

BUILDING CONSENSUS: A SUBMISSION
FROM THE 13 AFFECTED COMMUNITIES ADDRESSING THE
FUTURE OF THE CHARLOTTETOWN , CORNWALL, AND STRATFORD
SPECIAL PLANNING AREA REGULATIONS

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**Submitted to the Minister of
Communities, Cultural Affairs
and Labour**

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1. INTRODUCTION

For the past 14 years the 13 communities encircling the City of Charlottetown and the Towns of Cornwall and Stratford have had both their development and their local autonomy curtailed by Special Planning Area (SPA) Regulations imposed by the Provincial Government. These regulations were enacted at the time of municipal amalgamation in the Charlottetown area.

For many years there has been active questioning over the appropriateness of these regulations and their long term status. The previous provincial government rescinded the regulations as one of their last acts. The new government reimposed the regulations, however, upon assuming power. We have been informed that the long term future of the regulations remains under review.

As part of their regular Official Plan reviews several of the affected communities determined that it was inadvisable to complete these reviews if the SPA regulations could be significantly amended in the near future. If this were to happen, the newly revised Plans could then require further major amendments.

At this point the 13 affected communities came together and determined that it was desirable for these communities to jointly review the current status of the regulations, their impact on their communities and to develop recommendations for the Minister of Communities, Cultural Affairs and Labour on the most desirable direction to take in terms of the long term status of these regulations and on land use planning policy generally in these communities and in the adjacent areas.

2. BACKGROUND

2.1 History

As part of the initiative to amalgamate the municipalities in the Charlottetown area, the Provincial Government decided to establish a buffer zone around the three new municipalities of Charlottetown, Cornwall and Stratford. A similar buffer zone was established around the newly expanded City of Summerside. The Charlottetown regional buffer zone was put in place through the establishment of three new Special Planning Areas as part of the Planning Act Regulations. These were the Cornwall Region Special Planning Area; the Charlottetown Region Special Planning Area; and the Stratford Region Special Planning Area. They were enacted in 1994. Essentially the new regulations established very severe limitations on the subdivision of land in these three regions. In 1998, in response to expressed concerns from farmers who wished to be able to subdivide more than one residential lot for their children, an amendment was made to permit subdivision of additional lots for use by the children of the landowner.

In his presentation to our group, Don Walters, Manager of Inspection Services with the Department of Communities, Cultural Affairs and Labour, indicated that there were several purposes behind these regulations including: reducing the number of potential septic system failures; reducing land use conflicts; minimizing the loss of prime farmland; and forcing people into the newly formed municipalities in order to help minimize the costs of municipal services such as recreational facilities.

Unfortunately, there was nothing inherent in the new regulations which would enable the achievement of any of these objectives. The more evident reason for the imposition of these poorly founded regulations was to placate those communities who were unwillingly forced into amalgamation and who feared higher tax and utility rates - and the resultant exodus from the new municipalities to avoid these new taxes.

2.2 Content

As noted above, the new SPA Regulations were quite unrefined. There is nothing in the regulations to differentiate or protect prime farmland. There is nothing even close to zoning provisions to separate conflicting land uses. There is nothing to limit strip development or to protect watersheds or well fields or habitat areas. All the regulations really address is the number of new unserviced lots which can be subdivided.

In section 63 (3) the "objective" for development are listed as follows:

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- 63 (3) (a) to minimize the extent to which unserviced residential, commercial and industrial development can occur;
- b) to sustain the rural community by limiting future urban or suburban residential development and non-resource commercial and industrial development in order to minimize the loss of primary industry lands to non-resource land uses; and
- c) to minimize the potential for conflicts between resource uses and urban residential, commercial and industrial uses.

In section 63 (4) the regulations limit the subdivision of any existing parcel into essentially six additional lots, one for each of the following potential uses: residential; recreational use; resource-commercial or resource-industrial uses where the lot is intended for agriculture, forestry or fisheries purposes; non-resource commercial or non-resource industrial use, where the lot is intended for other than agricultural, forestry or fisheries purposes where the lot has an area no greater than one acre; institutional use where the lot has an area no greater than three acres; and rural tourism use where the lot has an area no greater than three acres.

