting was undertaken by municipalities to reconfigure land that had been previously subdivided so that it could be developed economically, but replotting has not received extensive use. In British Columbia the use has been scattered across the province, and has occurred sporadically for seventy years. The most recent replot was in North Vancouver District in the 1980s. In Alberta extensive replotting occurred in Edmonton following World War Two, but this declined after the 1970s housing boom. In the mid 1990s, when Alberta revised its Planning Act into the Municipal Government Act, the replotting provisions were not included. It appears that in both Alberta and Saskatchewan replotting activity was concentrated in one urban region, in Edmonton and Saskatoon respectively.

Saskatoon's active Land Development Department and local developers use replotting when opportunities arise, as a cooperative measure to jointly organize the subdivision of adjacent parcels of land. In the latter years of replotting in Alberta, it is significant that all or most projects entailed the agreement of all landowners whose property was affected.

Overall, the replotting legislations in British Columbia and Saskatchewan, and the former legislation in Alberta, provide frameworks that could support a role for replotting in urban redevelopment. The basic activities required in most urban redevelopment projects are the same activities described in the replotting legislation. These may be summarized as assembling a site from multiple owners and seeking municipal approvals for a redevelopment plan. The legislations contain the capacity to use replotting in different ways than it has been employed previously. Where replottting has always been initiated by municipalities, it appears possible for private owners to propose that a replot be initiated. The proposal would have to be in the specified format, and it would have to meet the criteria for the proportion of project ownership that is supporting the replot. In a proposal for an urban redevelopment, it is likely the proposal would have to be presented in terms of the values of the properties involved, rather than merely the land areas. If the required majority of the owners of a proposed redevelopment are agreed, and the proposal is seen to be in the public interest as expressed by city council, the authority of the replotting legislation is sufficient to force the compliance of minority, non-consenting owners.

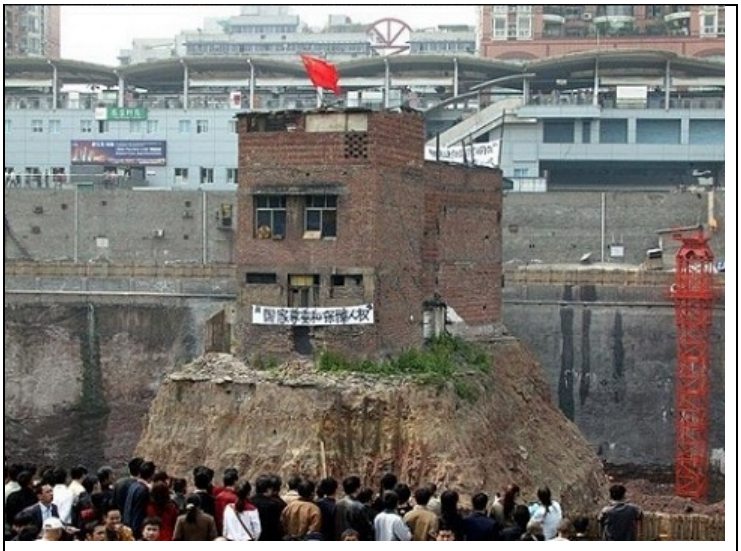
No examples were discovered in Canada of replotting being used to reconfigure land following a disaster. Reconfiguration is a valuable function under these circumstances. Calamitous events that could occur in Canadian cities (earthquakes, floods, tsunamis, major fires, explosions) would destroy improvements on the land, and it might be desireable to rebuild the affected area in a different manner. The Canadian replotting legislation provides this capacity, and if was not available, the only tools available to public policy to begin the re-organization of the devastated district would be purchase or expropriation.

It was observed in the international literature that replotting has considerable parallels with expropriation, and this will be discussed further in the next section. There is relatively little experience with replotting in Canada, compared to expropriation, so it is likely that the laws and practices concerning expropriation are more advanced than replotting. It was observed that replotting provisions are less developed in relation to interests beyond the mere ownership of land. Some of the most common "other interests" include: mortgagees, tenants, leasehold improvements, business disturbance and goodwill, value to owner, moving costs, etc. If replotting is to take on a new use as a tool to help manage urban

redevelopment, its treatment of all interests in the property affected will need to be improved.

As cities proceed from the era of postwar growth and globalization into a time when development must be more sustainable, urban development is undergoing significant change. Urban policies are making our settlements more compact and better integrating homes, jobs and services. The forms and mechanics of urban growth, are matters of real concern to everyone who wants a decent life for future generations. Historically, Canadians have paid little attention to the clash between private rights to land and the public interest in improving cities. It will be useful for policy makers to consider Canadian views on the relationship between the public interest in improvement, and the rights of private owners over land use. This subject warrants better understanding.

As society employs measures to create more compact and integrated cities, growth forces become focused at limited locations, and the landowners at those locations are given an element of monopoly power. The owners may use this power to support society in its objectives, or they may resist change or overestimate the value of their property and attempt to exact a premium from society. The power of a landowner who does not consent to a socially-desirable change is a problem that developers have faced forever as they sought opportunities to create profitable projects. Non-consenting owners can become a problem for the whole community as it endeavors to direct growth to those places where the development will be most socially beneficial.



The "nail house" is surrounded by a large excavation after its owners rejected a construction company's purchase offers and defied a judicial order to abandon the site. Source: "Nail House in Chongquing Demolished". China Daily (3 April 2007), Retrieved 13 November 2007.

This section outlines the problem of non-consenting owners, and considers whether the circumstances that produce the problem are important, and whether they are likely to be increasing or declining in the future. This paper is introducing the proposition that replotting can be a useful tool to help deal with this problem. The section also assesses the relative merits of several public policy alternatives to replotting.

To begin, the meaning of the concept of a non-consenting owner, or holdout, should be clarified. It is a quite simple concept – either an owner participates in a redevelopment proposal or that owner is not consenting. "Holding out" or "not

consenting" are descriptive terms that need not have any derogatory connotations. There is no implication that whenever a developer proposes a redevelopment, all landowners in the area must participate.

While a landowner who doesn't participate in a developers' scheme is a problem for that developer, that non-consenting owner is not necessarily a problem of interest to society. The societal interest in a holdout becomes established when the community has an opportunity to examine the redevelopment that is being proposed and consider the degree to which the project would meet social objectives, with and without the holdout. The measure of the holdout problem, for society, is the added societal benefit to the redevelopment if that holdout property was included, or the diminishment of the benefit without the holdout property. If society views the loss of the potential benefit to be a significant problem, then that holdout has become a societal problem.

Typical Urban Situations that Facilitate Non-Consenting Owners

Situations that provide opportunities for holdouts that are in conflict with social goals are also situations that are important to society. This peculiar combination of significant social objectives and vulnerability to private interference will likely occur more frequently in the future. Since this is a situation associated specifically with public policy, the question arises, "should society put measures in place to ensure that its important objectives are not compromised by non-consenting owners?"

There are many situations where important public interests create opportunities for holdouts. Our cities are designating places where public policy wants redevelopment to concentrate. These are usually locations where the infrastructure exists to support added development, where good facilities exist to transport large numbers of people, and where other public investments are being made to make future settlements successful. Following is a brief listing of typical situations in which public policy supports intensification at a specific location:

- Neighbourhoods surrounding junctions and key stops on mass transit lines (subways, LRTs, Skytrains, busways);
- Locations identified for mixed land uses. Typical examples are existing shopping centres selected for upgrading to nodes of residential and commercial use, and concentrations of residential density identified as needing neighbourhood retail and other services;
- Places identified as "Main Streets" where intensification is to be encouraged as linear concentrations of density and mixed use that is supportive of mass transportation;
- Precincts where major public investments are concentrated, such as:

  - Medical districts;
  - University or college precincts;
  - Areas surrounding major arts investments, museums, performing arts venues, sports and recreation facilities;
  - Military precincts;
  - Areas near entrances to major parks, places with high scenic or other functional amenities;
- Growth nodes designated in official plans, regional and district development studies and plans;
- Locations identified as "blighted" or functionally obsolete to the extent that development becomes a social goal.

Once public policy has directed that growth should occur at these locations, market forces concentrate on them. Developers move into the areas, and generally begin to formulate projects that accord with the public goals. Property owners in the designated locations who do not participate with the developers are using the privileged position created for them by public policy, and hindering the realization of the social objectives.

As urban intensification becomes a central component of our plans to make communities more sustainable, it follows that there will be increasing opportunities for socially-problematic holdouts. As governments and industry seek to improve cities by directing resources and growth designations to certain nodes and junctions where transportation, services and other infrastructure can support the intensification of jobs and residences, some landowners in these locations will seek to exact a premium for using their property in cooperation with public policy. Responsible owners and developers will seek to transform existing property to the desired, intensified uses, at market prices. Non-consenting owners will not cooperate with the intended development plans, or will seek prices or incomes that exceed market values. At present, developers have three options to deal with non-consenting owners: agreeing to pay exorbitant prices for their property, proceeding without the holdout property, or foregoing the development, even though it is socially-desired.[145] Governments and industry need a better tool to deal with non-consenting landowners.

Background – Private Land Ownership and Public Control of Land

Conflicts may arise between the best use of land from the perspective of the 'public interest', and the use chosen by a private owner. In a market economy landowners must be agreed in order for a redevelopment proposal to occur on

[145] As was described in the introductory chapter, there are disadvantages arising from each of these options, that apply to the broader community.

their sites. What does Canadian policy say about situations where the owner's wants are at odds with the wishes of the neighbourhood, the broader community, or the whole city (as represented by the city council)?

In her examination of redevelopment, British Columbia planner Mary Rawson observed that private land owners occupy a central position:

> "*The biggest stumbling block to land redesign is the fact of private ownership."*[146]

A widely-published professor of land law in the United States, Charles M. Haar, suggests that owners have some responsibility to align their land use with community needs:

> *"Land is the one ultimate resource of the community. It should be alienable so that the person who owns land but does not have the skill to develop it properly can sell it to someone who is ready and able to put it to a more intensive and automatically higher and better use for the community."*[147]

Urban planning has a mediating role between the societies' interests and private owners. A recent article by Professors Jacobs and Paulsen reviewed the evolution of private and public rights around land use controls in the United States, over the last century, and observed:

> *" At its best, planning balances individual property rights with the community's interest in how that property is used".*[148]

Canada's distinguished professor of planning law, James B. Milner, in a textbook discussing the relationship between urban planning and property rights, indicates that societies' interest should normally rule over property rights:

> *"It is usually considered that all planning proposals except outright expropriation of land should be regarded as justified in the public interest without compensation."* [149]

Milner is addressing the boundary between planning measures that require compensation and other planning measures, asserting that compensation is only

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[146] Rawson, Op. Cit., p.61.
[147] Harr, Charles M., "The Social Control of Urban Space", pp. 175-229 in Lowden Wingo, ed., Cities and Space: the Future Use of Urban Land, (Baltimore: John Hopkins Press, 1964), p. 194.
[148] Jacobs, Harvey M. and Kurt Paulsen, "Property Rights: The Neglected Theme of 20th Century Amercian Planning", pp 134-143 in Journal of the American Planning Association, Volume 75, Number 2, (Spring, 2009), p. 140.
[149] Milner, J.B., "Town and Regional Planning in Transition", pp 59-75 in Canadian Public Administration, Volume 3, Number 1, 1960, p.75.

required in cases involving the forced taking of land ownership. In his textbook surveying facts and events that *"… deal, generally, with the interference by the state in the private use of land"*[150], he wrote specifically about the replot legislation in British Columbia as an illustration of a need for improved mechanisms to deal with the conflict between private land and social progress, that can clash in cases of replotting and expropriation:

> *"…raise serious conflicts of interest and require settlement by some device, either the dictate of some private individual or group, or the exercise of a more orderly 'legal' procedure".*[151]

These experts in law and planning see limits to the rights of non-consenting private landowners in locations where public interest wants redevelopment. Their considerations include the concept of "forcible taking" of the land as a direct solution to the problem of the non-consenting owner. They see issues related to just compensation for such a taking, but not in the taking itself.

Is Upzoning an Alternative to Forced Taking?

Before examining expropriation, some consideration should be given to whether the forced taking measures are the only tools available to ensure that private landowners behave in accordance with a public interest in redevelopment.

As part of this research, discussions were held with over fifty Western Canadian specialists in urban development, public officials, private developers, lawyers and academics, about various aspects of replotting and redevelopment. One alternative to the forcible taking policies was suggested by one person during these discussions. That alternative would be for a local council that wants to have land redeveloped to a particular use, to rezone the land to that use and density, and then ensure that taxes are charged in accordance with the increased value of the property. It is anticipated that the result would be a higher carrying cost that forces the owners of the rezoned land to redevelop their property to its zoned, highest and best use.

Is this a viable public policy alternative to forcible taking? It would generate both push and pull factors encouraging redevelopment. If the property is not very profitable in its current use, increasing a significant cost factor like property taxes will certainly place financial pressure on the owner. The

[150] Milner, J.B., Community Planning – A Casebook on Law and Administration, (Toronto: University of Toronto Press, 1963), p. vii.
[151] Milner, Op. Cit., p.vi.

amount of the pressure would depend on the profitability of the property after the rezoning. Low profitability would push the owner towards redevelopment, just as the expectation of higher profits from the rezoned use would pull towards a change. However, the impacts of these pushes and pulls wouldn't depend exclusively on the economics of the land, but instead would be the outcome of the financial strategies and strengths of the owner. An owner whose business is marginal might have to respond quickly to the decreased profitability,[152] whereas a wealthy owner might be willing to bear the decease for many years. Even though owners are pressured towards redevelopment, they may not have the resources to undertake the type of development sought by public policy. In the case of locations selected for transportation improvements there is evidence that the lift in land values occurs in patterns and stages, so the impact of higher taxation will also emerge gradually and differentially.[153]Eventually the higher taxation should cause all owners to opt for the higher profitability of the publicly-desired land use, but the owners' capacities to carry out the public will may vary, and the force of the taxation may take a very long time to bring about land use change.

There are further disadvantages to the rezoning and taxation approach, at the district level. Because the economic pressures generated by the taxation affect each property and each owner in a different manner, it does not facilitate a coordinated or comprehensive redevelopment of the entire neighbourhood. It may instead be encouraging less-desirable piecemeal redevelopments, and they in turn may inhibit the redevelopment of surrounding properties.

An upzoning approach probably encourages public planners to go beyond their area of competence by specifying the land use on particular sites in considerable detail. The public sector is quite able to describe the general land uses and densities it desires in a neighbourhood, but it is not equipped to design the reconfiguration of each property. City councils are often reluctant to upzone small areas because of the difficult questions of equity this creates. What is the rationale for a property at the edge of the upzoning district receiving a beneficial designation when an adjoining property does not?

An upzone and tax policy would be a useful longer term measure in the public planning toolkit. It would reinforce the indication of the public

[152] Elderly and not well-to-do property owners might find a dramatic increase in taxes to be more than a financial burden, it could upset their lifetime plans.
[153] Roberts, Amy, "A Question of Transport", pp. 30-31 in Right of Way, March/April 2009, p.31.

interest provided by official plans and other forms of growth designation, and it would to generate revenue and encourage and contribute to desirable redevelopment. In some cases it would influence owners to make the desired changes, or to cooperate with others in proposing redevelopment projects. It would generate more revenue in a growing district, and this would help defray the added public costs of supporting the expansion. It is an indirect factor in land use change but it should not be counted on to produce desired land use change over the short to mid term.

In conclusion, the rezoning and taxation approach could contribute to bringing about redevelopment but it is not a sure method of producing land use change in the short to mid term when public policy wants to see change, and therefore it is not an alternative to the direct measures.

The Other Method of Forcible Taking - Expropriation

In Western Canada two public policy measures allow for a forced taking of land, expropriation and replotting. In order to understand their respective capacities to contribute to urban redevelopment, both measures should be examined as well as recent trends in their use. This paper has already considered replotting, so it now turns to examination of the other measure, expropriation.

Although it is seldom viewed as a popular measure expropriation has been employed regularly for a century by governments across North America to acquire sites for public projects. There has been a recent trend to employ expropriation in support of redevelopments in which private business has a role.

The verb “to expropriate” is defined in the Oxford English Dictionary as:

> *“ to dispossess (a person) of ownership; to deprive of property. Now chiefly to deprive of property either wholly or in part, for the public use, usually with provision of compensation”*[154],

and expropriation is:

> *“the action of taking (property) out of the owner’s hand (esp. by public authority)”*[155].

[154] Oxford University Press, The Compact Edition of the Oxford English Dictionary, Volume II , (London:1981), p. 935.
[155] Loc. Cit., p. 935.

In his authoritative text on land policy, now deceased Montreal Professor R.W.G. Bryant described expropriation as:

> "*Expropriation, or the exercise of eminent domain, is of course an essential tool in the hands of public authorities not only for public needs such as highways and schools, but also for urban renewal, new towns, and in some countries for the more effective control of city growth.*"[156].

Expropriation clashes abruptly with private property rights. In his textbook, *Urban and Regional Planning in Canada*, Toronto Professor J. Barry Cullingworth observes that this friction entails issues that are known at the highest level of law:

> *"The law of expropriation in Canada is highly complex. There is nothing unusual in this: the issues are inherently complicated and considerably affected by the accidents of history. What is unusual about the Canadian situation is how late it was before an out-dated and arbitrary system was reformed. Mr. Justice Thorson's statement in Grayson v The Queen (1956-60 Ex. C.R. 336) is well known:*
>
> > *'I have frequently called attention to these provisions of the law and stated that Canada has the most arbitrary system of expropriation in the whole of the civilized world. I am not aware of any other country in the civilized world that exercises its right of eminent domain in the arbitrary manner that Canada does. And, unfortunately, the example set by Canada has infected several of the Canadian provinces in which a similar system of expropriation has been adopted.'*
>
> *The specific point at issue here was that title to land could be taken by the mere filing of a plan in the Registry Office. Indeed, most of the older acts, generally pre-1960, authorized expropriation without any prior notice to the owner and without any statutory right of appeal."*[157]

It is also important to see the issues surrounding forcible takings in context, and in the case of replotting and expropriation, to observe how the contexts are undergoing change.

Changing Context Around Forced Takings

The use of forced taking, or eminent domain,[158] is changing in at least four important aspects. These are: compensation; public interest; the convergence

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[156] Bryant, R.W.G., Land: Private Property, Public Control, (Montreal: Harvest House, 1972), p.263.
[157] Cullingworth, J. Barry, Urban and Regional Planning in Canada, (New Brunswick, USA: Transaction Books, 1987), pp. 172-173.
[158] Eminent Domain is one of several terms that have similar meanings yet highly specific differences, and that in popular usage are often treated as though they are interchangeable. Eminent domain originally

between replotting and expropriation; and the differences between these two measures. The following discussion of these aspects is oriented to bring out the impact of the changing contexts on the potential for using replotting to aid urban redevelopment.

Compensation The last half century has seen a steady process of improving and reforming the compensation provisions in expropriations, through legislative revisions, administrative decisions and court cases. There is a breadth of detail about the equitable treatment of compensation in various replotting and expropriation procedures. An illustration is seen in the 1988 review of expropriation in British Columbia by law professor Eric Todd, the author of Canada's authoritative text on expropriation. He provided a checklist of twelve compensable items in that province at that time[159]:

"

1. *Market value of land and buildings (ss. 30,31)*
2. *Cost of equivalent reinstatement in special circumstances where no normal market value (s.34) "church, hospital, school or like use"*
3. *Special value, i.e.: the value of a non-marketable economic advantage, or of non-marketable residential improvement (s.30(2))*
4. *Disturbance damages (s.33)*
5. *Leasehold interests (ss. 35,37,38)*
6. *Security interests (ss.1,36, and Expropriation Act General Regulation s.4)*
7. *Residential owner-occupiers (s.37)*
8. *Partial takings, including easements and rights of way (s.39)*
9. *Severance and injurious affection damage to remaining land (s.39)*
10. *Injurious affection where no land taken (ss.40,41)*
11. Interest (ss. 45,46)
12. Costs (ss. 44,47) "

This checklist could be expanded today to include other compensation measures that are now commonly considered:

- Home for a home (where regardless of the market value of an expropriated home, compensation must be sufficient to

referred to the concept that private property exists under the eminent domain of the state, and the state may use, alienate or even destroy that property to serve public needs, although the private owner must be compensated for loss. The term is primarily used in the United States, often in a context where the terms condemnation or appropriation are used to describe the actual exercise of the power of eminent domain. In Canada, where such a forcible taking of private property by the state can only occur under federal or provincial statutory authority, the term expropriation is used. In the UK the usual term is compulsory purchase.

[159] Todd, Eric C.E., "Expropriation Law Reform in British Columbia – Last But Not Least", pp121-146 in University of British Columbia Law Review, Volume 121, 1988-1989, p.135. The sections cited are from British Columbia's Expropriations Act.

allow the former owner to acquire accommodation that is at least equivalent to what was expropriated);
- Negotiation and Purchase by Agreement (where a public authority capable of expropriation negotiates a purchase, but is required to inform the vendor of his/her full rights in the event that a expropriation occurred); and to a lesser extent
- Inverse expropriation (where knowledge of a public authorities' plan has depressed property value).

For readers who may not be familiar with the thoroughness of compensatory measures, a useful illustration is seen in a brochure explaining Ontario Hydro's[160] expropriation procedures and practices in layman's language. Written the 1980s, it describes a wide range of qualities that a property might possess, and how they would be eligible for compensation in the event of a forced taking.[161]

There is no compensation for some public actions that impact private property. As was described in the quotation from Professor Milner above, under Canadian law compensation is required if the ownership of the property is taken, but not if the ownership is not taken. A comment by Mr. Justice Cory in a relevant Supreme Court decision illustrates this:

> *"The whole purpose of The Expropriations Act is to provide full and fair compensation to the person whose land has been expropriated. It is the taking of the land which triggers and gives rise to the right to compensation. An owner whose land is caught up in a zoning or planning process but not expropriated must simply accept in the public interest any loss that accrues from delay."*[162]

A similar statement is seen in Mr. Justice Cromwell's observation, as part of the landmark expropriation decision in *Mariner Real Estate v. Nova Scotia*,:

> *"It is settled law, for example, that the regulation of land use which has the effect of decreasing the value of the land is not an expropriation."*[163]

Professor Todd's textbook on expropriation provides some amplification:

> *" Traditionally the property concept is thought of as a bundle of rights of*

[160] Now the Ontario Power Authority.
[161] Ontario Hydro, Property and Compensation Policies, (Toronto: Ontario Hydro Real Estate Services Division, November, 1983). http://www.expropriationlaw.ca/articles/art03200_files/art03201.pdf.
[162] From Dell Holdings Ltd. v. Toronto Area Transit Operating Authority, (S.C.C.) 1997, at pp. 51-52.
[163] Mariner Real Estate v. Nova Scotia, (1999), 177 D.L.R. (4th) 696 (N.S.C.A.), p.15.

> *which one of the most important is that of user. At common law this right was virtually unlimited and subject only to the restraints imposed by the law of public and private nuisance. At a later stage in the evolution of property law the use of land might be limited by the terms of restrictive covenants.*
>
> *Today the principal restrictions on land use arise from the planning and zoning provisions of public authorities. By the imposition, removal or alteration of land use controls a public authority may dramatically increase, or decrease, the value of land by changing the permitted uses which may be made of it. In such a case, in the absence of express statutory provision to the contrary an owner is not entitled to compensation or any other remedy notwithstanding that subdivision approval or rezoning is refused or development is blocked or frozen pursuant to statutory planning powers in order, for example, to facilitate the future acquisition of the land for public purposes.*
>
> *Ordinarily, in this country, the United States and the United Kingdom, compensation does not follow zoning either up or down ... (but) a taker may not, through the device of zoning, depress the value of property as a prelude to compulsory taking of the property for a public purpose."*[164]

This is significantly different from U.S. constitutional law. The difference between Canadian and U.S. law was described in the judgment in *Mariner v. Nova Scotia*, as follows:

> *"[101] The U.S. constitutional law has, on this issue, taken a fundamentally different path than has Canadian law concerning the interpretation of expropriation legislation. In U.S. constitutional law, regulation which has the effect of denying the owner all economically beneficial or productive use of land constitutes a taking of property for which compensation must be paid. Under Canadian expropriation law, deprivation of economic value is not a taking of land, for the reasons I have set out at length earlier. It follows that U.S. constitutional law cases cannot be relied on as accurately stating Canadian law on this point. Moreover, in U.S. constitutional law, as I understand it, deprivation of property through regulation for public purposes is sufficient to bring a case within the constitutional protection against taking for "public use", unlike the situation under the Expropriation Act which requires the taking of land. It is not, as I understand it, necessary in U.S. constitutional law to show that the state acquires any title or interest in the land regulated. For these reasons, I conclude that the U.S. takings clause cases are not of assistance in determining whether there has been an acquisition of land*

[164] Todd, Eric C.E., The Law of Expropriation in Canada, ed.2, (Scarborough: Carswell, 1992), pp. 22-23.

within the meaning of the Nova Scotia Expropriation Act.[165]

The Canadian compensation principle probably applies to non-consenting landowners whose property is included in a proposed replotting scheme. If the replotting is not approved, and the non-consenting owner claims damages related to the period that the property was being considered in the proposal, it is likely the claim would not succeed.

One of the purposes of expropriation legislation is to treat the owners of expropriated property fairly and equitably, and in practice expropriation is evolving towards these goals. When faced with a compensation decision, the Alberta expropriating authorities and courts are deliberately choosing to be generous towards the landowner, not towards the state. In the interviews conducted for this project with lawyers and provincial officials across Western Canada, similar observations were made in each province. After extensive review of recent decisions in Alberta courts, Edmonton lawyer Donald Mallon, QC, who specializes in expropriation and administrative law, concluded there is a pattern visible in recent history:

> *"The object of the Act (the Expropriation Act) has not changed: a displaced owner is not to be "out-of-pocket" as a result of expropriation. If a change in the pattern of cost awards over the past decade can be discerned, it is probably reflective of two things:*
>
> 1. *The interpretation of the statute is, appropriately, more liberal or purposive than in the past; and*
> 2. *The definition of "reasonable" remains a moving target.*
>
> *On balance, that's likely a good thing."*[166]

While much of this discussion has concerned compensation for expropriation, the same principles apply in a case of replotting. It is notable that, in 1971, the British Columbia Law Reform Commission released a lengthy study of expropriation law in British Columbia that contained numerous recommendations for reform. Many of the recommendations were incorporated into *The Expropriations Act,* R.S.B.C. 1996, c. 125 which came into force on December 24, 1987. Some of its findings also concerned replotting:

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[165] See Mariner v. Nova Scotia, Op. Cit., p. 27.

[166] Mallon, Donald P., Expropriation Costs in Alberta: Cases and Commentary, Paper given at Alberta Expropriation Association Annual Conference, September 29, 2000. See http://www.prowsechowne.com/pdf/expropriation/expropriation_alberta.pdf

> *"The exercise of replotting powers amounts to expropriation so far as nonconsenting owners are concerned. Unlike matters dealt with under the 'Special Surveys Act', where the intent is to settle boundary disputes, replotting is undertaken by municipalities for public purposes to redevelop areas, including highways and parks in those areas. In the replotting process the entire lot of an owner may be taken. No doubt municipalities exercising the replotting powers are conscientious in administering the relevant provisions as fairly as possible. But this can be no justification for not entitling the nonconsenting owners under those provisions to the same procedural safeguards and compensation as an owner whose property is expropriated for a school or a highway.*
> *The formula laid down in the general expropriation statute which we later propose is appropriate for determining compensation in a replotting scheme. There is no reason why that formula should not apply to a replotting expropriation in the same way as any other expropriation. …*
> *The Commission also believes that a nonconsenting owner should be entitled to invoke the inquiry procedure later recommended by the Commission. It would follow that the approval procedure should also be applicable. …*
> *Certainly the function of the ad hoc commissioners in determining compensation payable should be carried out by the general arbitration tribunal later recommended.*
> *The Commission accordingly recommends:*
> *'The replotting provisions contained in Division (2) of Part XXVII of the Municipal Act be governed by the general statute later proposed.*[167]

British Columbia has not implemented this recommendation, perhaps because in recent years little use has been made of the replotting legislation in the province. A single compensation regime for both expropriation and replotting would be a more publicly understandable, equitable and administratively efficient manner of performing these compensation functions.

Consideration of the Public Interest

A more complex aspect of replotting and expropriation is their relationship to public interest.

There has been a significant change in this concept. Expropriation originated with somewhat shaky "public interest" credentials in the railroad-building era. Through the 20th Century it evolved as a broader measure, although its use was limited to public works – acquiring rights-of-

[167] Law Reform Commission of British Columbia, Report on Expropriation (Project no. 5), (Vancouver: the Commission, 1971), p. 57.

way for roads and utilities, sites for public buildings, parks, military establishments, etc. Since World War II, the massive urbanization that transformed Canada and North America was accompanied by a gradual change in the use of expropriation to support other aspects of urban growth. Public authorities invested in massive and strategic changes to build cities, moving railroads and dockyards out of inner areas, building new transportation infrastructure, public institutions, even major public housing ventures. Urban renewal projects entailed clearing slums and blighted industrial districts to create new, more dynamic land uses. Where necessary, expropriation was used as part of these ventures, in the public interest. In some cases, lands that were expropriated for redevelopments were re-sold or leased to private owners. When urban growth weakens in the private sector, the public sector often designs redevelopments to encourage private investment, create jobs, produce public revenue and increase the economic competitiveness of a city. Expropriation is sometimes used to support these economic ventures, and in some cases this usage, in the public interest, has been controversial.

Professor Dale's analysis in Edmonton concluded the extensive replotting in that city had served the public well:

> *"If the city had not taken a dominant role in replotting the land, the physical form and the ordered development of the outer parts would have been markedly different, for the many landowners had varying attitudes on the form of the plan, the time of registration and servicing, and the character of the area. Areas most suited to development, physically and economically, might easily have been by-passed, causing significant transportation, utility installation and maintenance difficulties."*[168]

The concern about the use of expropriation or replotting is not whether the instrument serves the public interest. The heart of the controversy is a concern about whether property that has been acquired by public authorities through a replotting or an expropriation can be re-sold to private interests. Can it be in the public interest to take private property coercively and then dispose of it to another private owner?

Spokespersons for private rights may question whether municipalities should be able to use expropriation to advance an urban redevelopment scheme:

> *" For example, under the Manitoba Municipal Act, the municipality is only obligated to engage in negotiations with you to meet the conditions for an*

[168] Reported in Dale, Op. Cit., p. 339.

> *expropriation. Since 1997, the Manitoba government joined four other provinces in allowing municipalities to expropriate private land for 'economic development' purposes.*
>
> *By amending its Municipal Act, the province created a loophole for municipalities to take land. As landowners are discovering, this loophole is big enough for several trucks to pass through.*
>
> *They only need prove they held talks with you. If you're lucky, you may even have had an independent inquiry officer look at the expropriation. Again, the government is only obligated to "consider" the inquiry officer's report; it is not binding.*
>
> *This is not an isolated incident; it occurs all over Canada and the United States. Ontario, Alberta, Saskatchewan and New Brunswick allow municipal expropriation for economic development purposes.*
>
> *While the changes were made to allow for local job creation, it is apparent the provisions are too broad and prone to abuse.*[169]

A more nuanced consideration of the issue is presented in the paper ***"****City Building: A New Kind of Infrastructure Investment"* by Stephen Waqué, an Ontario lawyer specializing in expropriation cases:

> *" Urban intensification produces a diversity of densely packaged, highly valued economic interests in real estate in terms of fee simple interests, limited partnerships, ground leases, retail leases, joint ventures, mortgages, et cetera. One of the pervading challenges of urban renewal is to assemble real estate. Private sector assemblies often take decades. … the problem of assembly is the fundamental threshold problem for urban renewal."*[170]
>
> *"The power of expropriation for typical municipal purposes such as road widenings, trunk sewers and landfill sites is found within the Municipal Act. The power to take land to act as a catalyst in urban renewal is found in the Planning Act. The recent cases both in Windsor and Toronto have explored different aspects of the possible limitation of that Planning Act power.*
>
> *The most dramatic challenge to the scope of that power is presented from the perspective of the private retail shop keeper who sees his lands being*

[169] Quesnel, Joseph, Municipal Expropriation for Economic Development: A Tied-Up David v. Goliath Battle, (Winnipeg: Frontier Centre for Public Policy, August 2009). See http://www.fcpp.org/publication.php/2898

[170] Waqué, Stephen F. and Salim M. Hirji, Urban Renewal Land Assembly: Where Do We "Grow" From Here ?, Paper given at the International Right of Way Association and Ontario Association of Municipal Real Estate Administrators Joint Meeting, October 14, 2005, p.13.

> *expropriated to facilitate the development of a different form of retail or commercial use whether it be a casino or a multi-screen urban entertainment complex. The argument is made that the municipality is merely choosing one form of commercial development over another.*
>
> *In its awkward and sometimes inadequate way, the law tries to instill the discipline of proper public purpose as a pre-condition to the exercise of the expropriation remedy to avoid that mean result. The issue of proper public purpose has been the focus of many of the challenges we have defended to urban renewal projects. Among the grounds alleged in court actions in the last decade are:*
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> *1. whether City council was acting in good faith;*
> *2. whether City council was biassed in its consideration of project; and*
> *3. whether City council acted consistently with its official plan policies.*
>
> *To meet these challenges, a public acquisition project usually has but does not necessarily require a foundation of a long, established and well thought out public policy framework. Failure to act in accordance with public policy requirements may lead to a successful action in bad faith".*[171]

During the last generation similar concerns had been emerging across North America. The issue came to a head in 2005, in the *Kelo v. City of New London* case in the Supreme Court of the United States.

Before discussing the outcome of this case, it is worthwhile reviewing what brought the matter before the Supreme Court. In the 1990s New London, Connecticut developed a plan for economic revitalization of part of the Fort Trumbull neighbourhood, containing 115 properties. The plan entailed consolidation of the properties under a single ownership, remediating and reconfiguring the parcels, creating new street patterns, parks and a military museum, and disposing of some of the new parcels to become a research and production facility for an international drug company, as well as residential and hotel developments. The following extract from a publication of the Lincoln Institute of Land Policy, describes what happened:

> *" The city approached landowners about their interest in the voluntary sale of their land, and 100 landowners agreed to sell. The city then proposed the use of eminent domain on the outstanding 15 properties (an action where the city would pay fair market value for each property). In so*

[171] Waqué, Stephen, "The Role of Expropriation in City Centre Revitalization", Paper given at the Ontario Expropriation Association Meeting 1 June, 2000, pp 4-5.

> *doing, the city did not assert that these properties were "blighted"—the legal and planning standard under which such eminent domain actions have existed since the 1954 U.S. Supreme Court decision in Berman v. Parker 348 U.S. 26 (1954). Rather, under the authority of state enabling legislation and based on a comprehensive plan, both of which the court later acknowledged, the city asserted only that the outstanding parcels were required as part of the plan to accomplish a greater public good—increased jobs for the community, increased pubic revenues (taxes), and increased economic competitiveness."*[172]

The 15 owners sued, and Susette Kelo became the spokesperson and image of the group, fighting to save "her little pink house." The case worked its way up to the US Supreme Court, where a majority ruled in favour of the city. In the view of two U.S. academics who conducted extensive research on this, it was not an unusual ruling:

> " *In so doing, it affirmed 50 years of similar actions by state and local governments throughout the country – actions which, while often clothed in a justification of blight, regularly had no more(or less) justification to them than that provided by New London.*"[173]

Stephen Waqué observed parallels in Canada to the *Kelo* decision, and noted that the decision involved a strong dissenting view:

> *" It permitted the commencement of condemnation proceedings against the holdout owners, and stated that the development plan being pursued by the City constituted a public purpose for the taking of land, and that it was "carefully formulated" and would provide benefits to the community, including new jobs and increased tax revenue.*
>
> *In this sense, the Kelo decision appears to be consistent with the jurisprudence that has been developed in Ontario through the Hertzman, Norwich, and Shergar decisions.*
>
> *However, there was a strong dissent from four of the judges on the Supreme Court bench, arguing that to allow the "Public Use" provisions to be construed as "public purpose" would essentially take from the poor to give to the rich. To use* (Associate Justice) *Sandra Day O'Connor's words:*
>
> *'Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the*

[172] Jacobs, Henry M. and Ellen M. Bassett, "After 'Kelo' – Political Rhetoric and Policy Responses", pp 14-20 in Land Lines (Journal of the Lincoln Institute of Land Policy), (Cambridge, MA, April 2010), p. 14.
[173] Jacobs and Bassett, Op. Cit., p.15.

political process, including large corporations and development firms.'"[174]

The *Kelo* decision with these dramatic dissents received a great deal of media interest. It might be observed that some of the media attention distorted this land use conflict into a fable that might be characterized as the innocent little David (the landowners) under attack from the rapacious giant Goliath (the state).[175] That public attention and a particular statement in the decision (cited below), caused a significant round of legislative activity at the state level:

> *"… the court noted, "We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power" (545 U.S. 469 [2005] at 489). That is, while New London's and similar local and state governmental actions were legal under the federal constitution, the U.S. Supreme Court invited state legislatures to decide whether such actions should be legal under state constitutions. …*
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> *Following the invitation of the court, 43 states adopted laws that appear to challenge Kelo. The explicit intent of most of these laws is to prohibit governmental eminent domain actions both for the sole purpose of economic development and in cases where privately owned land is taken from one owner to be transferred to another owner."*[176]

A widely-quoted opponent of the Kelo decision, attorney Jeff Rowes, observed that this activity by state governments is:

> *"…likely the most comprehensive legislative response in modern history to a controversial U.S. Supreme Court decision."*[177]

However, after two years of study that covered all states, U.S. researchers Jacobs and Bassett found that these new state-based laws have had little *de facto* effect. Following the states' reactions to *Kelo*, once again circumstances and cities' practices have changed:

> *" State and local governments are now grappling with circumstances quite different from those of a decade ago, especially since the economic recession in 2008 and 2009. Declines in development activity, property values, and property tax revenues appear to be leading a public discussion less focused on rapacious government activity and more concerned about how to encourage development. This change in the*

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[174] Ibid.

[175] The media distortions were discussed in Brooks, John and William Busch, "Perception v. Reality: A Commentary on Media Bias and Eminent Domain", pp. 20-25 in Right of Way, May/June 2008, pp. 20-21.

[176] Jacobs and Bassett, Op. Cit., p.15.

[177] Rowes, Jeff, "Property Rights, Reborn", in Legal Times, September 10, 2007.

> *economic climate has had a substantial impact on the reach of the adopted state-based Kelo laws."*[178]
>
> *" the results also indicated that it was not clear that the core issues of importance to the property rights movement were important to citizens in general, or even to elected officials."*[179]
>
> *" For the foreseeable future, we believe it is likely that planning in general and eminent domain in particular will be reexamined, and perhaps even witness a resurgence in support."*[180]
>
> *" Communities severely affected by the credit, housing, and mortgage-finance crises are being forced to reexamine eminent domain and related powers as ways to address abandoned housing and facilitate economic and social redevelopment."*[181]
>
> *" State-based laws are leading to requirements that when eminent domain is exercised it needs to be tied more explicitly to a broader planning and development process, as was the case in New London."*[182]

It is apparent that there are currents of change surrounding the issue of "public interest" and expropriation. In the United States, the rise of forcible takings as part of public-private ventures in community and economic redevelopment culminated in the Supreme Court's judgment in 2005 that this followed a correct interpretation of law. The judgment produced a flurry of activity in state laws that have helped specify the conditions when this "public interest" applies. The quotation from Waqué, above, mentioned that several decisions in Ontario paralleled the *Kelo* interpretation.

A prominent example from British Columbia illustrates another Canadian perspective on public interest in the application of expropriation for urban redevelopment. For many years, "Block 42", bounded by Georgia, Granville, Howe and Dunsmuir streets, could be described as the centre of Vancouver. In July of 1964 Vancouver's City Council endorsed a downtown redevelopment plan prepared by city planners that would see a commercial complex of office towers, shops and parking on Block 42. It instructed staff to solicit expressions of interest from private developers in carrying out the Block 42 scheme. In March 1965, following examination of six submissions and preliminary negotiations, Council authorized staff to

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[178] Loc. Cit..
[179] Jacobs and Bassett, Op. Cit., p. 20.
[180] Loc. Cit..
[181] Loc. Cit..
[182] Jacobs and Bassett, Op. Cit., p. 19.

negotiate with Cemp Investments with a view to receiving a firm proposal. The City and Cemp agreed that Cemp would pay the City for the purchase of Block 42, and the price would not be less than the cost to the City of making the Block available. In July 1966 the Council authorized a development agreement with Cemp and that November Council reaffirmed its July decision:

> *"…to exercise the powers of the CITY to acquire BLOCK 42 for the purpose of commercial development …"* .[183]

Also the City and Cemp executed a document entitled *"Agreement to Lease Block 42"* containing Paragraph 4, entitled "Acquisition of Block 42" that said in part:

> *" 4. THE CITY agrees that by December 31, 1967 it will, so far as it legally can but not otherwise, by purchase or, if necessary, by expropriation acquire all the lands and improvements within BLOCK 42 together with all interests or claims …"*[184]

The City was able to negotiate the purchase of some properties while others were expropriated. Some of the owners and tenants from Block 42 sued the City and the judgment in the case, "*Ingledew's Ltd. et al. v. City of Vancouver [1967}",* was issued by the British Columbia Superior Court in January, 1967. Some key aspects of this decision were:

- The suit challenged the City's authority to acquire land for the purpose of providing sites for commercial or industrial development, or to grant an option to purchase the demised land. The Court found the City had these authorities given to it in *The Vancouver Charter, 1953.*
- The suit asserted that the Council was not using its powers in good faith in its resolutions authorizing the agreement with Cemp, and specifically the lease provisions that would transfer or sell parts of the site to a private business.

The Court considered the reports of the Vancouver Planning Department that identified the public objectives for this redevelopment, and the fact that Council acted upon these reports when it authorized the commencement of the redevelopment scheme. Among the legal precedents it quoted was a relevant statement of Mr. Justice Estey, in a 1945 judgment of the Supreme Court of Canada:

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[183] Ingledew's Ltd. et al. v. City of Vancouver (1967), B.C.J. No. 110, 61 D.L.R. (2d) 41. Para 10, p.6.
[184] Ingledew's v. Vancouver, Op. Cit., Para. 11, p.7.

" Upon the question of public interest, Courts have recognized that the municipal council, familiar with local conditions, is in the best position of all parties to determine what is or is not in the public interest and have refused to interfere with its decision unless good and sufficient reason be established."[185]

The decision also quoted a statement of Mr. Justice Anglin in a 1907 judgment:

" I think it competent for the council to take into consideration all benefits of a public character which are likely to flow from the proposed change, whether they be direct or indirect, immediate or remote."[186]

In its decision in the Ingledews case, the Court found:

" It was open to Council to decide, as it has done, that the indirect, secondary and indeed rather long term benefits anticipated from the redevelopment scheme were sufficient in the public interest to justify acquiring Block 42 from the present owners and entering into the agreement with Fairview. I cannot find good and sufficient reason for the court to interfere."[187]

This examination of information about court cases has demonstrated that across North America municipalities are using expropriation to support private redevelopments in publicly-desired locations, sometimes disposing of expropriated property to private businesses. It has been challenged in court in both Canada and the United States and the challenges have gone to the highest levels. This has been found to be legal as long as the municipalities first determine that the redevelopment is in the public interest. In this context, it is significant to note that municipalities are recognized as the appropriate judges of public interest.

The Convergence of Expropriation and Replotting

There is a growing convergence between replotting and expropriation, although the use of replotting is declining.

One example of the convergence is seen in an article by an Alberta lawyer, W.A. Stevenson. He asserted in 1955, in *Alberta Law Review*, that replotting is being used *"…as a means of expropriation",* referring to cases where replotting had been used when city planners wanted to create a new road, or a school site, and

[185] Cited in Ingledew's v. Vancouver, Op. Cit., Para. 57, p.20.
[186] Ingledew's v. Vancouver, Op. Cit., Para. 61, p.22.
[187] Ingledew's v. Vancouver, Op. Cit., Para. 68, p.23.

affected landowners resisted.[188] He cited a report on Edmonton's civic affairs by the Honourable Mr. Justice Porter, who said that the replot power, when misused:

> *"is in effect a cruel method of expropriation which denies appropriate compensation to its victim."* [189]

The cruelty was seen as the difference in the right of appeal under the two legislations. In his view replot appeals are limited to questions of compensation, whereas an expropriation can be appealed if an owner questions whether the proposed redevelopment is in the public interest.[190]

Another illustration of the convergence was observed in the British Columbia Law Reform Commission's 1971 report, quoted above. Both instruments can take ownership of the property of non-consenting owners, subject to the payment of compensation. The compensation requirements in replotting were originally focused on replacing an amount of land at a location, but the principle has gradually become more sophisticated, and money can replace land. Similarly, changes to the compensation entailed in expropriation have been improved to make it more comprehensive and equitable. In the former Alberta replotting legislation, compensation was adjudicated by the same Land Compensation Board as expropriations. A similarly unified administration was recommended by the BC Law Reform Commission, but has not yet been created.

The uses of the two instruments have also converged somewhat. The use of expropriation has widened from only acquiring sites for public works, to obtaining sites for more varied projects in the public interest. Urban redevelopment projects are sometimes proposed that meet this definition, and they may become supported by expropriations. This has become similar to the original purpose of replotting, the reconfiguration of land for urban redevelopment. The two instruments have much more in common than they did a few decades ago.