As noted earlier, this allowance was modified by the addition of Section 63 (5) which allows additional residential lots to accommodate lots for the children of the owner of the existing

parcel of land. Residential subdivisions are unrestricted where municipal services are provided.

There are essentially no restrictions on the types of commercial or industrial buildings or uses which can be established on either new lots or existing parcels. If a community wishes to restrict or control uses such as auto body shops, junk yards, asphalt plants, mushroom plants, fox farms, kennels, C & D sites or race tracks, the community would still have to enact an Official Plan and Zoning Bylaw.

2.3 The Impact

2.3.1 Large Scale Residential Subdivisions

It should come as no surprise that the most obvious impact of the SPA regulations has been the halting of any new large scale, or even small scale, residential subdivisions. As intended, over the last 14 years development has essentially been limited to single lots and the pace of development in all the affected communities has been slow.

2.3.2 Leapfrogging

One of the most common criticisms of all buffer zones is the phenomenon of leapfrogging. In almost all jurisdictions where a buffer zone has been established to prevent urban sprawl, development has simply leapt over the buffer zone and development pressure on the outlying regions has significantly increased. This was predicted in the Chelsett town fringes and it has certainly occurred.

Most of the problems which the SPA regulations sought to cure have not in fact been cured, they have simply been moved further away from the city. An extra five minutes of commuting has not proved to be any disincentive for suburban residential development.

2.3.3 Strip Development

All of the affected communities have noticed an increase in “strip” or ribbon development in their areas as a result of the SPA regulations. When single or multiple lots are encouraged to be developed off existing parcels there is not sufficient development volume to permit the construction of subdivision streets. All lots, therefore, tend to be developed along existing roadways.

This has a number of undesirable consequences. The most obvious is the proliferation of uncontrolled accesses along our roads which create more unsafe turning movements, reduce traffic safety and cause reduced speeds and thus less efficient roadways. Other problems include increased school bussing costs and maximization of farms vs. non-farm conflicts. If at some time in the future central services are required, this is the most expensive form of

development to service. The safety of children and adults walking along busy roadways in these linear developments is also a major concern and the cost of sidewalks is prohibitively expensive given the low residential densities.

2.3.4 Land Use Conflicts

Since there are no zoning provisions in the regulations and thus no real protection from land use conflicts between industrial, commercial and residential development, it is somewhat surprising how few land use conflicts have been noted by the 13 affected communities. Several significant issues were raised; however, and all communities expressed a concern about the potential disruption which could be caused by a major development which could create nuisances such as noise, odours, heavy truck traffic, dust, groundwater pollution, etc. Without their own Official Plans there is little, if any, protection currently offered by the SPA regulations, despite the fact that this is one of the stated objectives.

2.3.5 Local Autonomy/Community Strengthening

While one of the stated objectives of the SPA regulations was to “sustain the rural community” there can be no question that the 13 communities which fall under the SPA regulations have been weakened. Any community development advocate knows that a stagnant community is by definition an unhealthy community. Some moderate level of residential and economic growth is required to sustain current levels of services in communities and to be able to respond to evolving demands. While uncontrolled suburban growth is certainly problematic, a 14 year freeze on development can be equally damaging. Since the Provincial Government has continued to permit significant rural residential development but has simply directed it beyond the SPA communities, there has been a resultant unfair distribution of the healthy levels of growth for which all communities should be able to compete.

There has also been a significant undermining of the affected communities’ ability to control their own development through the planning process. Despite having provincially approved Official Plans, all communities have had these plans largely superseded by the SPA regulations. While both sets of controls remain in effect, the restrictions imposed by the SPA regulations make most Official Plans almost irrelevant. It is difficult to get local citizens interested in land use planning when the Province has taken away much of the local decision making power. It is a particularly frustrating situation when local communities with Official Plans essentially end up having to enforce Provincial Regulations which they had no part in creating. This is a major disincentive for local planning.