The Decline in the Use of Replotting

However, in one respect the two measures are not converging. While expropriation continues to be a tool that municipalities employ from time to time,

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[188] Stevenson, W.A., "Problems in Alberta's Town Planning Legislation", pp. 431-438 in Alberta Law Review, Vol. 1, No. 5, 1955, pp.431-438.
[189] Quoted in Stevenson, Op. Cit., p.432.
[190] Based on Stevenson, Ibid., p.432. This assertion that replotting cannot be appealed on grounds of "public interest" ignores the fact that replotting could not occur unless the city council had held a public hearing process and then decided that the project was in the public interest. It also implies that appealing expropriation on the grounds of public interest may be successful, which is quite optimistic.

with a growth in its use in support of private development, the use of replotting has declined. In his 1977 report on the various British Columbia legislations affecting land use, West Coast Environmental Law researcher John Ince made the following observation about replotting:

> *"Sections 823 to 856 of the Municipal Act govern replotting. The apparent complexity of the legislation has dissuaded most municipalities from ever utilizing the replotting process."*[191],[192]

Between 1996 and 2000 the BC Municipal Act with its planning provisions, including replotting, was systematically repealed and replaced by the Local Government Act. The new Act continued to include replot provisions, although Ministry officials recollect that these received minimal review during the preparation of the new legislation. There was little interest in replottting on the part of any of the participating stakeholders. In their authoritative report on local government matters for the Union of British Columbia Municipalities in 2008, Bish and Clemens made the same sort of observations about replotting as West Coast Environmental Law had made thirty years previously:

> *" Sometimes when development occurred long ago the actual construction of buildings did not conform to the correct parcel boundaries, with the result that several buildings encroach upon their neighbours' property. When a major project like a new freeway is undertaken, it can be expected that there will be situations in which existing patterns of land subdivision will be disturbed. To address this kind of situation, the Local Government Act enables municipalities to initiate replotting and realignment of parcels to the landowners in a district, with compensation paid to owners who are adversely affect by the replotting scheme. … … This is a specialized tool that is rarely used."*[193]

Alberta has had no replotting legislation since 1995. The reference publication, *Planning Law and Practice in Alberta*, provides an assessment of why replotting was halted in that province, and the situation following its demise:

> *"The well-planned, coordinated, comprehensive development or redevelopment of a given area of a community is as much, if not more of, a matter of interest to the public as it is to the owners of the land within the area. Consequently, past planning legislation provided a mechanism - called 'replotting schemes' – under which resubdivision of multiple lots to expedite comprehensive development could be accomplished, even over the objections of some owners having land in*

[191] Ince, John, Land Use Law: A Study of Legislation Governing Land Use in British Columbia, (Vancouver: West Coast Environmental Law Research Foundation, 1977), p. 168.
[192] The replotting legislation is now in sections 982-1018 of British Columbia's Local Government Act.
[193] Bish Robert L. and Eric G. Clemens, Local Government in British Columbia, 4th Edition, (Richmond: Union of British Columbia Municipalities, 2008), pp. 169-170.

> *the area to be subdivided. For those owners of lands who refused to consent to a resubdivision affecting their lands, the adoption of a replotting scheme amounted to a type of expropriation of their land. The compensation for the expropriation took the form of allocation of new lots and in some cases payments for loss of improvements or business advantage. In light of the drastic consequences for private property rights flowing from a replotting scheme, the Legislature had provided elaborate procedures designed to assure reasonable fairness of treatment to all concerned, including appeals.*
>
> *Because of the extreme complexity of the replot procedures prescribed in the legislation, aimed at ensuring fair treatment of those owners who objected, only a very few replots ever occurred, and none under the 1977 Planning Act. Because of their lack of use, the replot provisions were not reenacted in Pt. 17 of the Municipal Government Act. This means that if a comprehensive development is to take place in an area where land ownership is fragmented, it will have to be achieved by consensus."*[194]

This assessment matches the recollection of a former Deputy Minister of Municipal Affairs in Alberta during that era, provided during the interview stage of this project. He described a particularly busy period when staff were drafting Municipal Government Act amendments under a time constraint and with limited ability to consult with stakeholders. As the replotting provisions were not used widely, were considered difficult to use, and did not have a lot of supporters at that time, they were considered expendable.

While replotting declined elsewhere in Alberta it is notable that "The Crowsnest Pass Regulation" described earlier, is the ongoing exception. In Saskatchewan, replotting seems to be limited to the City of Saskatoon, where it has received sparing and dwindling use. It has served as a special tool that private developers and Saskatoon's Land Development Department have used in growth districts to re-organize the pattern of land holdings and create new road allowances and public dedications, as well as marketable parcels. It has been used co-operatively by these development professionals, so its capacities to coercively intervene with non-consenting owners have not been needed. In recent years, fewer situations have arisen where replotting is needed for reconfiguration purposes, and developers and city officials have become accustomed to using standard official plans, rezoning and subdivision approvals to plan and authorize most suburban developments.[195]

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[194] Laux, Frederick A., Planning Law and Practice in Alberta, 3rd Edition, (Edmonton:Juriliber Limited, 2005), pp. 12-31 – 12-32.

[195] These observations about Saskatoon emerged from discussions with several experienced Saskatoon developers and planners, in both the private and the public sectors.

The assessments available in the literature of why this decline occurred are varied, somewhat contradictory, and therefore puzzling. The revisions made to the various replotting laws have added details that improve their ability to address more complicated conditions in the market, yet some analysts have described the result as too complex. The complexity argument does not account for Alberta, where replotting projects received unanimous approval of all affected landowners, adding a layer of complexity to the requirements in the legislation. Some key informants indicated that the kind of disjointed land title problems for which replotting was created, have gradually been resolved, so the need for replot projects has diminished. Some informants said replotting projects required considerable effort from municipal staff and today's municipalities no longer have resources for such projects. However, Saskatoon and Crowsnest Pass employed replotting into the last decade, and the informants from these cities did not describe such staff limitations. In light of the limited knowledge of what the experience with replotting has actually been, and the contradictory nature of some of these views, it must be concluded that many opinions are being expressed on the basis of incomplete information.

Notwithstanding the Crowsnest Pass situation, the evolution of replotting in Western Canada appears to be stalled. The continued improvements, through amendments, to the various replotting legislations across Western Canada were not sufficient to alter the decline in the usage of this land use control tool.

Differences Between Replotting and Expropriation

While it is interesting to observe the convergence between replotting and expropriation, the differences between them are significant and ultimately, more important. It is not surprising that they have in common efforts to improve their operating efficiency and compensation provisions, and make their treatment of non-consenting landowners more equitable. They are tools of public land use control that are being used in the same environment, so it is not unusual that they are coming to be used for similar purposes.

However, there is a fundamental difference in the process of using the two tools that should be understood, because it is the real advantage of replotting. This difference can be illustrated by observing the process typically entailed in employing each tool.

> **Typical Expropriation Process** An expropriation project typically begins as a plan or notion within a municipal government, possibly with but more likely without, public discussion. It moves from being a concept to becoming an action when a decision is made by the municipal council,

often in an "*in camera"* session, that expropriation is required. Once approved, it progresses with the filing of expropriation papers on the title of the land concerned, in the Land Titles Office (in some places, a Registry Office). Next, the municipal legal or property department contacts the former owners to formally notify them that the expropriation has occurred and compensation is owing. Also, arrangements are begun concerning the former owners departure from, or continuing occupancy of, the property.

It is important to note that if there is a dispute about the "public interest" in the expropriation, it usually begins at this stage. If the purpose of the expropriation was to gain public ownership of the land so redevelopment can occur, it is likely that the land will need to undergo a rezoning and development/subdivision approval process. While this process would ensure that any resulting decision is in the public interest, it should be noted that this determination does not occur until after the land has been expropriated. If a dispute about the expropriation does occur, it is usually in the form of an informal debate in the media. It is unlikely that a dispute leads to a lawsuit by the former owner, because the legal precedents described earlier lessen the likelihood that a suit will succeed. While this typical expropriation process meets legal requirements for establishing the public interest, it must be observed that it does so in a minimal, not very transparent, and often controversial manner.

Typical Replotting Process The process in a typical replotting is quite different from expropriation and, it may be argued, superior. In order to begin a replot, whether it is undertaken by a municipality or, potentially, by some of the landowners involved, the first step is to propose to the municipal council that a replotting project be initiated.[196] If council does agree, in a public meeting, to initiate a replotting proposal, a process of notification and public hearing(s) is required. A lot of information must be provided to all owners and the public concerning the specifics of the proposed replot, who would be affected, what the costs would be, etc. Also, there are stringent requirements concerning the obtaining of formal approval from the majority of the owners who would be affected. Once all of these conditions are met the council may consider the question of whether it actually approves the replotting. If there are non-consenting owners, it is only when the replot has been approved, probably also involving a rezoning and subdivision/development approval, that the public exercises its power of eminent domain.

[196] In British Columbia, a thorough public notification must occur before council can consider it.

> This process can be seen as a deliberate technique to expose the proposal to public scrutiny, ensure that decision-makers are aware of public views, and produce a decision in public. This transparent process yields an outcome that is, by definition, “in the public interest”. In that respect it is superior to the expropriation process and is a more suitable measure for implementing publicly desired urban redevelopment projects.

Concluding Observations

The potential of replotting to assist urban redevelopment depends on the needs of urban redevelopment, the capacities of replotting and the availability of alternative measures. This section has contributed to assessing the potential of replotting by identifying some of the significant needs that it might serve, and considering alternative means of meeting these needs. It observed the way that public interest in redevelopment confers unusual power to landowners at the locations where change is desired. If some of these owners do not consent to the kind of redevelopment sought by public policy, replotting and expropriation are the two measures the public can use to intervene and secure the public goals.

This section has described parallels and differences between replotting and expropriation that are important to an understanding of replotting’s potentials. Both measures are evolving, and perhaps converging. The parallels point to the need to ensure that non-consenting owners are treated equitably under either legislation. Primarily, this means that replotting provisions regarding compensation of non-consenting owners must match the provisions in expropriation. Also, compensation details must ensure that there is no financial inequity in the treatment of all owners.

Replotting has been criticized as another form of expropriation, and expropriation has been criticized as trending towards intrusion in private ownership without a public interest. Replotting has the superior attribute of ensuring that the public interest is being served before interfering with private owners in an urban redevelopment situation. The superiority lies in the fact that, unlike expropriation, it ensures that the public interest is openly debated and established through a public approval process before the power of eminent domain is exercised. The entire process must be fair, in the sense that it must secure a widely-perceived, significant public benefit, and stakeholders must have a real opportunity to air their views and influence the process, and appeal deemed improprieties.

It appears that the community of urban planners, developers and lawyers have not noticed that replotting is a tool that could be used in a different way, to deal with today’s real and growing problems of making cities more sustainable.

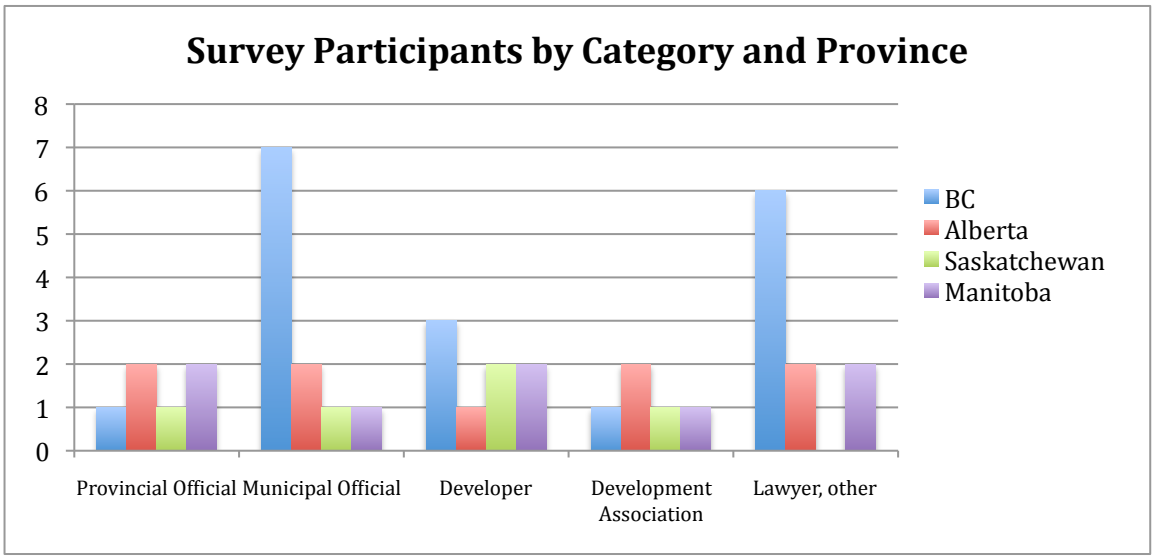
The section noted that the present replotting legislation, as it has been employed, is falling into dis-use. It is ironic that this old and obscure land use control measure that has such beneficial capacities for a new use in current circumstances,[197] is receiving dwindling use.

There is potential, conceptually, for replotting and expropriation to meld together into an integrated, first stage, urban redevelopment mechanism. The participatory aspects of initiating and authorizing a redevelopment scheme could be based on replotting, coupled with more financially-equitable compensation measures seen in expropriation. In the future, as urban redevelopment assumes more importance, it is likely that there will be a role for more, and improved, replotting.

[197] There may be a expectation that it would be uneconomic for private developers to initiate and bear the costs of processing a proposal for a rezoning/subdivision project as a replot. The increase over the costs of processing a typical redevelopment proposal would be slight, perhaps at most twenty percent. That degree of increase in processing costs would be an extremely small proportion of the total cost of an urban redevelopment project. The corresponding benefits would include: a more economic land assembly; and more sound redevelopment; favourable publicity as social values are being associated with the project., and, ultimately, a more marketable product. These benefits are of a higher magnitude than the slightly increased processing costs.

This section presents the views of knowledgeable people from Western Canada on the major issues associated with replottting and its potential to contribute to the intensification of cities. The research stages of this project have revealed aspects of Canada's experience with replotting that appear to offer capabilities to assist in the critical land assembly and planning stages of urban redevelopment. The survey phase of the project gathered assessments of these capabilities from informed people who are involved with, or observers of, urban redevelopment. The results of this phase change this report from being the findings of one researcher, to being a presentation of the considered viewpoints on the subject by a group of relevant experts.

Forty individuals or groups were interviewed between July and October of 2010. The participants were key informants from both the private and public sectors, in most of the major cities of the four western provinces. This participation is described in detail in Appendix D.



The participants in these interviews can be grouped in five general categories:

- Provinces (6) Interviews arranged at deputy ministers' offices in the municipal affairs ministries of British Columbia, Alberta, Saskatchewan and Manitoba;
- Municipalities (11) Interviews arranged through planning directors' offices in municipalities. Most of these municipalities had experience with replotting. Meetings were held to present the research at Saanich, North Saanich, Vancouver, District of North Vancouver, Burnaby, Surrey, Edmonton, Calgary, Crowsnest Pass, Saskatoon, Regina and Winnipeg;
- Developers (8) Interviews arranged with experienced developers in all provinces and most of the surveyed municipalities;

- Development Industry Offices (5) Interviews arranged with development industry associations in each province and some major cities. Meetings were held to present the research at: Urban Development Institute - Pacific (UDI-Vancouver and UDI-Victoria), UDI Alberta, UDI Calgary, UDI Edmonton, Saskatchewan Home Builders Association and Manitoba Home Builders Association;
- Others (10) Interviews arranged with lawyers specializing in municipal law, with academic specialists in land economics or planning, and with retired senior public officials and developers.

These participants possessed a range of expertise that gives depth and stature to their views on replotting and its potentials. Twenty-five out of the thirty-four developers and public officials interviewed were familiar with replotting legislation, and seven had roles in one or more replots. Three-quarters of all the interviewees had been involved in land assemblies, and almost all of them reported that the land assemblies entailed non-consenting landowners. Ninety percent reported that holdouts have had an impact on their redevelopments, have often impacted the project economics, and there were often multiple impacts. The collective knowledge and experience of these interview participants with urban redevelopment provides valuable, highly-credible insights into the potential of using replotting to assist in this important process.

Perspectives on the Decline of Replotting

As the literature provided little indication about why replottting activity has declined across Western Canada, the key informants' insights on this question were particularly valuable. Most informants did not express an opinion on this matter because they didn't know. About one-third of them did comment, providing a variety of perspectives (paraphrased as follows):

- Replotting is a labour-intensive activity, and through the 1970s and 1980s municipal planning departments in British Columbia became over-loaded with higher-priority tasks. Replotting was a discretionary activity, so it lost out *(several BC interviewees);*
- There was little need for replotting, and it was an extreme measure *(BC interviewee);*
- Replotting was too intrusive in private property rights *(BC interviewee);*
- Municipal staff were reluctant to take on such complex tasks *(BC interviewee);*
- Replotting was a top-down planning measure *(BC interviewee);*
- Replotting declined because it was not needed *(BC interviewee);*
- It was useful and was done a lot in Edmonton in 1970s, but when the city-owned lots had been used up there was no more need for it *(Alberta interviewee);*

- After the 1980s governments were cutting back expenditures in planning, cities had run out of scattered lots that gave rise to replotting, and the replot legislation had few stakeholders or champions, so it was allowed to lapse *(Alberta interviewee);*
- Replotting was too intrusive in private property rights (*Alberta interviewee);*
- The type of problems needing replotting are not found any more *(Saskatchewan interviewee);*
- The situations that used to be dealt with by replottting are now resolved by mutual agreement of landowners *(Saskatchewan interviewee);*
- Replotting is very difficult and complex so governments and developers have avoided it *(Manitoba interviewee).*

As was observed in the discussion of Canadian literature, replotting has been a relatively obscure activity, and even the most knowledgeable people in the field of urban redevelopment have little familiarity with its history or decline. Of the minority among the key informants who commented on the decline of replotting, most said the problems it was created to solve, had diminished.

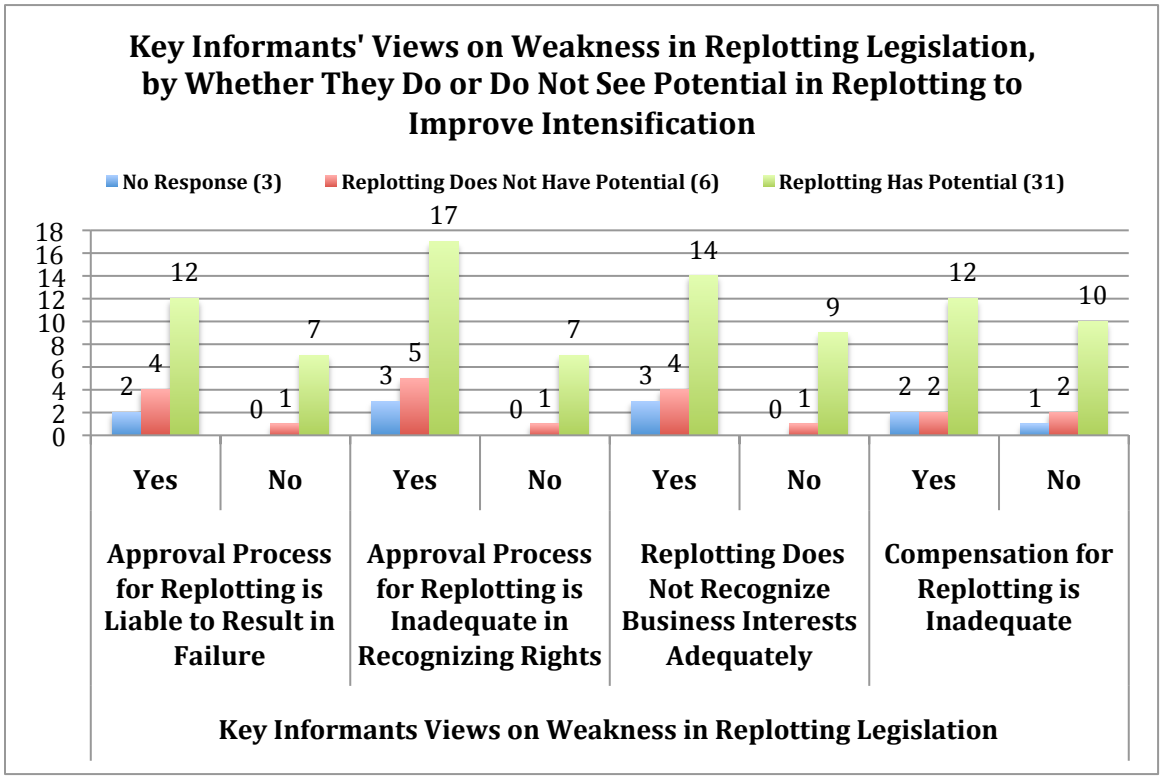
It can be concluded that the decline of replotting over the past 30-40 years is the outcome of a combination of factors. This period saw a significant reduction in the type of situations that replotting was designed to correct. As resources became tighter municipal budgets no longer gave sufficient priority to this labour-intensive, urban planning tool to continue its use. While these were the principal factors that lead to the decline, their contribution was compounded by the fact that replotting is an obscure, specialized tool and when it is not used, there is less knowledge about when it might logically be used and how to use it. Under these circumstances, the decline reinforced itself.

In Alberta, the fact mentioned earlier that during the latter years of replotting all or most projects entailed unanimous agreement of all landowners, was probably another contributor to its decline. If all owners agree to a redevelopment plan, municipalities would surely encourage them to proceed with a rezoning and subdivision proposal rather than as a replot, as the later would entail municipal expense.

Are there Weaknesses in the Present Replotting Legislation?

The key informants were asked a series of questions about possible critical issues that might inhibit the use of the existing replotting legislation to assist intensification. The following chart depicts their responses, grouped by whether they felt that overall, replotting had the potential to improve intensification. It is

clear that most of these knowledgeable informants consider that replotting does have potential to improve intensification.



Examination of the views of the informants that see this potential for replotting, provides insight into the aspects of replotting that need improvement. From another perspective, this examination shows which aspects of replotting are associated with the views of the minority of informants who feel that replottting lacks the potential.

There is considerable variability in the key informants' views, and the rate of response to several of these questions was not strong:

- The strongest positive and negative responses concerned whether the approval process for replotting adequately recognizes rights. Even though "rights" is an imprecise wording, of the 31 informants that felt replotting has potential to improve intensification, 17 expressed the view that at present replotting is inadequate in recognizing rights, and only 7 felt it is not inadequate (ie: adequate). On the other hand, of the 6 informants that felt that replotting does not have potential to improve intensification, almost all (5) felt that it is inadequate in recognizing rights. Among the key informants then, there is a strong view that the recognition of the rights of

owners and other interests in property are not sufficiently recognized in the present replottting legislation.

- Whether replotting adequately recognizes business interests is another broadly worded problem, yet 14 of the informants that consider replotting to have potential, felt that it does not adequately recognize business interests. Nine of the informants that see the potential consider that business interests are adequately recognized. Four of the six informants that doubt the potential of replotting feel it is weak in recognizing business interests. Overall the informants are somewhat split in their views, but generally feel that business interests are suitably recognized in the existing replottting legislation.
- Similarly, the informants that see potential in replotting were about equally divided about whether the compensation arrangements in replotting are adequate. Out of the 31 informants that see replotting's potential, 12 said compensation is inadequate, and 10 said it is adequate.
- Lastly, the informants who see potential in replotting had quite ambivalent views about the possibility that the approval process is likely to result in the failure of many applications for replotting. Of these 31 informants, 12 felt it was liable to result in failure, and 7 felt it was not (and 12 did not respond to the question!). Of the 6 informants that doubt the potential of replotting, 4 felt the approval process is liable to result in failure.

The overall impression given by the key informants is that there are weaknesses in the replotting legislation, but they are not sufficiently problematic to negate its positive features or functions. It is clear, however, that the overwhelming majority of these experts in development feel replotting has potential to improve intensification.

Intrusiveness of Replotting, Susceptibility to Mislead

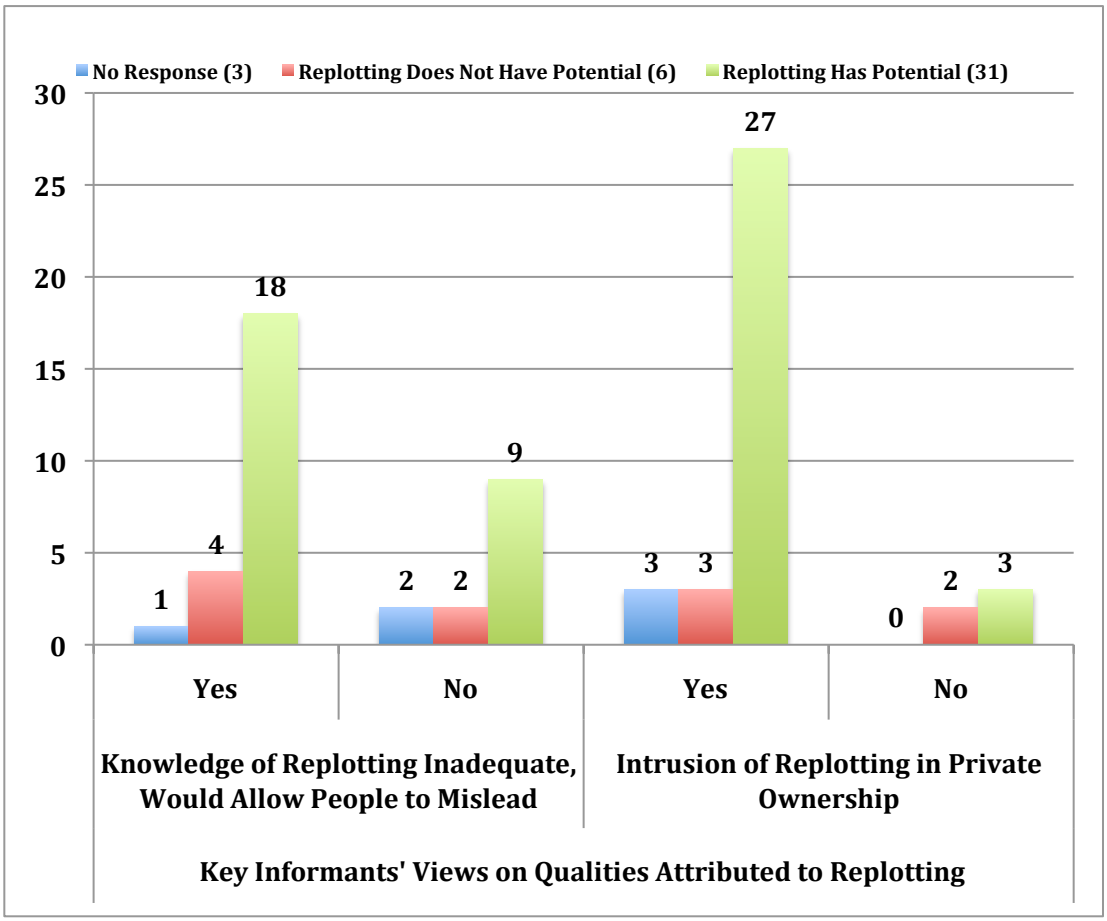
The informants were asked about two qualities that might be attributed to replotting, whether or not the attributions would be accurate.

- Twenty-seven of the 31 key informants that see potential for replottting, also recognize that replotting intrudes in private ownership. This illustrates that these knowledgeable informants are cognizant that improving redevelopment requires a tool that somewhat increases the exercise of public power over private owners.

  It is not uncommon that people, when learning about replotting, consider that its intrusion into private ownership is a critical issue. This suggests a need, if replotting is to grow in use as a tool to deal with problems of non-consenting owners in urban redevelopment, to create better understanding

in the population generally about what rights landowners and society actually have, and what is and what is not an intrusion. As was observed above, the key informants do not see the intrusion as an issue.

- The key informants were also asked whether inadequate knowledge about replotting would allow unscrupulous land assemblers to mislead property owners with inaccurate claims about what replotting could do to them. This question is probably too specific, because anything can be faulted if unscrupulous people misrepresent it for nefarious purposes. Nonetheless, of the 31 informants that see replotting as a potential tool for improving intensification processes, 18 indicated concern that people could mislead others about its use.



Merger of Expropriation and Replotting

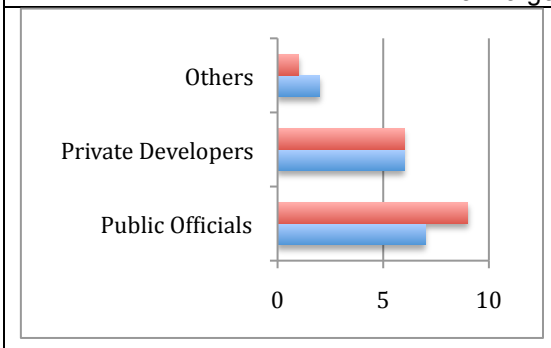
As was described in the discussion of expropriation earlier, there are parallels between the compensation arrangements in replotting and expropriation. Forty years ago the British Columbia Law Reform Commission recommended that the two be harmonized in a single compensation mechanism. The key informants were asked whether they feel the compensation aspects of the two measures should be merged.

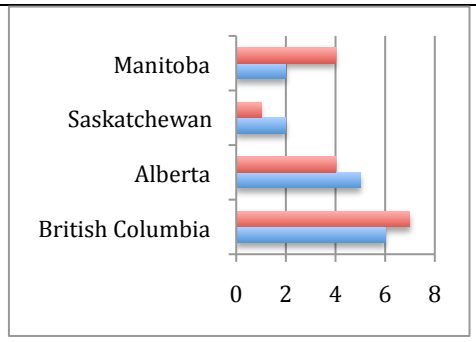
- Thirty-one of the 40 informants responded to the question and 48 percent felt they should be merged (15 responses). The preceding chart illustrates that the informants' opinions were divided quite equally between pro-merger and no-merger views. The divisions occur within provinces and within the various categories (public officials, developers, or "others"). This division of views is not surprising, because the question is very broad, and both expropriation and replottting are complex measures. It is unlikely that knowledgeable informants would have uniform views.

"Should Replotting and Expropriation Be Merged Into a Single Continuium of Measures?" - Key Informants' Views

Pro Merger - BLUE

No Merger - RED





Summary Views on Replotting Issues

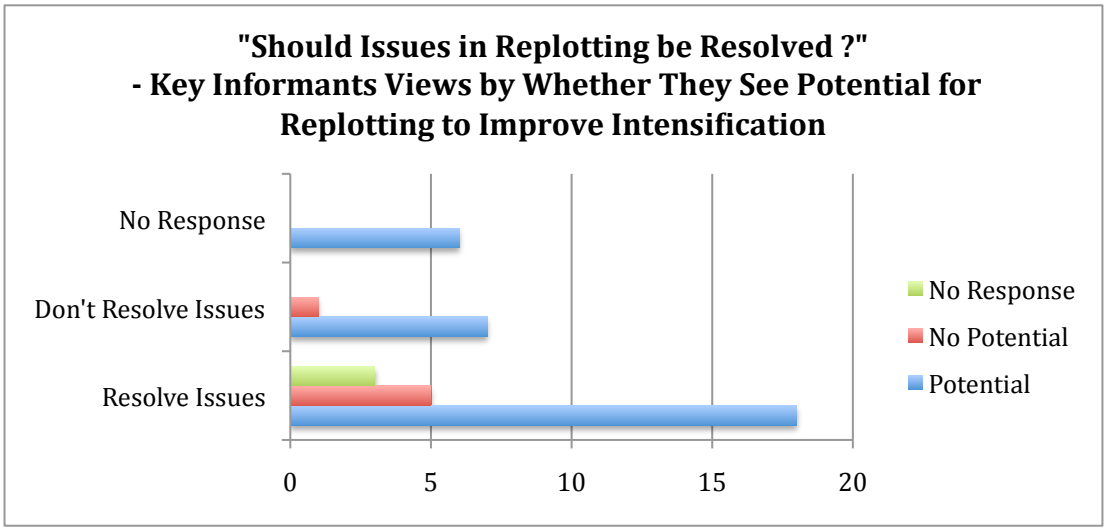
Following the consideration of these various possible issues in replotting, the key informants were asked "Is it important to resolve issues in replotting?" Not surprisingly, most informants felt they should be resolved. Six of the 40 informants did not respond, but of those who did, 76 percent felt replotting issues should be addressed and resolved (26 of 34 responses).

In the three prairie provinces the informants' opinions were strongly for resolving issues, while in British Columbia one-half felt they should be resolved and another one-sixth did not respond to the question.

"Should Issues in Replotting be Resolved?", Responses by Province					
	British Columbia	Alberta	Saskatchewan	Manitoba	All Responses
No. of Key Informants	*18*	*9*	*5*	*8*	*40*
Informants Responding "Yes"	*9*	*8*	*4*	*5*	*26*
Informants not Responding	*3*	*1*	*1*	*1*	*6*

The key informants' responses to the question about resolving issues was assessed in combination with their opinions about the potential for replotting to improve urban redevelopment.

Of the 31 informants that see potential for replotting, 18 would like to see issues resolved. Seven felt the potential existed but the issues need not be resolved, and 6 did not respond to the "resolve or not" question. Five of the 6 informants that felt replotting does not have potential, felt the issues do need to be resolved. Also, the 3 informants that did not respond to the question about the potential of replotting, felt that the issues need to be resolved.

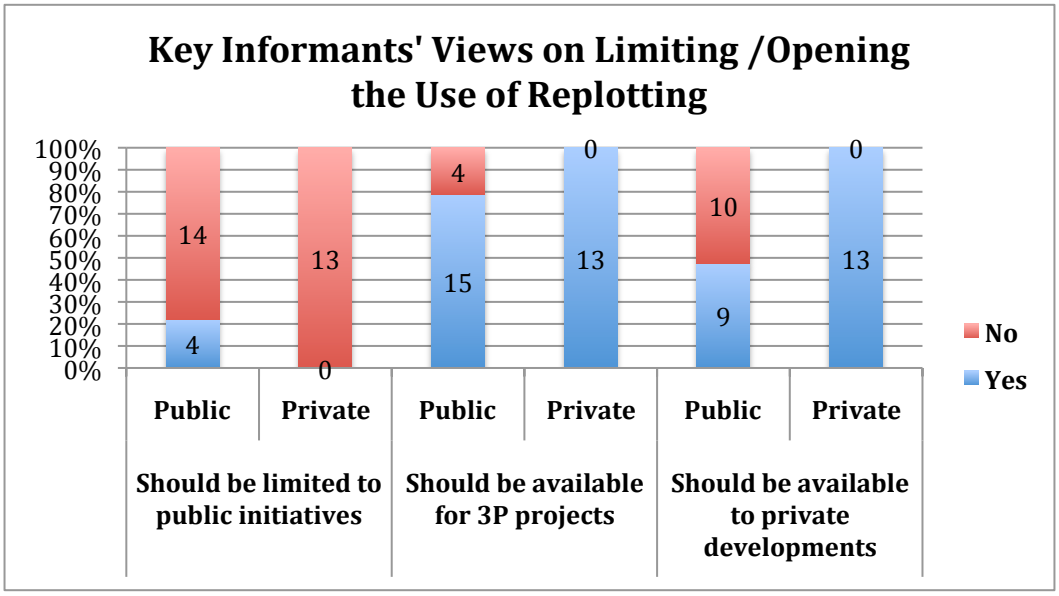


The conclusion of this examination is that the key informants strongly feel that the issues in replotting should be resolved, and that this would support the potential of replotting to improve urban redevelopment.

Overall, it can be concluded that the key informants are concerned to various degrees about issues concerning replotting. No single issue stood out as particularly important to the group of informants as a whole, or to any of the sub-categories identified within the group.

Opening Replotting to Other Uses

The key informants were asked if they would limit the use of replotting to public initiatives, or whether it should be made available to support public/private partnerships, or private developments. The following table presents the views of only the 34 empirically-involved informants (provincial and municipal officials, developers and development industry associations).



These informants feel that replotting should be opened to new uses. The thirteen private sector representatives were unanimous in saying that replotting should not be limited to public initiatives like road widenings or expansions of public sites such as school grounds or parks. They indicated it should be available to both private developments and public/private partnerships. The nineteen public officials expressed similar views. Fourteen agreed that replotting should not be limited to public initiatives Fifteen of the public officials agreed with the private informants that replotting should be available to redevelopments that are

undertaken as public/private joint ventures, including both formal 3P developments and any redevelopment schemes that entail significant private and public elements.

There was a little more variety in the public officials' opinions about whether replotting should be available to private redevelopments. Nine of the nineteen public officials agreed with the unanimous view of the thirteen private informants, that replotting should be available. A slim majority of public officials disagreed.

It is instructive to note the viewpoints of a few of the informants who opposed the extension of replotting to private developments:

> *"Replotting may be too risky for private developers"*
>
> *"Replotting for private development, and merged with expropriation should only occur through careful and unequivocal legislation"*
>
> *"There will be no political appetite for supporting private sector development with replotting"*[198]

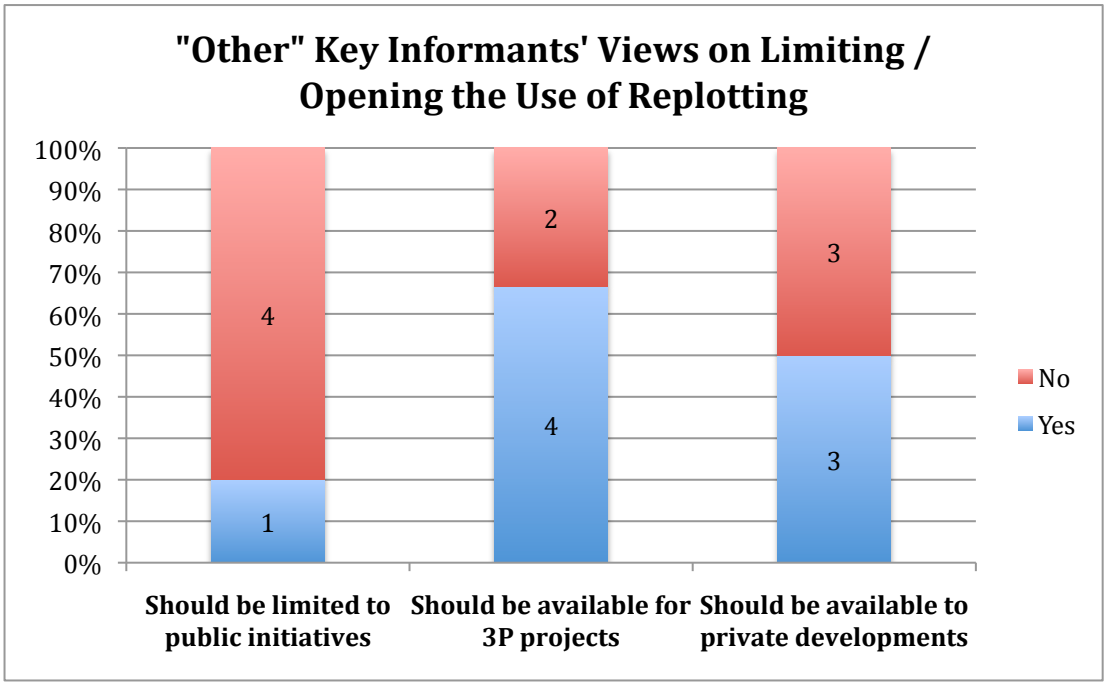
These opinions are better described as cautions than reasons to reject the proposition.

Overall, it can be concluded that a strong majority of knowledgeable informants support using replotting in support of private developments and private/public partnerships.

It is also interesting to observe the opinions of the "Other" key informants who were interviewed, the six lawyers and academics that were not included in the empirically-involved group. As seen in the following chart, their views were more varied than the more empirical informants.

Four of the five that responded agreed with the empirical groups that replotting should not be limited to public initiatives. On the question of whether replotting should be available to 3P projects, four of the six felt it should. Equal numbers supported and opposed using replotting for private redevelopments. The "Other" group is less certain about opening the use of replotting than most informants.

[198] These quotations of key informants' remarks are presented without attribution because some of the informants requested anonymity.

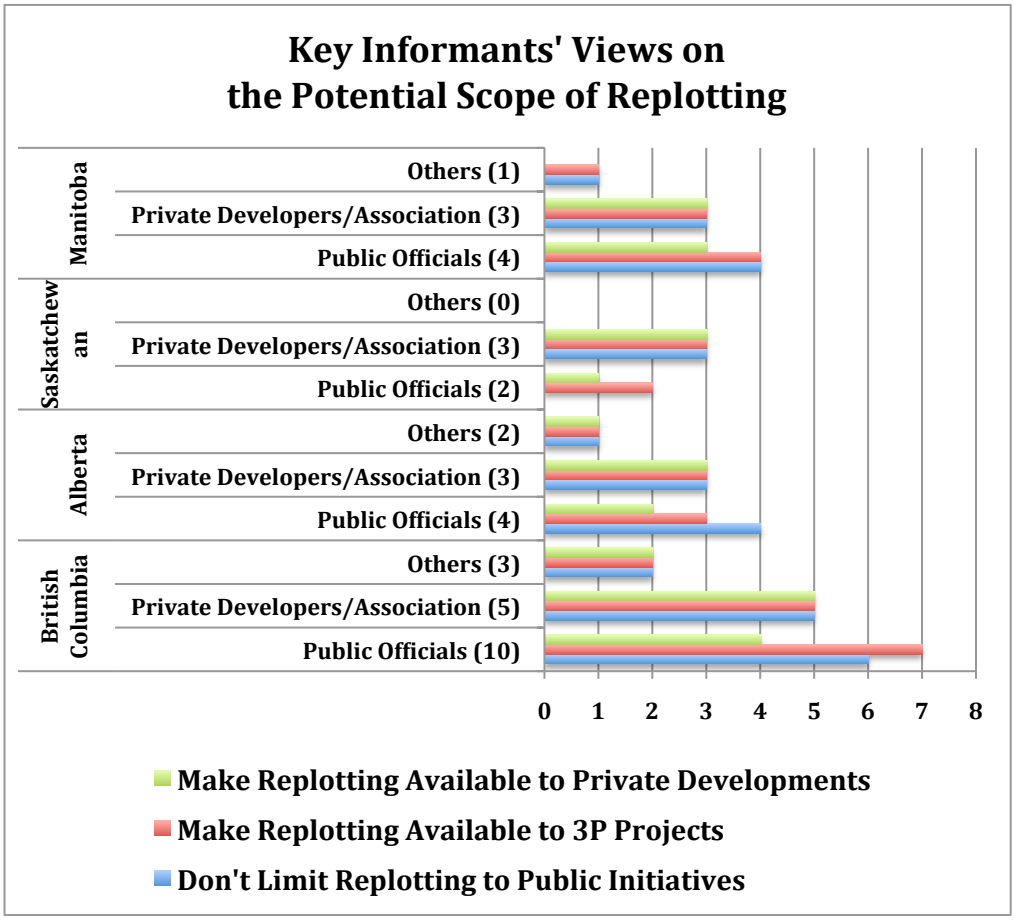


All of the key informants' views on opening the use of replotting were examined by province and by category of respondent.

- In Manitoba, where there has never been replotting, the informants held virtually identical views. All felt that replotting should not be limited to public initiatives, and that it should be available to public/private partnerships. Seven of the eight informants felt replotting should be available to private development, and one public official disagreed.
- In Saskatchewan the developers and the public officials all agreed that replotting should be available to public/private partnerships. One public official disagreed with the four other informants who felt it should be available to private projects. Both public sector informants disagreed with the unanimous view of the private developers that replotting should not be limited to public initiatives. There is an element of inconsistency in one of these public official's views, who said replotting should be available to private developments and 3P projects, but also said that it should be limited to publicly initiated projects.
- In Alberta where the replotting legislation is now lapsed, all informants agreed that replotting should not be limited to public initiatives. With the exception of one public official, they also agreed that replotting should be available to 3P projects. Two of the public officials (one-half of the public

informants in Alberta) do not agree with all other informants in the province who felt that replotting should be available to private developments.

- In British Columbia 15 of the 18 informants feel that replotting should be used by 3P projects. Three of the ten public informants disagreed or did not provide their views. Fourteen informants felt replotting should not be limited to public initiatives (although 4 of the 10 public officials disagreed or did not provide their views). Twelve informants said replotting should be available to private developments (although 6 of the 10 public officials disagreed or did not provide their views).



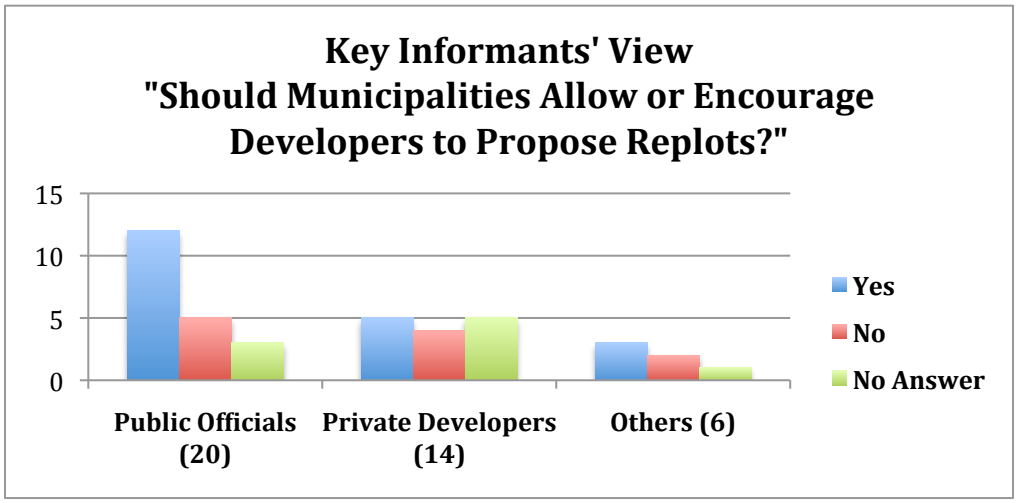
Some of the informants offered valuable suggestions for qualifications that could be employed in the event that the use of replottting is expanded:

> *"Replotting could be used if there is a disagreement on design, not on financial"*
>
> *"Replotting should apply only to projects where without it the project is significantly less effective"*

"Replotting would be useful to assist in development around transit stations, as a tool to encourage TOD (transit oriented development)"

In summary, the key informants are strongly of the view that replotting should not be limited to public initiatives, and that it should be available to public/private partnerships. This view is held unanimously by the private sector respondants. Public officials are less uniform in their views on this aspect of replotting. In Alberta and Saskatchewan public officials are split on the issue, while in British Columbia 6 of the 10 public officials did not support the idea of using replotting for private developments.

These viewpoints, that contemplate the use of replotting being expanded to non-traditional tasks, are strongly buttressed by the key informants' response to another question: "Should municipalities allow or encourage private developers to submit proposals to prepare replot schemes?" This question poses the possibility that municipalities encourage developers to do something unprecedented. It is notable that this unprecedented action appears to be permissible under the British Columbia, Saskatchewan, and former Alberta replotting legislation.



Twenty of the 40 key informants felt that municipalities and developers should take the step and allow private owners to propose the initiation of replots, while 9 declined to state their opinions. Twelve of the 20 public officials agreed with this initiative, while only 5 of the 14 private developers supported it.

It is interesting that while the developers were often unanimous in their views on other questions, they were quite divided on this issue. One of the developer's support was accompanied by an unusual, contradictory condition:

"Yes but municipalities shouldn't "encourage" developers to propose replots".

This may be interpreted as a caution that developers would be seen as self-serving if they advocate municipalities actively encouraging the development community to propose replots.

Overall, the knowledgeable informants are supportive of the idea of allowing private landowners to propose to municipalities that replot projects be initiated.

The Potential of Replotting to Improve Urban Intensification

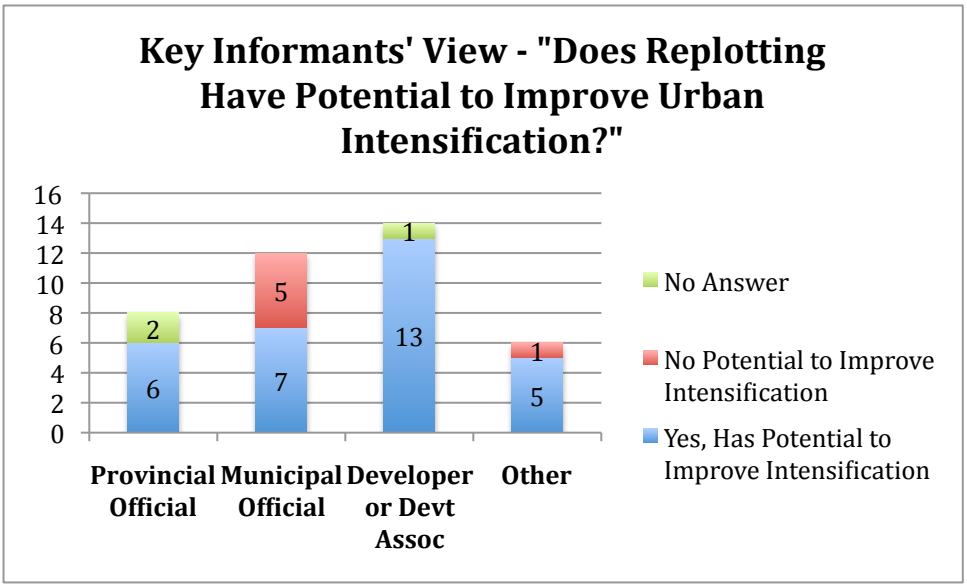
While there is little ongoing use being made of the replotting legislation for its original purposes, there appears to be a strong potential for using the replotting in a different way, to improve urban intensification. The replotting legislation in Western Canada would allow an initiator to propose that a group of contiguous properties be rezoned and redeveloped, whether that initiator is the municipality, one of the landowners, or a group of the landowners. In order to succeed with such a proposal, the owners of almost all of the property value in the project would have to agree, and it would be wise for the proponents to assure the municipality that it would not bear any processing costs.

If a proposed redevelopment project has encountered a non-consenting owner and replotting is seen as a way to solve the problem, the project initiator could make a proposal to the municipality that the redevelopment be considered as a replot, rather than as a conventional rezoning and development approval. The initiator would have to be convinced that the public approval process would find sufficient social merit in the proposal that it would overcome the objections of minority, non-consenting landowners and ultimately succeed at council. This implies that the project would be in a location that public policy is designating for growth. Also, the initiator would have to expect the added benefit of a successful replot, when completed, would exceed the costs of financing the approval process and fully compensating the non-consenting owner(s) for their property, and redevelopment.

After discussing the replotting legislation and its capabilities, the key informants were asked “Do you see potential for using the replotting legislation to improve urban intensification projects?”

Of the 40 informants, 31 said that replotting has the potential to improve intensification, while 3 had no response. Developers, development associations and provincial officials were entirely agreed about this potential, with one person offering “no response”. Of the seven informants that had actually been involved in replotting, five felt that it has potential to improve intensification, and the other

two (both public officials) did not express an opinion. There were more positive than negative responses from all categories of respondants.



Some of the informants' observations were:

> *"I am excited to hear about this legislation"*
>
> *"This is an interesting idea for the province"*
>
> *"Replotting is something the province and the development industry should explore"*
>
> *"Replotting should be limited to clear public interest situations"*
>
> *"Replotting is useful in limited situations to resolve financial holdouts"*
>
> *"Replotting would be useful if applied very judiciously, perhaps under the supervision of a judge"*
>
> *Replotting was complicated and it will have to be complicated to succeed"*
>
> *"Replotting has potential but its impact would be limited because it entails a high level of consultation"*
>
> *"Replotting legislation must be clear"*
>
> *"Local governments are reluctant to take on more work"*
>
> *"The replotting concept needs more focus. It is unlikely the province will change. There are better instruments".*

Of the 40 key informants, 5 municipal officials and one lawyer said replotting does not have potential to improve intensification.

The surveyed experts in the field of urban redevelopment see potential for using replotting legislation to assist urban intensification in Western Canada. The developers and officials of development industry associations were particularly united in this view.

Concluding Observations

The interviews with key informants across Western Canada produced valuable information about replotting and its potential to improve urban intensification. Informants were interviewed from the four western provinces, including public officials, developers and legal and planning experts. They were experienced with land assembly, holdouts, and to a lesser extent, replotting. This is a knowledgeable group whose views warrant attention.

The key informants' information provided an explanation of the decline of replotting in recent years. This occurred because of a mixture of reduced need, the relative expense of replotting to constrained municipal planning budgets, and a diminished knowledge of how and why replotting is done. In Alberta restrictions may have developed in the practice of replotting that rendered it less useful to all concerned.

The informants strongly agreed that replotting has potential to improve urban redevelopment. Most felt that replotting should not be limited to public sector initiatives, and that it should be available to public-private partnerships. These views were held in each province.

All private developers and most public officials felt that replotting should be made available to private developments. Public officials in the prairies provinces supported this proposition, although their views were mixed. In British Columbia most public officials opposed it.

When these knowledgeable informants were asked if municipalities should allow or encourage private developers to propose replots, 20 of the 31 responses were affirmative.

The informants were also agreed that replotting should be improved to more appropriately recognize rights to property, and business interests. These changes were supported both by informants that see potential for replotting to aid urban redevelopment, and by the minority of informants that did not see this potential. There was less agreement about the importance of addressing several other "issues" – improvement of compensation, merging replotting and expropriation, potential of failure during the approval process, the intrusion in rights, and the susceptibility to misleading claims by unscrupulous people. Most

informants in Alberta and Saskatchewan felt replotting and expropriation should be merged, while the opposite was expressed in British Columbia and Manitoba. The key informants want the issues in replotting to be resolved.

This survey information has added the wisdom of people with relevant expertise from across Western Canada to the understanding of the central questions about replotting. The experts have agreed that replotting should be improved in several areas. The central question of this research is “Does replotting have potential to improve the redevelopment of cities?” These key informants were strongly agreed that it does.

This paper has reviewed the experience with replotting, particularly in Western Canada, and has examined the potential for using replotting as a tool to improve urban redevelopment.

Replotting is the term used in Canada to describe an activity that is undertaken in many parts of the world, generally known as land readjustment or LR. It began in the late 19th Century in Germany, where it is termed reparcelling. When local authorities want an area to be redeveloped but the parcels of land are too small or unsuitably shaped for modern redevelopment, the area is expropriated, reconfigured into usable building lots and streets, and redistributed to the former owners. From Germany similar practices spread to France, Eastern Europe and the Middle East. The greatest application of land readjustment has been in Japan where nearly one-half of all cities have used it, and it is said to have re-planned thirty percent of the urban area of the country since 1900. The Japanese model was exported to Korea and much of Asia. Another variant of land readjustment termed “land pooling” occurs in India and in Western Australia. LR has been promoted in Asia by a United Nations’ agency, UNESCAP, as a tool to reorganize land for modern urban development.

These replotting measures have been found useful all over the world to deal with replanning and rebuilding cities in the wake of destructive events, whether manmade calamities like wars or natural disasters like earthquakes or hurricanes. In some cases the activity is initiated by public authorities, often “development corporations”, while others are begun by private owners and public/private partnerships. Some of the replotting legislation is more suited to dealing with land than with improvements to land, although the success of replotting in practice indicates that such legislative weaknesses can be overcome by able administrators. It appears that replotting, like most land development activity, is more likely to succeed in rising markets than declining ones, and tends to favour large landowners over small ones. In some cases the extent of private consent to the reconfiguration is mandated, and in others the individual landowners can effectively veto projects. In general, however, it seems that internationally, landowners find replotting preferable to an alternative land control measure, expropriation.

In 1928 the first replotting legislation appeared in Canada as a revision of British Columbia’s Town Planning Act. It was introduced to deal with volumes of lots that had been prematurely subdivided during the land boom era, that were accumulating in municipal ownership through tax forfeits. Many of these lots were not suitable for development due their shapes or their locations on slopes. In the British Columbia legislation, if the majority of landowners in a given area were in agreement, the municipality could decide to initiate a replot, and if replotting was approved by the Council the area would be taken into municipal ownership in

trust, reconfigured, and pro-rata shares of the resulting parcels or compensation had to be provided to owners (including non-consenting owners). Alberta passed similar legislation in 1929 and Saskatchewan instituted replotting in 1945. It was never authorized in Manitoba.

The use of replotting has varied, and the amount of replotting activity has changed. In British Columbia replotting was used primarily to reorganize land that had been subdivided in unbuildable configurations or locations, often on steep slopes. In Edmonton, about one-half of all land within the city limits was replotted between 1947 and 1966, mainly to better facilitate development. In Saskatoon replotting was carried out into the 1990s as an efficient method of integrating land held by several owners, including the city, in order to plan and service it, create roads and public facilities, and prepare it for development by the various owners. The activity has gradually dwindled across Western Canada. In 1995-96 Alberta eliminated its Planning Act and amended its Municipal Government Act to incorporate most of the planning provisions from the former legislation. There was no impetus to include replottting, so the amended Act has no replotting section.

This paper presented a table containing the current replotting legislation in British Columbia and Saskatchewan, and the former legislation in Alberta. A descriptive assessment of the main features of these legislations was also provided. It was observed that compensation requirements are not as fully developed in replotting as they are in expropriation laws. The specifications of who gets notice of a replotting, and who has standing at hearings and compensation tribunals, do not include some potential stakeholders. Also, it was noted that the various legislations do not specify who may initiate a replotting proposal, although it is very specific in detailing what must be in such a proposal, how it must be considered, the public hearing it must receive, and how a replotting proceeds if a municipal council approves it.

Overall, it was observed that the Canadian replotting legislations constitute frameworks that could support a different role for replotting in urban redevelopment. It could certainly be useful, as similar measures have been in countries around the world, to reorganize urban areas that have been impacted by disasters. In more normal circumstances, where replotting has always been initiated by municipalities, it appears possible for private owners to propose that a replot be initiated. The proposal would have to be in the specified format, and it would have to meet the criteria for the proportion of project ownership that is supporting the replot. It is likely the proposal would be presented in terms of the values of the properties involved, rather than merely the land areas. If the required majority of the owners of a proposed redevelopment are agreed, and the proposal is seen to be in the public interest as expressed by city council, the

authority of the replotting legislation is sufficient to force the compliance of minority, non-consenting owners. This would be a helpful addition to the capabilities available to municipalities and private owners alike, to improve urban redevelopment.

The potential of replotting to assist urban intensification depends on the needs for urban redevelopment, the capacities of replotting and the availability of alternative measures. The research presented a list of typical situations where public policy commonly designates a location for intensification. The public interest in redevelopment confers unusual power to landowners at these locations where society wants to have land use change. If some of these owners do not consent to the kind of redevelopment sought by public policy, they can block the achievement of the social goals, or they can extract a premium for their agreement. When this occurs, public policy has two effective tools to address the problem and secure the desired public objective, replotting and expropriation.

There are parallels and differences between replotting and expropriation, and these are important to an understanding of replotting's potentials. Both replotting and expropriation are evolving, and perhaps converging. Replotting has been criticized as another form of expropriation, and expropriation has been criticized as trending towards intrusion in private ownership without a public interest. Ideally, non-consenting owners must be treated equitably under either legislation, which means that replotting provisions regarding compensation of non-consenting owners should match the provisions in expropriation. Compensation details should not allow for any financial inequity in the treatment of all owners and other stakeholders.

This paper has shown that provisions in replotting are superior to those in expropriation for ensuring that the public interest is being served when interfering with private owners in an urban redevelopment situation. There is a trend, albeit controversial, that expropriation in support of private redevelopments is allowable under certain circumstances by laws in Canada and in the United States. The limiting requirement is that the project must have a public purpose or be in the public interest. The superiority of replotting lies in the fact that in replots the public interest is well established before the power of eminent domain is exercised, whereas in expropriation this is not mandatory. Under either measure, the entire process should be fair, in the sense that it must secure a widely-perceived, significant public benefit, and stakeholders must have a real opportunity to air their views and influence the process and appeal deemed improprieties.

There is potential, conceptually, for replotting and expropriation to meld together into an integrated, first stage, urban redevelopment mechanism. The participatory

aspects of initiating and authorizing a redevelopment scheme could be based on replotting, coupled with more financially-equitable compensation measures seen in expropriation.

The research has noted that the present replotting legislation is falling into disuse. It is ironic that this old and obscure land use control measure that has such beneficial capacities for a new use in current circumstances, is receiving dwindling use. It appears that the community of urban planners, developers and lawyers have not noticed that it is a tool that could be used in a different way, to deal with today's real and growing problems of making cities more sustainable.

The paper reported the results of a series of interviews conducted with forty "key informants" located in the four western provinces. These included public officials at provincial and municipal levels, developers, and academics and lawyers specializing in municipal planning. They were experienced with land assembly, holdouts, and to a lesser extent, replotting. This is a knowledgeable group whose views warrant attention.

These experts in land use planning and development felt strongly that replotting has potential to improve urban redevelopment. They feel that replotting should not be limited to public sector initiatives, and that it should be available to public-private partnerships. These were majority views in each province.

All developers and most public officials felt that replotting should be made available to private developments. Public officials in the prairie provinces had mixed views on this proposition, while in British Columbia the majority of them opposed it. When asked if municipalities should allow or encourage private developers to propose replots, 20 of the 31 responses were affirmative. Most informants in British Columbia and Manitoba feel replotting and expropriation should not be merged, although the opposite view was expressed in Alberta and Saskatchewan. The key informants want the issues in replotting to be resolved.

The purpose of this paper was to explore the potential of replotting to improve sustainability in western Canada. Most residents of this region live in cities. In order for these urban areas to be more sustainable, it is essential that sprawl be abated and growth be redirected to intensification. Redevelopment must be focused in nodes of increasing density where homes, jobs, services and infrastructure can be brought together in efficient concentrations so that wasteful and purposeless travel is minimized. A list of these types of redevelopment nodes was identified. The private and public developers that will bring about this redevelopment can be stymied, or at least have their projects compromised, by non-consenting owners at the land assembly stage. The examination of replotting legislation has shown that while it was not intended for this purpose, it has the

potential to allow private developers, public authorities and the community in general to interact together to resolve the holdout problem in a fair and equitable manner. This information and these ideas were exposed to forty key informants with expertise in urban planning and law from across western Canada. There was broad and thorough agreement that replotting has this potential to address situations where a holdout is impeding the public interest in redeveloping a specific location. Consequently, it would improve urban sustainability. In Western Canada's cities of the future, as redevelopment assumes more importance it is likely that there will be a role for more, and improved, replotting**.**

APPENDIX A

CAPITOL HILL REPLOT SCHEME, BURNABY
(before replotting)

APPENDIX B

The Modern Replotting Legislation in Western Canada

The following table presents the current replotting legislation in British Columbia and Saskatchewan, and the legislation that formerly existed in Alberta, in a format that facilitates comparison.

The table contains the entire laws, however, it presents them in a re-organized manner. Similar clauses from the various province's laws are displayed side by side in the table, grouped under headings in the left column that identify major common features. The sections of the various legislations are referenced in BOLD.

Legislation	**British Columbia** "*Local Government Act*", R.S.B.C 1996, c.323, Part 28 – Replotting Schemes	**Alberta** "*The Planning Act*", R.S.A. 1980, c.P-9, Division 7 – Replotting Schemes ***(Repealed Since 1995)***	**Saskatchewan** "*The Planning and Development Act 2007*", S.S. 2007, c. P-13.2, Division 5 – Replotting Schemes
Purpose	**s.987** (1) In a replotting, (a) effort must be made to allot to owners new parcels in approximately the same location as their former parcels, and (b) parcels with buildings, structures, erections or utilities erected on them, subject to the necessary adjustment of boundaries, must be returned to their former owners wherever practicable. (2) The allotment of new parcels in exchange for former parcels must be carried out as far as practicable with the consent of the respective owners. (3) Failing consent of an owner, there may be allotted to the owner a new parcel or parcels of value equal as nearly as possible to the value of the owner's former parcel or parcels,or compensation in money may be made to the owner instead of an allotment of real property. (4) Unavoidable differences of value between former parcels and new parcels may be equalized by (a) granting money compensation, or (b) with the owner's consent or agreement, allotting to the owner of a new parcel of greater value than the owner's former parcel for a cash payment or on terms. (5) If a new parcel is allotted under subsection (4) (b) on terms, the municipality may take a mortgage, with agreed interest, from the owner for payment of the difference in value. (6) Any real property not allotted as provided above may be allotted to any owner at an agreed price, the amount of which must be paid to the municipality. (7) The whole of the real property remaining unallotted must be allotted to the municipality and is surplus real property.		**s.144** For the purpose of facilitating the physical development of land within a municipality by redistributing the ownership of the land within a replotting scheme and after the hearing mentioned in section 145, a council may, by resolution, authorize the preparation of a replotting scheme and describe the land to be included within the replotting scheme.

Legislation	British Columbia "*Local Government Act*", R.S.B.C 1996, c.323, Part 28 – Replotting Schemes	Alberta "*The Planning Act*", R.S.A. 1980, c.P-9, Division 7 – Replotting Schemes ***(Repealed Since 1995)***	Saskatchewan "*The Planning and Development Act 2007*", S.S. 2007, c. P-13.2, Division 5 – Replotting Schemes
Initial Notification Requirement	**s. 989** (1) Before initiating a replotting scheme, the council must have notice of the scheme published in a newspaper. (2) Also before initiating a replotting scheme, the council must have the following sent to each owner of a parcel in the district, in the manner provided for the giving of notice under section 414: (a) a plan showing the real property in the district as presently subdivided and a plan showing that property as if replotted under the proposed scheme, with both plans having marked on them (i) the dimensions of the boundaries of each parcel shown, and (ii) the scale of the plan, which must be the same for both plans and which must not be smaller than 1 to 1 000; (b) a statement of (i) the estimated total cost of the scheme, (ii) the cost to be borne by the municipality, (iii) the total cost to be borne by all the owners, and (iv) the portion of the cost for each new parcel; (c) a statement showing (i) the number of instalments by which the owner's share of the cost may be paid, (ii) at what interval after completion of the scheme the first instalment will be due, and (iii) at what intervals any remaining instalments will be due; (d) the proposed allotment of new parcels for former parcels; (e) a form of consent to the replotting proposed by the scheme as it affects the owner's property, including (i) the details of (A) any compensation proposed to be paid by the municipality for the real property as a result of the	**s. 124** (1) If a council proposes to consider a resolution authorizing the preparation of a replotting scheme, it shall cause notice of its intention to be served on the registered owners of land within the boundaries of the proposed replotting scheme stating (a) the land proposed to be included in the replotting scheme, (b) the nature of the proposed alteration in the boundaries of the lots in the scheme, (c) the location and relocation of any easements or rights of way in the scheme, and (d) the time and place at which the council intends to hold a hearing on the matter. **s. 130** (1) On completion of the preparation of a replotting scheme, the council shall cause notice of it to be served on each registered owner of land in the replotting scheme. (2) The notice referred to in subsection (1) shall (a) outline the contents of the replotting scheme and explain the consequences of it, if adopted, and (b) state the date, time and place at which a public hearing will be held by council to hear representations with respect to the scheme.	**s. 145** (1) If a council proposes to consider a resolution authorizing the preparation of a replotting scheme, it shall serve notice of its intention on the registered owners of land within the boundaries of the replotting scheme stating: (a) the land proposed to be included in the replotting scheme; (b) the nature of the proposed alteration in boundaries of the lots in the replotting scheme; (c) the location of any easements or rights of way in the replotting scheme; and (d) the time and place at which the council intends to hold a hearing on the matter. **s. 153** (1) On completion of the preparation of a replotting scheme, the council shall cause notice of the replotting scheme to be served on each registered owner of land within the boundaries of the replotting scheme. (2) The notice mentioned in subsection (1) must: (a) outline the contents of the replotting scheme and explain its consequences if adopted; and (b) state the date, time and place at which a public hearing will be held to hear representations with respect to the replotting scheme.

	scheme, or (B) any sums requested to be paid to the municipality for the real property as a result of the scheme, and (ii) a space in which, if the owner signs the consent and returns it to the municipality, the owner must set out (A) the market or true value of the real property, and (B) the amount or proportion the owner considers to be the value of the owner's interest.		

Legislation	British Columbia "*Local Government Act*", R.S.B.C 1996, c.323, Part 28 – Replotting Schemes	Alberta "*The Planning Act*", R.S.A. 1980, c.P-9, Division 7 – Replotting Schemes ***(Repealed Since 1995)***	Saskatchewan "*The Planning and Development Act 2007*", S.S. 2007, c. P-13.2, Division 5 – Replotting Schemes
Definition of Proponents/ Initiators	**s.984** A council may, by bylaw adopted by an affirmative vote of at least 2/3 of all its members, (a) define a part of the municipality as a district for the purpose of replotting, and (b) authorize the preparation of a scheme, including incidental preliminary surveys, for the replotting of the district. **s. 990** (1) The council may, by resolution, authorize the initiation of the replotting scheme without further consent by other owners in the district if the owners of parcels of real property, the assessed land value of which is at least 70% of the total assessed value of all the land in the district according to the last revised real property assessment roll, consent to the replotting set out in the scheme. (2) A consent referred to in subsection (1) must be in writing in the form referred to in section 989 (2) (e). (3) The calculation of the 70% of the assessed value referred to in subsection (1) must be determined as follows: (a) land only, without improvements, is to be considered for the purpose of this section; (b) the value of an owner's interest in a parcel is the assessed value of the parcel if (i) the parcel is owned in fee simple, free of charges, (ii) the parcel is owned by a purchaser from the Provincial government or from a Provincial government corporation and the purchaser has completed the payments but the Crown grant, order in council or conveyance has not been	**s. 129** (1)If a replotting scheme that is a valuation replot is consented to under section 131(2)(a), each registered owner of land included in the replotting scheme is entitled to be allotted one or more new lots in the replotting scheme having an appraised market value bearing the same proportion to the aggregate appraised value of all the proposed new lots in the replotting scheme as the appraised market value of his original one or more lots bears to the aggregate appraised market value of all the original lots in the scheme. (2) If a replotting scheme that is a land replot has been consented to under section 131(2)(b), each registered owner in entitled to be allotted one or more new lots in the replotting scheme having an area bearing the same proportion to the aggregate area of all the proposed new lots in the replotting scheme as the area of his original one or more lots bears to the aggregate area of all the original lots in the replotting scheme. **s. 131** (1) As soon as practicable after serving notices under section 130, the council shall hold a hearing on the scheme in accordance with the notice and at the hearing shall hear any registered owner who wishes to be heard. (2) After holding the hearing and on being satisfied that consent to the replotting scheme has been given in writing by (a) 90% or more of the registered owners of the original lots in the replotting scheme having 90% or more of the market value of all the lots appraised under section 127(1)(a), or	**s. 155** (1) The council may, by resolution, adopt the replotting scheme after: (a) holding a hearing; and (b) obtaining written consent of owners of parcels of land (i) constituting at least two-thirds of the number of original parcels included in the replotting scheme; and (ii) constituting at least two-thirds of the assessed value of the original parcels, exclusive of improvements

	delivered to or registered by the purchaser, or (iii) the parcel has been purchased at a tax sale and the period for redemption has not expired; (c) in the cases of parcels of real property held subject to one or more charges, the particular interest in the parcel and dividing the resulting product by the true or market value of the parcel, and (i) the value of the charges and of the estate in fee simple must be determined by multiplying the assessed value of the land by the true or market value of the particular interest in the parcel and dividing the resulting product by the true or market value of the parcel, and (ii) if the true or market values of an interest in real property cannot be determined from the information supplied by owners of a parcel under section 989 (2) (e), the designated municipal officer must assess and determine the values for the purposes of subparagraph (i) from whatever records or information are available to that municipal officer; (d) if a parcel of real property is held by a tenant for life, (i) the true or market value of the life estate is its present worth as determined by using the official Statistics Canada Tabulations of British Columbia life expectancy in effect when the valuation is made, and (ii) the true or market value of the estate in remainder in fee simple is the resulting balance, after subtracting the true or market value of the life estate from the true or market value of the parcel; (e) in the cases of multiple ownership of estates in fee simple and charges, (i) each tenant in common must be considered to consent to the proportion of the whole estate in fee simple or charge held by the tenant's proportion in the tenancy, and (ii) each joint tenant must be considered to consent to an equal share with each of the tenant's co-joint tenants in the whole estate in fee simple or charge.	(b) 90% or more of the registered owners of the original lots in the replotting scheme, the council may, by resolution, adopt the scheme. (3) If the council fails to obtain the consents required under this section, it shall by resolution discontinue the scheme and file a certified copy of the resolution in the appropriate land titles office, whereupon the Registrar shall cancel each memorandum endorsed pursuant to section 125 that relates to the scheme. (4) Notwithstanding anything in this section, when in the case of a municipality other than a city, land forming any part of a public roadway is affected by a replotting scheme, the scheme shall not be adopted by the council without the prior approval of the Minister of Transportation	

Legislation	British Columbia "*Local Government Act*", R.S.B.C 1996, c.323, Part 28 – Replotting Schemes	Alberta "*The Planning Act*", R.S.A. 1980, c.P-9, Division 7 – Replotting Schemes ***(Repealed Since 1995)***	Saskatchewan "*The Planning and Development Act 2007*", S.S. 2007, c. P-13.2, Division 5 – Replotting Schemes
Initial Hearing		**s. 124** (2) At the hearing referred to in the notice, the council shall hear any registered owner to whom a notice of the hearing has been sent and who wishes to be heard or a person acting on his behalf. (3) For the purpose of redistributing the ownership of land within a replotting scheme and after the hearing referred to in subsection (1), a council may pass a resolution authorizing the preparation of a replotting scheme and describing the land to be included within the scheme. (4) During the preparation of a replotting scheme the council may by resolution include additional land in the scheme or exclude land from the scheme.	**s. 145** (3) At the hearing mentioned in the notice, the council shall hear any registered owner to whom a notice of the hearing has been given and who wishes to be heard or any person acting on behalf of the registered owner. **s. 154** As soon as is practicable after serving notices pursuant to section 153, the council shall: (a) hold a public hearing on the replotting scheme in accordance with the notice; and (b) at the public hearing, hear any registered owner who wishes to be heard.
Replot Procedures and Allocation of Costs	**s. 985** (1) A replotting scheme must indicate the following: (a) the proposed relocation and exchange of parcels of real property in which the Provincial government or the municipality has no estate or interest; (b) whether compensation is to be proposed to the respective owners and its amount; (c) the value of any surplus real property; (d) the new location of a building, structure, erection or utility that is to be moved. (2) A replotting scheme may set out an apportionment of the net cost of the scheme between the municipality and the owners, consideration being given to (a) the saving that the scheme may effect in the expenditure of the municipality for highways and municipal utilities, and (b) the increased taxation that may be	**s. 126** On the endorsement of a memorandum of a resolution under section 125, the council shall (a) if a valuation replot is proposed, cause appraisals to be made in accordance with section 127, or (b) if a land replot is proposed, calculate the proportion of land in the replotting scheme to which each registered owner is entitled under section 129(2), and cause a replotting scheme to be prepared in accordance with section 128 **s. 127** (1) If a valuation replot is proposed, the council shall cause an appraisal to be made to establish the market value, as of the date of the endorsement of the memorandum of the resolution under section 125, of (a) each original lot in the replotting scheme, excluding building and improvements on it, and (b) each proposed new lot in the replotting scheme, excluding building and improvements on it. (2) In this section "market value" means the sum of money that might be expected to be realized if the lot were sold in the open market by a willing seller to a willing buyer.	**s. 148** A replotting scheme must consist of: (a) a plan showing the original lots within the scheme, the dimensions and area of each lot, the total area of the lots, easements and rights of way registered against the land in the replotting scheme; (b) a plan showing the proposed re-subdivision in accordance with the requirements of any bylaws or regulations governing the subdivision of land within the municipality, including the location of easements and rights of way in the replotting scheme; (c) a schedule of the existing buildings and public utilities that are proposed to be demolished, provided, altered, expanded or upgraded; (d) a schedule of the names and addresses of the registered owners of the original lots; (e) a schedule showing the area of each

	derived by the municipality from the increased value of the real property in the district. (3) An apportionment under subsection (2) may or may not be as provided by section 1011. **s. 988** Subject to making compensation for a charge against a former parcel, the municipality may (a) acquire such a charge and hold it as a charge against a new parcel allotted to the owner of the former parcel, and (b) take all necessary proceedings for the collection of the amount due under and by virtue of the charge or for the sale, transfer or realization of the security created by it.	**s.128** A replotting scheme shall consist of (a) a plan showing the original lots within the scheme, the dimensions and area of each lot, the total area of all the lots and all easement and rights of way registered against the land in the replotting scheme, (b) a schedule of the existing buildings and public utilities that are proposed to be demolished, reconstructed or mover, (c) a schedule of the names of the registered owners of the original lots, (d) if a valuation replot is proposed, (i) a schedule showing the appraised market value of each original lot made pursuant to section 127(1)(a), and (ii) a schedule showing the appraised market value of each proposed new lot made pursuant to section 127(1)(b), (e) if a land replot is proposed, (i) a schedule showing the area of each original lot, and (ii) a schedule showing the area of each proposed new lot, (f) a schedule showing the proposed allotment of each new lot to be created by the scheme and the proposed registered owner of it, (g) proposals respecting the estimated cost of and the share of the cost of preparing the replotting scheme and the replot compensation, if any, to be paid by (i) each registered owner of land in the scheme, and (ii) the council, and whether the costs or compensation or both are to be paid by the registered owners or whether they are to form a tax against the land that is the subject of the replotting scheme under section 134(2), and (h) a proposed plan of subdivision relating to the land in the replotting scheme showing in addition to those things provided for in this Act and the regulations, the location of easements and rights of way over the land included in the replotting scheme **s. 134** (1) The proportion of the cost of preparing a replotting scheme payable by a council and any replot compensation payable by a council may be paid out of the general revenue of the council. (2) The portion of the cost of preparing the replotting scheme and any replot compensation payable by the registered owners of land included in the scheme may be raised by a special tax	original lot and the area of each proposed new lot; (f) a schedule showing the proposed allotment of each new lot to be created by the replotting scheme including the proposed registered owner of the lot and his or her address; (g) the lands that the council proposes to acquire pursuant to section 150 without an exchange of properties; (h) the compensation, if any, proposed to be paid to the registered owners; and (i) the proposed apportionment of the estimated cost of preparing the replotting scheme to be paid by: (i) each registered owner of land within the boundaries of the replotting scheme; and (ii) the municipality. **s.149** (1) The cost of preparing a replotting scheme must be apportioned in the manner indicated in the replotting scheme. (2) The cost of preparing a replotting scheme must include the following costs respecting the replotting scheme: (a) survey costs; (b) costs paid to prepare a plan of subdivision; (c) any fees payable to the approving authority in connection with the review and approval of the proposed subdivision and the registration of any interests respecting the proposed subdivision;

		levied and collected on and from the land included in the scheme liable to assessment and taxation for general municipal purposes. (d) roadways, public highways and related infrastructure; (e) land titles costs. (3) The portion of any cost of preparing a replotting scheme that is payable: (a) by the municipality may be included in the annual tax levy of the municipality; or (b) by the owners, other than the municipality, may be raised by a special tax levied by the municipality on the lands of those owners included in the replotting scheme. (4) The special tax mentioned in clause (3)(b) is a lien on the land and is recoverable in the same manner as general taxes levied on the land.	

Legislation	**British Columbia** "*Local Government Act*", R.S.B.C 1996, c.323, Part 28 – Replotting Schemes	**Alberta** "*The Planning Act*", R.S.A. 1980, c.P-9, Division 7 – Replotting Schemes ***(Repealed Since 1995)***	**Saskatchewan** "*The Planning and Development Act 2007*", S.S. 2007, c. P-13.2, Division 5 – Replotting Schemes
Approving Authority	This is usually the Council. **See s. 995**	This is usually the Council. **See s.125**	This is usually the Council. **See also s. 145 (1)** **s. 145** (2) If a council is not an approving authority, it shall forward the informationdescribed in subsection (1), at the same time that it serves notice of its intention on registered owners pursuant to that subsection, to the approving authority for the area of Saskatchewan within which the municipality is located.
Need for Timely Decision	**s.995** (1) Within 4 months after the initiation of a replotting scheme, the council must, by resolution, either (a) discontinue the replotting scheme, or (b) authorize the completion of the replotting scheme and put it into effect. (2) If a council resolves to discontinue a replotting scheme under subsection (1) (a), (a) the municipal corporate officer must file in the land title office a copy of the resolution to discontinue, certified under that officer's signature, and (b) the registrar of land titles must then cancel the note under section 993 (1). (3) If the council resolves to authorize the completion of the scheme under subsection (1) (b), the municipality must make application in accordance with section 996 to have title to the common mass registered in fee simple in trust for the owners of the new parcels.		**s. 157** (1) Within two years after the date of the resolution authorizing the preparation of a replotting scheme, the council shall: (a) discontinue the replotting scheme and discharge any interest registered pursuant to section 146; or (b) adopt the replotting scheme and submit the documents to the Controller of Surveys in accordance with clause 156(1)(b). PLANNING AND DEVELOPMENT, 2007 c. P-13.2 (2) If on the expiration of two years after the date of the resolution authorizing the preparation of a replotting scheme the council has not acted in accordance with clause (1)(a) or (b), the interests registered pursuant to section 146, subject to subsection (3), cease to have effect. (3) If a plan of subdivision and any schedule mentioned in clause 148(f) covering some of the parcels of land described in the list mentioned in clause 146(2)(b) have been approved or received by the Controller of Surveys, only those interests registered with respect to the titles to the parcels of land not covered by the plan and schedule cease to have effect.

	s. 1002 (1) Within one month after completion of the replotting scheme, the council must apply to the Supreme Court for the appointment of a commissioner to hold a public hearing of and to decide any complaints under sections 1000 and 1001 and the court must appoint a commissioner. (2) An application under subsection (1) may be made without notice to any other person. (3) If the council does not apply under subsection (1), any owner who did not consent may apply on notice to the council. (4) A person who is (a) a member of the council, (b) an owner within the district, or (c) the spouse of an owner within the district must not be appointed or act as a commissioner. (5) Before entering on the duties of office, the commissioner must subscribe and take the following oath before the municipal corporate officer: I, ..., do solemnly swear that (a) I will truly and faithfully, and without fear, favour or partiality, execute the powers and trusts of a commissioner under Part 28 of the *Local Government Act*, according to the best of my knowledge and judgment, and (b) I am not disqualified from acting as a commissioner under that Act. (6) The municipality must pay the commissioner remuneration at a rate agreed between the commissioner and the council, and in the event of failure to agree, a reasonable remuneration set by the Supreme Court on summary application by the municipality or the commissioner.		

Legislation	**British Columbia** "*Local Government Act*", R.S.B.C 1996, c.323, Part 28 – Replotting Schemes	**Alberta** "*The Planning Act*", R.S.A. 1980, c.P-9, Division 7 – Replotting Schemes ***(Repealed Since 1995)***	**Saskatchewan** "*The Planning and Development Act 2007*", S.S. 2007, c. P-13.2, Division 5 – Replotting Schemes
Notice of Approval	**s. 1004** (1) On an appointment being made, the designated municipal officer must give to each of the owners who did not consent whose name appears on either of the lists referred to in section 1016 a notice in writing including the following: (a) a statement that a replotting scheme has been put into effect; (b) a description of the owner's former parcel; (c) a statement (i) of the allotment of new parcel made, (ii) of the compensation proposed to the owner, and (iii) that, if a parcel is improved, that the owner's buildings may be affected; (d) a statement that the scheme and the allotments under it are absolutely binding on the owner to all intents and purposes, excepting only the owner's right to complain against (i) the adequacy of compensation proposed, or (ii) the failure to propose compensation; (e) the time and place appointed by the commissioner for hearing complaints; (f) a statement that, if the owner intends to complain, the owner must give written notice with the grounds of the complaint to the designated municipal officer 10 days before the hearing. (2) Notice under subsection (1) may be given by any of the following: (a) by personal service on the person to whom it is directed; (b) by registered mail addressed to the person at that person's address (i) as shown on a list provided under section 1016, (ii) as shown on any record in the land title office relating to the person's ownership of or interest in the former parcel, or (iii) as last known to the assessor for the municipality; (c) on application to the Supreme Court, by substituted service in accordance with the order of the court. (3) The designated municipal officer may, in his or her discretion, send with any one or more of the notices a copy of the plan of replotting or any portion of it on the same or a different scale. (4) The designated municipal officer must keep a record of all notices given under this section by showing, opposite the names of the owners of the parcels in the district, the names of the persons to whom notices were sent and the parcels concerned and the date and method of giving each notice.	**s. 132** On passing a resolution adopting a replotting scheme, the council shall (a) cause notice to be served by registered mail on all registered owners of land in the replotting scheme stating that (i) the council has adopted the scheme, and (ii) the registered owner may apply for replot compensation, and (b) submit the following documents to the Land Compensation Board: (i) a certified copy of each notice given pursuant to clause (a), (ii) a certified copy of the resolution adopting the scheme, and (iii) a certified copy of the scheme as adopted by the council.	**s. 159** Within 10 days after the receipt from the Controller of Surveys of a notice of approval of the plan of subdivision, the municipal administrator shall: (a) cause notice to be served by registered mail or personal service on all registered owners of land in the replotting scheme stating that: (i) the council has adopted the replotting scheme; and (ii) the plan of subdivision has been approved by the Controller of Surveys; and (b) deposit with a judge of the Court of Queen's Bench sitting at the judicial centre nearest to which the land is situated: (i) a list stating the names and addresses of all owners affected by the replotting scheme who have not consented in writing to the replotting scheme, together with a description of the parcel of land allotted by the replotting scheme to each such owner and of the parcel in lieu of which the allotment was made; (ii) a certified copy of the resolution adopting the replotting scheme; and (iii) a certified copy of the replotting scheme as adopted by the council and a copy of the plan of subdivision approved by the Controller of Surveys.

Legislation	**British Columbia** "*Local Government Act*", R.S.B.C 1996, c.323, Part 28 – Replotting Schemes	**Alberta** "*The Planning Act*", R.S.A. 1980, c.P-9, Division 7 – Replotting Schemes ***(Repealed Since 1995)***	**Saskatchewan** "*The Planning and Development Act 2007*", S.S. 2007, c. P-13.2, Division 5 – Replotting Schemes
Action on Adoption	**s. 996** (1) An application to have title to the common mass registered in fee simple in trust for the owners of the new parcels must be in the form approved under the *Land Title Act* and must be accompanied by the following: (a) a reference plan defining the common mass, signed by the municipal corporate officer, and complying with the requirements of the *Land Title Act* for reference plans, other than the requirements of section 103 of that Act; (b) a certificate signed by the municipal corporate officer, setting out (i) in the 1st column, compiled in numerical or alphabetical order, the description of each new parcel, (ii) in the 2nd column, opposite the description of the relevant new parcel, the description of the former parcel or parcels in respect of which the allotment of the new parcel has been made, (iii) in the 3rd column, opposite the description of the relevant new parcel, the name and address of the owner in fee simple to whom each new parcel has been allotted, (iv) in the 4th column, opposite the description of the relevant new parcel, the names of owners of all charges and their addresses and the nature and serial registration numbers of the charges registered against the former parcel or parcels in respect of which the allotment of the new parcel has been made, and (v) in the 5th column, opposite the description of the relevant new parcel, (A) the names and addresses of any (I) claimant of a lien filed under the *Builders Lien*	**s. 133** (1) On the adoption of a replotting scheme, the council shall (a) apply for subdivision approval of the land included in the replotting scheme, and b) file at the land titles office (i) a certified copy of the resolution adopting the scheme, (ii) a certified copy of the scheme, and (iii) the plan of subdivision endorsed by the subdivision approving authority made in accordance with the scheme as adopted, sealed with the seal of the municipal corporation together with a statutory declaration signed by the municipal secretary in a form prescribed by the subdivision regulations. (2) On the documents referred to in subsection (1)(b) being filed, the registrar shall, on satisfying himself that the requirements of this Act have been complied with, (a) register the plan of subdivision, (b) make any cancellations of certificates of title to the original lots in the replotting scheme that are necessary, (c) issue any certificates of title to the new lots established by the scheme that are necessary, (d) endorse on the certificate of title of the registered owners of the new lots (i) those easements and rights of way that were not relocated, and (ii) those encumbrances that were endorsed on the certificate of title of the registered owners of the original lots unless those encumbrances are not transferred, (e) make any other endorsements of	**s. 156** (1) On the adoption of a replotting scheme, the council shall: (a) apply to the relevant approving authority for subdivision approval, in accordance with the provisions of this Part, of the land included in the replotting scheme with proof of compliance. (b) submit to the Controller of Surveys all documentation in registerable form (2) For the purposes of subclause (1)(b)(iii), the plan must be approved by the municipal administrator. (3) After the plan of subdivision has been approved by the Controller of Surveys pursuant to subclause (1)(b)(iii), the council shall: (a) apply to the Registrar of Titles to issue title respecting the parcels shown on the plan of subdivision; and (b) discharge any registered interest that was based on: (i) a building restriction; or (ii) a building restriction caveat or any other mutual or restrictive covenant that was registered pursuant to The Land Titles Act, 2000 or any former Land Titles Act.:

	Act, (II) person who has registered a certificate of pending litigation under the *Land Title Act*, (III) caveator under the *Land Title Act*, (IV) person taking a security interest in fixtures under the *Personal Property Security Act*, or (V) spouse claiming the benefits of the *Land (Spouse Protection) Act*, and (B) the description of any former parcel or parcels in respect of which no allotment of a new parcel or parcels has been made; I a subdivision plan defining the new parcels, complying with the requirements of the *Land Title Act* and bearing the title "prepared under the replotting provisions of the *Local Government Act*"; (d) an application in the form approved under the *Land Title Act* to deposit the subdivision plan. (2) The registrar of land titles must examine the application forms, reference plan, subdivision plan and certificate and, if satisfied that they are in order and in compliance with this Part and the *Land Title Act*, must deposit the reference plan and assign to it a serial deposit number	encumbrances necessary as a result of the replotting scheme, and (f) cancel the memorandum of the resolution endorsed pursuant to section 125. (3) Section 83(6) of the land Titles Act does not apply to a plan of subdivision registered pursuant to subsection (2).	

Legislation	British Columbia "*Local Government Act*", R.S.B.C 1996, c.323, Part 28 – Replotting Schemes	Alberta "*The Planning Act*", R.S.A. 1980, c.P-9, Division 7 – Replotting Schemes ***(Repealed Since 1995)***	Saskatchewan "*The Planning and Development Act 2007*", S.S. 2007, c. P-13.2, Division 5 – Replotting Schemes
Role of Registrar's Office/Land Titles Office	**s. 993** (1) A copy of the resolution referred to in section 990 (1) [initiation of replotting], adopted by the council and certified by the municipal corporate officer, together with the plans referred to in section 989 (2) (a), must be filed in the land title office. (2) When the resolution is filed under subsection (1), the registrar of land titles must cause a note of it to be made in every place in the records under the care of the registrar where title in fee simple to a parcel located in the district is registered. (3) The note under subsection (2) must be by the filing number and series, and the series may be the same as the series that includes caveats. (4) The replotting scheme is initiated when the note under subsection (2) is made. **s. 994** (1) A note under section 993 is notice to all persons having any right, title, interest, charge, claim or demand in, to or on the affected parcels, and to all persons subsequently dealing with them, that a scheme for their replotting has been initiated, and those persons are bound by all proceedings under this Part taken before and after that notice. (2) A person who has a right, title, interest, charge, claim or demand in, to, or on real property in the district that is not duly registered before the initiation of the scheme is not entitled to notice of proceedings under this Part, unless the person is a purchaser (a) from the Provincial government, (b) from the municipality, or (c) at a tax sale. (3) A person subsequently dealing with an affected parcel is not entitled to notice unless the person has (a) given the designated municipal officer written notice of the person's purchase or claim and evidence of its registration, and (b) provided that municipal officer with an address to which notices may be mailed. **s. 997** (1) The deposit of a reference plan under section 996 (a) vests in the municipality the title of the common mass, in trust as stated, in fee simple, free from all charges registered against former parcels, and (b) extinguishes all highways, parks or public squares within the common mass. (2) Subsection (1) binds the Provincial government.	**s. 125** (1) On authorizing the preparation of a replotting scheme under section 124, the council shall cause to be filed in the appropriate land titles office (a) a certified copy of the resolution, (b) a list of all existing lots included within the replotting scheme, and (c) a statutory declaration of the municipal secretary that the requirements of section 124 have been met, whereupon the Registrar shall endorse on the certificate of title of each lot a memorandum of the resolution and shall notify the registered owners accordingly. (2) A council shall cause a certified copy of a resolution including additional land in or excluding land from a proposed	**s. 146** 1) If a council authorizes the preparation of a replotting scheme pursuant to section 144, the municipal administrator shall apply to the Registrar of Titles to prohibit, pursuant to section 99 of The Land Titles Act, 2000, a transfer or the registration of any interest against the titles of all parcels of land included within the replotting scheme.

	(3) On finding a good safe holding and marketable title in fee simple to the common mass, the registrar of land titles must register the title claimed by the municipality, and the *Land Title Act* then applies. (4) The municipality need not produce any former absolute, interim or duplicate indefeasible title to any former parcel, but on the issue of the indefeasible title to the municipality in trust all of those certificates are deemed to be cancelled. (5) After the registration under subsection (3), the registrar of land titles must deposit the subdivision plan, assign to it a serial deposit number, and issue any new indefeasible titles for the new parcels. (6) The indefeasible titles under subsection (5) must be noted or endorsed, as the case may require, with all claims, demands or notices as set out in the 5th column of the certificate referred to in section 996 (1) (b). (7) The replotting scheme is completed when the requirements of subsection (6) are met, and after this the *Land Title Act* applies. (8) In addition to the application of the *Land Title Act*, the deposit of the subdivision plan vests title to the respective new parcels in the persons named in the 3rd and 4th columns of the certificate referred to in section 996 (1) (b) according to the estate, title or interest disclosed by the certificate, but subject to all claims, demands or notices set out in the fifth column of the certificate. **s. 998** (1) As soon as possible after the completion of the replotting scheme, the municipality must apply under the *Land Title Act* for registration on behalf of the persons who own the new parcels. (2) The registrar of land titles, in his or her discretion, may summarily reject or may refuse to register any application on behalf of an owner unless there is produced to the registrar any duplicate indefeasible title, or interim or absolute certificate of title to a former parcel that had not been produced before registration of the common mass under section 996. **s. 999** On completion of the replotting scheme, (a) except as otherwise dealt with under this Part, all rights, obligations and incidents of ownership of the owner of a former parcel or of an interest in it, and all public and private legal relationships with a former parcel, are deemed to be transferred to and exist in the new parcel allotted to the owner of the former parcel to the same extent and in the same manner as with the former parcel, (b) all conveyances, agreements, mortgages and other instruments, including grants of letters probate or letters of administration, in respect of parcels of real property described in them by a description appropriate to a former parcel and in respect of which registration of title had not been applied for before the completion of the replotting scheme must be construed as if the estate or interest passing or created or vested by them was in the new parcel, and (c) the new parcels and their respective owners are subject to and liable for all municipal charges, rates, taxes and assessments levied against their former respective parcels, and are subject to all proceedings taken and to be taken for the collection of municipal charges, rates, taxes and assessments in any manner provided for by law.	replotting scheme to be filed at the appropriate land titles office, whereupon the Registrar shall (a) endorse a memorandum of the resolution on the certificate of title of each lot added to the replotting scheme, (b) discharge the memorandum of the resolution affecting lots excluded from the replotting scheme, and (c) notify the registered owners of the affected lots accordingly. (3) A person who acquires an interest in land in a replotting scheme after the endorsement of a memorandum of the resolution on the certificate of title is not entitled to receive any notice of proceedings as to the replotting scheme unless he files in the office of the council written notice of his interest with evidence of the registration thereof and an address to which notices can be mailed.	

Legislation	British Columbia "*Local Government Act*", R.S.B.C 1996, c.323, Part 28 – Replotting Schemes	Alberta "*The Planning Act*", R.S.A. 1980, c.P-9, Division 7 – Replotting Schemes ***(Repealed Since 1995)***	Saskatchewan "*The Planning and Development Act 2007*", S.S. 2007, c. P-13.2, Division 5 – Replotting Schemes
Factors in Compensation	**s. 1000** On completion of the replotting scheme, the allotments of real property under it are absolutely binding to all intents and purposes on all the owners in the district, subject to the right of those owners who do not consent to the scheme to complain as to the adequacy of compensation proposed or the failure to propose compensation. **s. 1001** (1) An owner who does not consent and who gives notice of complaint as provided in section 1004 has the right to compensation in money for the following: (a) any loss of value of the former parcel, in so far as adequate compensation is not afforded by the new parcel allotted; (b) any loss of, damage to or the cost of moving buildings or improvements on the former parcel; (c) any loss of income from the use of buildings or the special condition or use of the former parcel caused by the replotting scheme. (2) In determining the amount of compensation, (a) a former parcel must be valued at its market value at the time of the initiation of the replotting scheme, but an increase in its value caused by the anticipation or initiation of the scheme must not be taken into consideration, and (b) a new parcel must be valued at its market value on completion of the replotting scheme. (3) A person is not entitled to compensation for any of the following: (a) costs, expenses, loss, damage or inconvenience incurred or sustained in investigating the replotting proceeding or in presenting a complaint or making an appeal, or caused by the initiation of or delay in or discontinuance of the replotting scheme; (b) an actual or anticipated loss or inconvenience of access to new parcels or of use of a municipal or public utility or service due to the new highways not being open for traffic; (c) an actual or anticipated loss, damage or inconvenience suffered in common with all or with the major part of other owners;	**s. 137** (1) A registered owner of land in a replotting scheme is entitled to compensation determined by the Land Compensation Board for the following: (a) the cost incurred or any loss or damage sustained by him as a direct result of any action taken by a council pursuant to section 135; (b) the cost incurred or any loss or damage sustained by him as a direct result of moving or relocating buildings if it is necessary and feasible to move them; (c) the value of buildings which cannot be moved and which are not replaced by equivalent buildings and improvements located on the new lot allotted to the registered owner; (d) any loss in value of buildings retained by the registered owner under the replotting scheme; (e) any loss resulting from the buildings located on the allotted lot being of lesser value or use than the buildings located on the registered owner's original lot; (f) the value to the registered owner of any element of special economic advantage to him arising out of or incidental to his occupation of the land to the extent that no other compensation has been awarded therefore; (g) business loss resulting from relocation of a business because of the replotting scheme; (h) the value of the goodwill of a business when that business can no longer be carried on as a result of the replotting scheme and	**s. 160** Within 30 days after the date that the material mentioned in clause 159(b) is deposited, the judge shall appoint a time and place for the hearing of applications by non-consenting owners for compensation. **s. 161** (1) On being notified of the time and place appointed for hearing applications for compensation, the municipal administrator shall give written notice of the time and place to each non-consenting owner whose name appears on the list mentioned in clause 159(b). (2) All notices required by subsection (1) must be served by personal service or registered mail not less than 20 days before the date of the hearing. **s. 162** On hearing the applications for compensation, the judge shall determine the amount of compensation, if any, to be allowed for and on account only of: (a) the loss of value of the former parcel of land insofar as adequate compensation is not afforded by the new parcel allotted; (b) the loss of, damage to or the cost

	(d) a building or structure constructed, erected, placed or altered, or an improvement made to land after the initiation of the replotting scheme or an actual or anticipated loss, damage or expense incidental to it, or incidental to the removal of that building or structure; (e) a reduction in or loss of value due to reduction in area within the limits of a right to take land for highway purposes contained in the Crown grant of or statute applying to the land. **s. 1005** The commissioner must appoint a time and place for the hearing of complaints as follows: (a) the place must be at the municipal hall or another suitable place in the municipality; (b) the time must be not less than 40 days and not more than 90 days after the designated municipal officer has given the notices referred to in section 1004. **s. 1006** (1) The commissioner must sit at the time and place appointed, and must hear complaints of which notice has been given. (2) The proceedings before the commissioner must be public. (3) The commissioner must inquire into and pass on the sufficiency of all notices required to be given under section 1004 and, in the commissioner's sole discretion, may direct further notices and hear any complaint made. (4) If the commissioner thinks fit in the interest of justice, the commissioner may hear a complaint made to the commissioner at any time before the conclusion of the hearing. (5) The municipality may complain to the commissioner on its own behalf or on behalf of any other person. (6) The following rules apply respecting evidence that may be accepted by the commissioner: (a) the commissioner may receive any evidence that the commissioner thinks proper to admit and may take a view and examine on oath any person interested and the witnesses that appear before the commissioner; (b) the commissioner may act on, accept or adopt the evidence the commissioner considers sufficient, whether on oath or not and whether written or oral; (c) the commissioner has the right to insist on evidence being given or submitted orally under oath or by affidavit, but need not require any evidence to be so given;	in the opinion of the Land Compensation Board it is not feasible for the registered owner to relocate; (i) any other disturbance costs and expenses incurred by the registered owner as the natural and reasonable consequence of the implementation of the replotting scheme. (2) if as a result of the replotting scheme a registered owner lost his principal residence section 47 of the Expropriation Act applies as though the land on which the residence is located had been expropriated. (3) The Land Compensation Board may defer determination of the business losses referred to in subsection (1)(g) until the business has moved and been in operation for 6 months or until a 3-year period has elapsed, whichever first occurs. (4) Replot compensation shall be paid by a council within 3 months after the registration of a plan of subdivision arising out of a replottting scheme or within 3 months after the decision of the Land Compensation Board, whichever is the later, and recovered in accordance with the replotting scheme. **s. 138** (1) No compensation is payable in respect of any development on land after the date of the endorsement of the memorandum of the resolution under section 125. (2) The land compensation Board has no jurisdiction to consider any matter with respect to the appraised market value of lots determined under section 127 or the allocation of lots under section 192(2). (3) In exercising any power or duty under this Act the Land Compensation Board may exercise and has all the powers it has under the Expropriation Act.	of moving buildings or improvements on the former parcel of land; (c) the loss of income from the use of buildings or from the special conditions or use of the former parcel of land caused by the carrying out of the replotting scheme; and (d) the loss resulting from the acquisition of the person's land by the council pursuant to section 150. **s. 163** In determining the amount of compensation, the judge shall ascertain: (a) the value of the former parcel of land as of the date of the interest registered against the title pursuant to section 146; and (b) the value of the new parcel of land as of the date of the approval of the plan of subdivision. **s. 166** The compensation mentioned in section 165 stands in the stead of the land with respect to which it was proposed or awarded and is subject to the limitations and charges, if any, to which the land was subject.

	(d) the strict rules of evidence do not apply. (7) The commissioner may, at the request of any complaining owner or on the commissioner's own initiative, summon in writing any person to attend at the hearing, give evidence and produce any documentary evidence. (8) The commissioner may order reasonable fees and expenses to be paid to a witness summoned on the commissioner's own initiative, which must be paid by the municipality. (8) The commissioner may order reasonable fees and expenses to be paid to a witness symmoned on the commissioner's own initiative, which must be paid by the municipality. (9) A person who fails to respond to a summons under subsection (7) commits an offence, and is liable on conviction to a penalty not greater than $100 and costs. (10) The commissioner or, in the absence of the commissioner, the municipal corporate officer may adjourn the hearing from time to time and from place to place, whether or not any person interested is present at the time of the adjournment. **s. 1007** (1) The powers of the commissioner are confined to (a) passing on the sufficiency of all notices required to be given under section 1004, and (b) hearing and deciding complaints under sections 1000 and 1001. (2) The commissioner must cause to be kept a record of each complaint made to the commissioner and of the commissioner's decision on it. (3) On the conclusion of the hearing, the commissioner must announce a date on which the commissioner's decisions will be given. (4) Promptly after giving his or her decisions, the commissioner must report to the council the complaints made to the commissioner and the decision on each. (5) The report under subsection (4) must be open for examination by any complainant or the solicitor or agent of a complainant.		

Legislation	British Columbia "*Local Government Act*", R.S.B.C 1996, c.323, Part 28 – Replotting Schemes	Alberta "*The Planning Act*", R.S.A. 1980, c.P-9, Division 7 – Replotting Schemes ***(Repealed Since 1995)***	Saskatchewan "*The Planning and Development Act 2007*", S.S. 2007, c. P-13.2, Division 5 – Replotting Schemes
Time for Paying Compensation	**s. 1009** (1) The municipality must pay (a) the amounts of compensation proposed by the replotting scheme within 3 months after its completion, or (b) if a complaint has been made, the compensation awarded by the commissioner, or the Supreme Court on appeal, within 3 months from the date of the award. 2) Either of the periods referred to in subsection (1) may be extended by the Supreme Court on application by the municipality without notice to any other person. (3) The compensation stands in the place of the land for which it was proposed or awarded, and is subject to any limitations and charges to which the land was subject. (4) The municipality may, without leave or order in any case it believes expedient, pay into the Supreme Court the amount of any compensation proposed or awarded. (5) Payment into court under subsection (4) must be accompanied by a crtificate of the municipal corporate officer giving particulars of the person to whom and the land for which the compensation was proposed or awarded, and the district registrar must give that corporate officer a receipt, attached to or endorsed on a copy of the corporate officer's certificate. (6) Compensation paid into court under subsection (4) must be paid out of court to the person entitled to it on the order of the court.	**s. 136** (1) A registered owner of land included in a replot scheme may, not later than 3 months after the date of registration of the plan of subdivision relating to the scheme by the council pursuant to section 133, apply to the Land Compensation Board to determine replot compensation. (2) The Land Compensation Board shall (a) fix a date, time and place for the hearing of an application referred to in subsection (1), and (b) cause a notice in writing to be served on the applicant and the council not later than 30 days before the date fixed for the hearing. (3) A person who fails to make an application within the time prescribed under subsection (1) ceases to be entitled to replot compensation.	**s. 165** (1) The council shall pay the amounts of compensation proposed by the replotting scheme out of the general revenue of the municipality within 90 days from the date of approval of the plan of subdivision by the Controller of Surveys. (2) Notwithstanding subsection (1), if an application for compensation has been made to a judge or an appeal has been made to the Court of Appeal, the council shall pay the compensation within 90 days from the date of the award or judgment.

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Appeals	**s. 1008** (1) A decision of a commissioner may be appealed to the Supreme Court. (2) An appeal under subsection (1) is to be an appeal by way of rehearing. (3) The person appealing must, within 10 days after the decision complained of, serve on the municipality a written notice of intention to appeal, setting out the grounds of appeal. (4) The appeal must be made on petition and 5 days' notice of the time for hearing the appeal must be given to the municipality. (5) The municipality may appeal from a decision of a commissioner, in which case it must give to the owner affected the notice of intention under subsection (3) and the notice of the hearing must be given the owner, both of which notices may be given in any manner provided in section 1004. (6) The powers of the Supreme Court on appeal are confined to hearing and deciding appeals from the decision of the commissioner on complaints under section 1001. (7) In term or during vacation, the court must hear the appeal in a summary manner and on the rules of evidence that govern a commissioner. (8) The court may adjourn the hearing from time to time and defer judgment at pleasure, but judgment must be given within 6 weeks from the time limit set by subsection (3) for giving notice of appeal. (9) If judgment is not given by the court within the time period under subsection (8), the commissioner's decision stands. (10) Persons making or opposing an appeal must pay their own costs and expenses and no costs as between party and party may be awarded by the court. (11) A decision of the Supreme Court under this section may be appealed to the Court of Appeal with leave of a justice of the Court of Appeal.		**s. 164** With leave of a judge of the Court of Appeal, any party to the hearing of applications for compensation provided for in this Act may appeal to the Court of Appeal from the decision of the judge hearing the application.

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Miscellaneous	**s. 982** For the purposes of this Part: **"common mass"** means the common mass of property referred to in section 986 (1); **"district"** means a part of a municipality defined by the council under section 984; **"former parcel"** means a parcel existing before the completion of a replotting scheme, and includes any portion of land formerly a portion of a highway, park or public square, or of land indicated as such on a plan of subdivision deposited in the land title office; **"new parcel"** means a parcel created or intended to be created by a replotting scheme, and includes a portion of land created or intended to be created as a portion of a highway, park or public square, or of land indicated as such on a plan of subdivision deposited in the land title office under this Part; **"owner"** means a purchaser of real property under an unregistered agreement for sale and purchase, a registered owner of an estate in fee simple, a registered owner of a charge or a tax sale purchaser during the redemption period, and includes the Provincial government, a Provincial government corporation and the municipality. **s. 983** (1) This Part applies to Crown land in a district held by purchasers from the Provincial government and in that case both the Provincial government and the purchasers are deemed to be owners for the purposes of this Part. (2) [Repealed 1997-25-152.] **s.986** (1) For the purpose of a replotting scheme, all the parcels and highways and all other real property in the district at the initiation of the scheme form one common mass of real property. (2) From the common mass is to be taken the real property necessary for highways, parks or public squares, which stands in the place of and compensates the Provincial government, the municipality and the public for the surrender of all former highways, parks or public squares. (3) The remainder of the common mass must be divided into parcels for allotment to the owners in a fair and equitable manner, so that as far as possible the value of new parcels allotted to them are equal to the value of their former parcels. (4) An allotment, decision, award, consent or other proceeding under this Part is binding on and inures to the benefit of the person who owns the real property	**s. 123** In this Division, (a) "cost of preparing the replotting scheme" means the following costs payable with respect to a replotting scheme: (i) appraisal costs, (ii) survey costs, (iii) costs paid to prepare a plan of subdivision, (iv) subdivision approving authority costs, and (v) land titles costs; (b) "land replot" means a replotting scheme based on a proportional redistribution of the land in a replotting scheme; (c) "replot compensation" means the compensation that may be awarded by the Land Compensation Board pursuant to section 137; (d) "valuation replot" means a replotting scheme based on the valuation of land to determine the redstribution of ownership of land within the replotting scheme. **s. 135** A council may demolish, reconstruct or move any building or public utility, the demolition, reconstruction or removal of which is required by a replotting	**s. 147** Any allotment, decision, award, consent or other proceedings in the carrying out of a replotting scheme shall be binding on and enure to the benefit of the registered owner of the land affected by the replotting scheme and the registered owner's heirs, executors, administrators and assigns. **s. 150** (1) If the area of land of an owner is too small to constitute a separate lot pursuant to the regulations or a bylaw governing the subdivision of land within the municipality, the council may acquire the land by agreement with the owner. (2) If the owner does not agree to sell land to the municipality, the council shall give written notice to the owner stating that: (a) the land is included in a replotting scheme; (b) compensation will be paid to the owner and that sections 160 to 166 apply to that compensation; and (c) no exchange of properties will be made. **s. 151** (1) …(a) all parcels of land, including highways and other public lands, are deemed to be united in a single unit of land. **s. 152** The council shall send one copy of the replotting scheme to: (a) the

	affected. **s. 991** (1) At any time before the commissioner gives his or her decisions under section 1007 (3), the designated municipal officer must receive from any owner the consent in writing referred to in section 989 (2) (e). (2) An owner who mails or delivers a consent to the municipality is bound by it, and no claims against the municipality may be allowed on matters specifically agreed to in the consent. **s. 992** (1) Alterations may be made in the replotting scheme before its completion. (2) If alterations affect the owners who have consented, the consent of all the affected owners is again required. **s. 1003** (1) If a commissioner (a) dies, resigns, refuses to act or is absent, or (b) is incapable of acting because of sickness, disability or misconduct, on the application of the municipality, the Supreme Court must appoint another person as commissioner. (2) An application under subsection (1) may be made without notice to any other person. (3) In the circumstances referred to in subsection (1), proceedings or decisions had, taken or arrived at by the commissioner before the vacancy are not in any way affected, but are valid and effectual, and must be and continue to be acted on, (a) even though the vacancy has occurred and the other commissioner has been appointed, and (b) without any necessity for recommencing the proceedings or reconsidering any matter or thing that has arisen or been considered or decided before the vacancy occurred. **s. 1010** The municipality may, by its employees, workers or contractors, move any building, structure, erection or utility required to be moved under the replotting scheme, or do any work or thing on private property in satisfaction of awards of compensation.	scheme.	minister responsible for the administration of The Highways and Transportation Act, 1997; and (b) Saskatchewan Power Corporation, SaskEnergy Incorporated, Saskatchewan Telecommunications and any other corporation operating a public utility that may be affected by the replotting scheme. **s. 158** Except as otherwise provided in this Act, on completion of registration in accordance with section 156: (a) all rights, obligations and incidents of ownership of the owner of a former parcel of land or of an interest in that land and all public and private relationships with respect to a former parcel of land are, for all purposes, deemed to be transferred to and to exist with respect to the new parcel allotted to the owner of the former parcel to the same extent and in the same manner as they existed with respect to the former parcel of land; (b) the new parcels of land and the respective owners of that land are subject to and liable for all the municipal rates, taxes, assessments and charges levied against the owners' former parcels respectively and are subject to all proceedings taken and to be taken for the collection of municipal rates, taxes, assessments and charges in any manner provided by law; and

(c) the replotting scheme and the allotments of land made by that scheme are binding for all purposes on all persons having any right, title, estate or interest in or to the land included in the plan of subdivision, subject only to any right to compensation provided in this Act.

s. 167

A council may, as required by a replotting scheme, demolish, reconstruct or move any building or public utility.

THE POTENTIAL OF REPLOTTING TO IMPROVE
THE SUSTAINABILITY OF CITIES IN WESTERN CANADA

Legislation	British Columbia "*Local Government Act*", R.S.B.C 1996, c.323, Part 28 – Replotting Schemes	Alberta "*The Planning Act*", R.S.A. 1980, c.P-9, Division 7 – Replotting Schemes ***(Repealed Since 1995)***	Saskatchewan "*The Planning and Development Act 2007*", S.S. 2007, c. P-13.2, Division 5 – Replotting Schemes
Cost Accounting	**s. 1011** (1)The municipality must keep a proper account of all money paid by it in connection with a replotting scheme, and on its completion and the payment of all compensation and incidental expenses must prepare a statement showing the net cost. (2) In the statement under subsection (1), the municipality must be debited with the value of all surplus land allotted to it and any money receivable under section 987 or otherwise on account of the replotting scheme. (3) If applicable, the net cost shown by the statement under subsection (1) must be apportioned between the municipality and the other owners in the manner set out in the replotting scheme. (4) If the replotting scheme does not mention an apportionment, the net cost shown by the statement under subsection (1) must be apportioned as follows: (a) the municipality's portion of the cost is that portion of the total net cost which bears the ratio that (i) the sum of the areas of the highways and public grounds and unsold land of the municipality at the completion of the replotting scheme bears to (ii) the whole area of the district; (b) the remainder is the owners' portion of the cost. (5) The net cost of the replotting scheme may be raised as follows: (a) the municipal portion of the cost may be raised by a special rate levied and collected on and from all the taxable land or land and improvements in the municipality; (b) the owner's portion of the cost may be raised by a special rate levied and collected on and from the taxable land in the district, according to the respective values of that land as shown in the first revised real property assessment roll of the municipality containing the new parcels. (6) As an alternative to subsection (5), the net cost of the replotting scheme may be paid by borrowing the required amount on debentures issued under the same provisions as if the scheme had been carried out as a local area service under the *Community Charter*, with (a) the municipality's portion of the cost being raised by a special rate levied and collected annually on and from all the taxable land or land and improvements in the municipality, and (b) the owners' portion of the cost being raised by a special rate levied and collected annually on and from the taxable land in the district according to the respective values of that land as shown in the revised real property assessment rolls for the years during which the special rates are levied. (7) Debentures under subsection (6) must be repayable within 10 years of the date of issue. (8) A special rate levied under subsection (5) or (6) must be due and payable to the municipality at the same time as other annual municipal rates and taxes, and (a) Part 7 of the *Community Charter*, except Division 5 *[Local Service Taxes]*, applies to subsections (5) (a) and (6) (a), and (b) Division 5 *[Local Service Taxes]* of Part 7 of the *Community Charter* applies to subsections (5) (b) and (6) (b).		

APPENDIX C

Alberta Land Surveyors' Association Submission Concerning the Efficacy of Replotting Legislation

The Council of the Alberta Land Surveyors' Association, at its meeting on June 26, 2002, sent the following detailed report about replotting to the Government of Alberta:

> *"The Land Boundary Adjustment Scheme was patterned after similar sections in the former Planning Act (RSA 1980, c P-9, s.123-138) for Replotting Schemes. The replotting scheme was a very useful tool which allowed lands to be replotted in cases of boundary adjustment such as the problems experienced in the Crowsnest Pass. Replotting schemes were more widely used in municipalities where major land re-consolidation and resubdivision was being proposed.*
>
> *The replot was a very useful tool to resubdivide lands that had been laid out near the turn of the century in grid fashion, into new modern curvilinear designs. The replotting scheme avoided the need for road closures and many rather cumbersome partial discharges of encumbrances and transfers of small aliquot parts of various lots and blocks. At the same time, each landowner had the opportunity to consent or disagree with the proposed replot.*
>
> *The provision for adjusting land boundaries under a replotting scheme was dropped from the previous legislation leaving the municipality with no reasonable solution to deal with occupational encroachments.*
>
> *The semi-mountainous topography of the Crowsnest Pass area and the fact that there was originally only one land owner, provided the residents of the parcels with the opportunity to take advantage of the viable building sites without recognizing the surveyed or the described parcel boundaries.*
>
> *The Land Boundary Adjustment Scheme process is unique to the Crowsnest Pass. This process has proven to be economical and beneficial to the municipality and landowners as the complete process is handled at the local level. There is no regular scheduling of the Land Boundary Adjustment Scheme as this process is normally initiated as a result of a transaction if there is a question raised regarding land ownership.*
>
> *A periodic review of the Regulation is beneficial. However, applying a sunset clause of December 31, 2003 in order to deal with the outstanding adjustments to boundaries would not be practical. Requests to adjust lines of occupation according to the provisions of sections 4-8 of the Regulation do not come to light until a land transaction takes place or a question of land ownership is raised. Rather than placing a sunset date on sections 4-8, these provisions provide an*

economical and expeditious means to resolve boundary questions and should be made available to other municipalities.

The Alberta Land Surveyors' Association would support the redrafting of the former Replotting Scheme legislation and placing it in the Municipal Government Act, making it applicable to all municipalities. At that time, it would be appropriate to sunset the Land Boundary Adjustment Scheme from the Crowsnest Pass Regulation. The Alberta Land Surveyors' Association would be pleased to assist with the redrafting of Replotting Scheme legislation to be added to the Municipal Government Act.

(The foregoing was quoted from Alberta Land Surveyors' Association, Council Report, June 26, 2002, p.1.

http://www.alsa.ab.ca/uploads/files/PDF/agm_reports/CR020626.pdf)

APPENDIX D

Survey of Key Informants from Western Canada on Replotting and Urban Redevelopment

A survey was conducted to learn the views of people from Western Canada who were knowledgeable in areas relevant to replotting, about the potential for using replotting legislation to improve land assembly for redevelopment. These views were obtained through interviews between July and October of 2010.
The interviews were arranged in a three-step process. Potential key informants were identified from among the experts found or mentioned in the literature review phase of this research project. Once identified, each of these potential "key informants" was contacted and provided with a summary of the research proposal and the interview format. If the informant requested any of the additional research material that had been drafted (history of replotting, assessment of legislation), it was provided. The informant was requested to participate in an interview, and the time and location of the interview was set, primarily at the informants' offices[199]. Many key informants suggested other experts that might be contacted, and these were followed up and interviews were requested. This process produced a total of 40 key informants.

Who Were the Key Informants?

The key informants that were interviewed can be grouped in five general categories:

- Provincial (6 interviews)
    - Contacts were made at deputy ministers' offices in the municipal affairs ministries of British Columbia, Alberta, Saskatchewan and Manitoba, and interviews within the ministries were arranged. Several current deputies or assistant deputy ministers participated, as did several former DMs or ADMs. Most were familiar with the recent evolution of replotting in their province.

- Municipal (11 interviews)
    - Potential key informants were approached in municipalities with replotting experience, as well as in nearby municipalities that had not recently been involved in replotting. Initial contacts were normally made at the offices of planning directors, and most of the

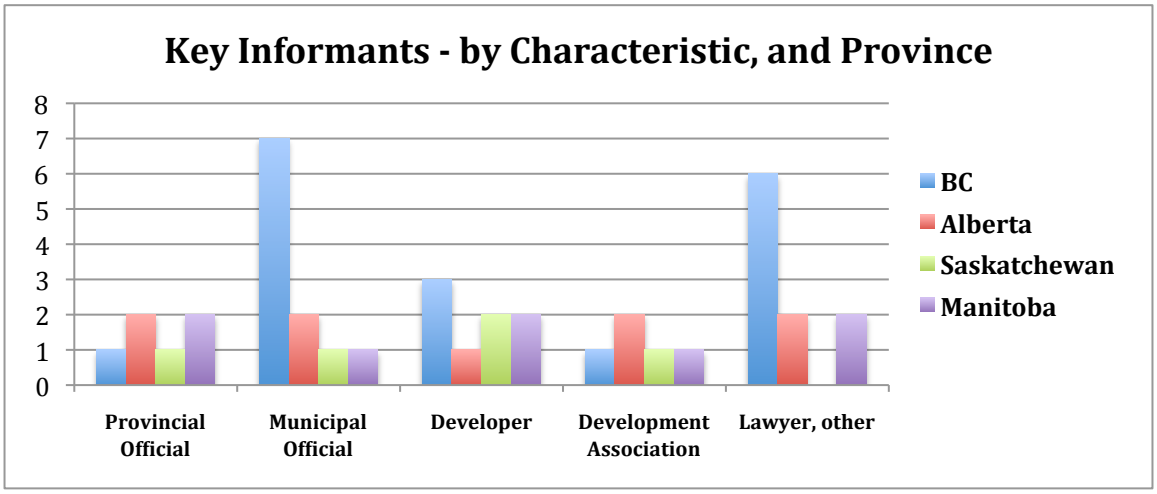
[199] Three interviews were conducted on the telephone.

resulting interviews involved directors or senior managers in planning departments.
    - The municipalities approached included: Saanich, North Saanich, Vancouver, North Vancouver District, Burnaby, Surrey, Edmonton, Calgary, Crowsnest Pass, Saskatoon, Regina and Winnipeg.

- Developers (8 interviews)
    - In all provinces and in each of the urban regions containing the surveyed municipalities, individual developers were interviewed who had experience with replotting and/or with land assembly problems in urban redevelopment.

- Development Industry (5 interviews)
    - Representatives of the land development industry associations in each province and some major cities were interviewed. These included: Urban Development Institute - Pacific (UDI-Vancouver and UDI-Victoria); UDI Alberta; UDI Edmonton; Saskatchewan Home Builders Association; and Manitoba Home Builders Association[200].

- Lawyer, other (10 interviews)
    - Certain individuals with particular knowledge or experience in legal and planning issues associated with replotting or expropriation were interviewed. These included lawyers that specialized in municipal law, and academic specialists in land economics or planning.



[200] A meeting was held with UDI (Calgary) and this organization was introduced to the research, but it did not complete an interview.

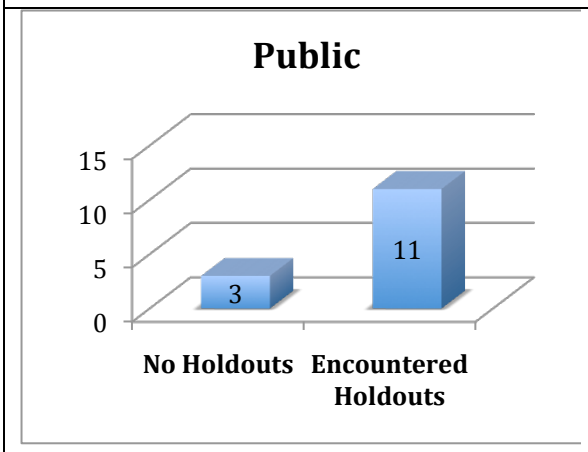
The 40 key informants came from all four provinces, with the largest group coming from the most populated province, British Columbia. The informants that were interviewed in each province represented each of the five characteristics shown above, with the exception that the "Lawyer, other" category is not represented in Saskatchewan.

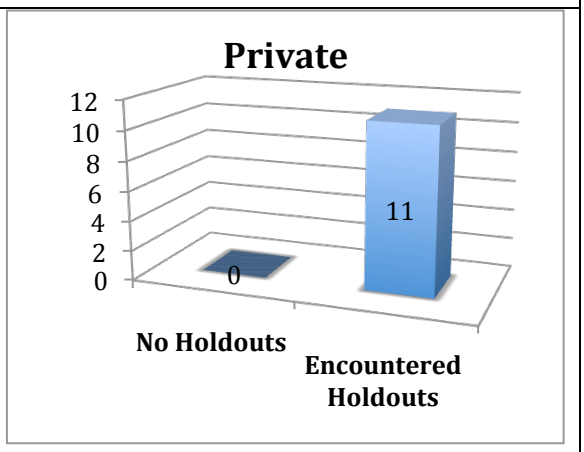
Some subtotals within the group of key informants warrant further explanation. The preceding chart described the current occupations of the forty informants, however, in order to analyze the survey results some adjustments had to be made to reflect the perspectives of certain informants. The category "Lawyer, other" includes four retirees, one developer and three public officials. For the purposes of the study, it was more appropriate to include these four with the respective groups that they had worked with, rather than classifying them with lawyers and academics. With these adjustments, twenty of the informants can be classified as being "public" (the provincial officials, municipal officials, retired public officials), and fourteen can be classified as "private" (developers, development associations, retired developers). With the adjustments, these thirty-four informants views were assessed in most of the analyses of the survey, as they are considered to be the informants who have the most empirical involvement in urban redevelopment, land assembly and replotting.

It should also be noted that one of the eight informants classified "Developer" in the chart headed a municipal housing corporation. It might be argued that this person was a "public" official. For the purposes of the survey, the "Developer" classification was considered more appropriate.

Key Informants' Experience with Land Assembly and Holdouts

Experience of Private and Public Key Informants with Land Assembly and Holdouts



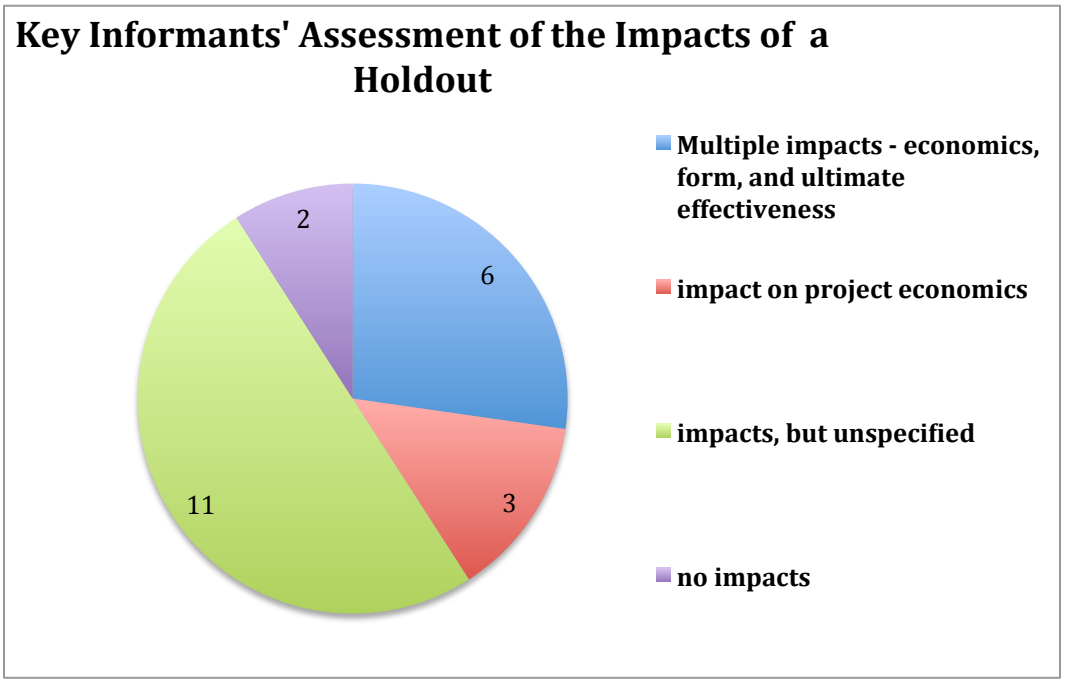


The survey asked a few questions of the key informants to bring out certain main dimensions of their knowledge and experience in urban redevelopment and replottting.

The empirically involved group of 34 key informants who were classified “public” or “private”, included 25 who had experience with land assemblies (three out of four). These included developers and some senior public officials who had actually organized and participated in the acquisition of sites involving multiple ownerships, as well as a few public officials who had overseen or had been indirectly involved in assemblies. The informants with experience in land assembly were split approximately equally between “private” and “public” sectors.

It is a telling fact that of the 25 informants who had been involved in land assemblies, 22 had encountered holdouts (88 percent). This is a strong indication of the extent to which both public endeavours and private developers can expect to encounter non-consenting landowners when they set out to undertake a redevelopment. All of the private developers experienced non-consenting owners, as had 79 percent of the public officials. The interviews did not determine any particulars about the minority of “public” informants who were involved with land assemblies but had not encountered holdouts.

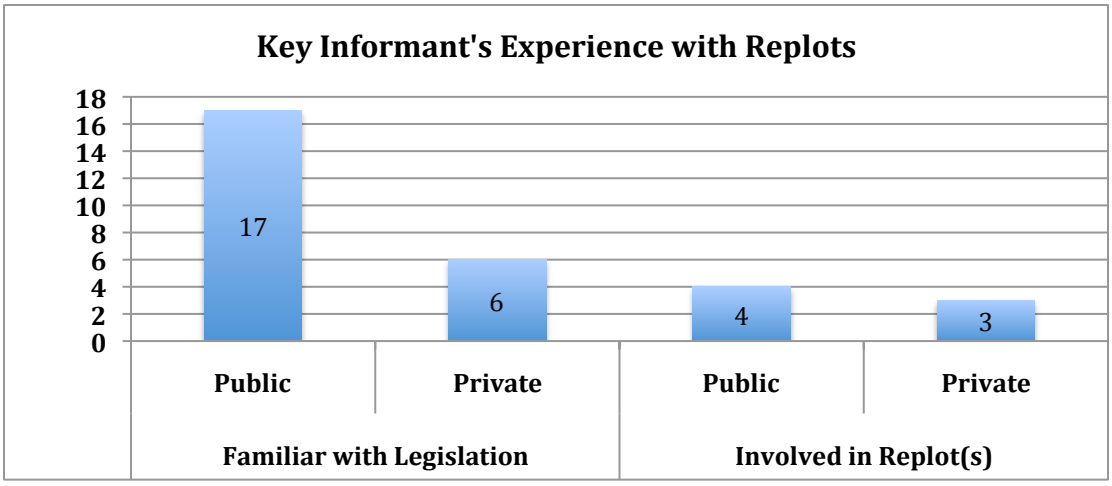
Of the 22 informants that had encountered holdouts, 20 said their redevelopment had been impacted as a result.



One-half of respondants did not specify the impacts, while six indicated there were multiple impacts. These were on the project economics, on the form of the redevelopment, and/or on the ultimate effectiveness of the redevelopment. Three key informants said the impacts were specifically on the project economics. Two reported that holdouts did not have identifiable impacts, and both of these informants were public officials.

Key Informants' Experience with Replotting

The key informants were also experienced with replotting. Of the empirically involved group (the 34 informants classified "public" or "private"), 23 were familiar with some replotting legislation and 7 had actually been involved in one or more replots. As there have been very few replots in recent years, it is fortunate that the survey contained the input of key informants with so much experience.

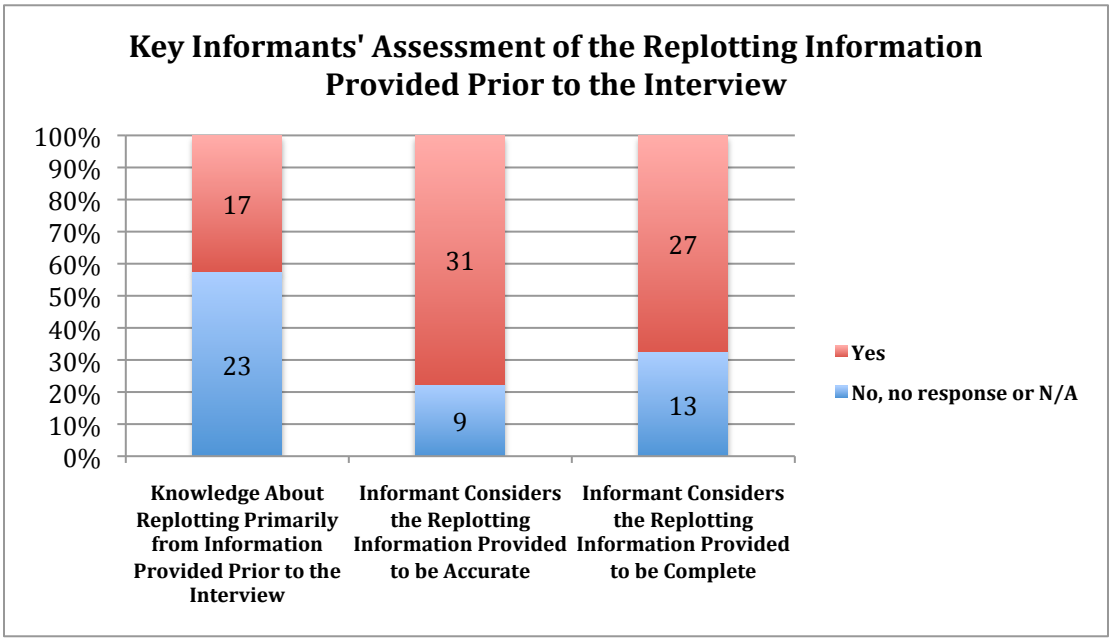


The informants were asked whether their experience with replotting was, or was not, successful. Five of the seven respondants who had replotting experience said it was successful. The reasons they mentioned included: property lines had been corrected; mountainous sites had been re-organized for development; it had made a better development in the community; and multiple owners had been satisfied with a development plan. Four informants said they had unsuccessful experiences with replotting because there were one or more non-consenting owners.[201]

[201] One respondant who said the replot was unsuccessful had not been involved in the replot, but was providing this observation.

Key Informants Familiarity with Information about Replotting

As was mentioned above, in preparation for their interview each key informant was provided with a summary of the research proposal and the interview format, and most also received the material drafted by this project on the history of replotting in Canada and internationally, and the discussion about the Canadian legislation. The informants were asked about the accuracy and completeness of this information and nearly one-half (17 of 40) indicated that the information provided was their primary source of knowledge about replotting (see chart below). This response may be compared with the finding described above, that 23 of the empirically involved group were familiar with some replotting legislation. Apparently there was quite limited information about replotting, except for the legislation, known to the entire key informant group prior to this project.



About 70 percent of all key informants considered the information provided by this project to be complete and about 80 percent of informants considered it to be accurate. Most interviewees who did not answer that the information was complete or accurate, felt their knowledge of the subject was insufficient to properly answer this question.

Key Informants' Permissions to Cite Their Responses

As part of the process of setting up and conducting these interviews, each key informant was given the opportunity to select and define the degree of confidentiality they required in the treatment of their responses.

All key informants agreed that their views could be reported anonymously, and most requested some degree of confidentiality in the treatment of their responses. Most informants gave permission to report their responses as part of a group, although three "public" officials and two "private" developers did not agree to this. This reticence reflects the facts that these discussions concerned an untested use of a somewhat obscure legislation, and many of the key informants represent organizations that have not considered positions on this potential use.

Confidentiality Requirements of Key Informants, by Category

Category of Key Informants		Degree of Confidentiality		
	No. of Informants	**Responses Can Be Cited**	**Responses Can Be Reported As Part of a Group**	**Responses Can Be Cited Anonymously**
Public Officials	20	10	17	20
Private Developers, Development Associations	14	8	12	14
Others, Lawyers	6	4	6	6

Only twenty-two of the forty key informants agreed that their responses could be attributed. Those authorizing attribution included one-half of the public officials, eight of the fourteen private developers, and four of the six "others".

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