3. ISSUES

In attempting to develop a long-term sustainable strategy for directing development in the area affected by the SPA regulations, there are a number of issues which must be addressed. Some are directly related to the SPA regulations themselves, others relate to circumstances in the area and in the province as a whole.

3.1 Development Issues

While there have been consistent complaints about the SPA regulations, the one result which has generally been seen as positive has been the resultant relatively slow pace of development in the affected communities. Most of these communities offer exceptionally attractive locations for suburban housing development. The prospect of the removal of these regulations without some form of alternative land use controls could result in relatively rampant and uncontrolled development.

While few major land use conflicts have evolved over the last 14 years, the prospect of any community experiencing the type of problems caused by the regional C & D site has left all communities concerned about having some form of effective land use controls in place.

All 13 communities are also concerned about the long term implications of strip development and the relatively uncontrolled unserviced residential development on their borders. As noted earlier, it is also important to understand that some moderate, controlled level of development and growth is important for all communities to ensure their long term health and to support entities such as local churches, community halls, community associations, recreation programs and volunteer fire departments.

3.2 Environmental Issues

During our discussions the topic of Watershed Planning came up on many occasions. Since the Walkerton tragedy in Ontario the level of concern over groundwater and surface water contamination has risen greatly. The recent study on nitrates and ongoing problems with siltation, nutrient enrichment and chemical run-off into surface waters was also a topic of concern.

While many of these issues are tied to agricultural practices which are regulated by the Province, most communities stressed the need to manage land use on a watershed basis in order to address problems in an integrated and comprehensive fashion.

Well field protection was also a major concern as was the protection of wetlands and habitat areas. Loss of prime farmland was also discussed, but the problems in the agricultural industry at present are making this a difficult topic to discuss. It is difficult to require farmers to preserve their land base in the face of low food prices and the overall decline in farming.

3.3 Local Government

Strong local governments are important but it is difficult to get anyone interested in participating when they feel their role is weak or ineffective. In order to strengthen local government we need to find a way to more effectively involve local councils in decisions which affect their future - particularly in terms of land use and development.

The primary reason for residents coming together to create local government is a desire to achieve a higher degree of control over local affairs. One of the most unfortunate effects of the SPA regulations has been the loss of local autonomy and the negative impact on local governments. Many community representatives expressed the feeling that there was little sense in having a local community council when the Provincial Government could largely undermine their authority to control development.

3.4 Local Planning

The only option currently available for communities who do not want to see local development controlled under the Planning Act Regulations (and who desire more effective control over potentially problematic land uses) is to develop an Official Plan and implementing bylaw.

Unfortunately this is a lengthy and expensive process. Even considering the financial assistance which is currently available, a community must also factor in the long term costs of implementation, regular plan and bylaw reviews and any potential legal challenges.

The SPA regulations represent another major disincentive for local planning. Those communities with their own Official Plans are responsible for the issuance of all development and subdivision permits in their community and are therefore required to enforce the provisions of the SPA regulations. This leaves the local councils legally and financially responsible for addressing any challenges resulting from regulations which they did not have any hand in approving and which they may not even support.

The Provincial Government should acknowledge that this situation is extremely unfair and tends to frustrate rather than encourage sound land use planning decisions in the SPA region.

3.5 Enforcement

Even if the SPA regulations were removed and each affected community were to be able to prepare and adopt an Official Plan and implementing Bylaw, the challenges of enforcement would be beyond the resources of most communities. Development control is a complex process which is best handled by professionals. Most of the 13 affected communities have limited assessments and part time administrators. Appendix 1 illustrates the tax assessment totals for each community. Only Miltonvale Park appears to have an adequate tax base to support local planning. New Haven-Riverdale, Clyde River and Kingston would have

marginal revenues. The balance of the communities would be very hard pressed to afford the burden of enforcing an Official Plan without some form of outside assistance.

Another issue which arises in small rural communities is the difficulty which Councillors face in processing applications from their neighbours. It is much easier and more effective for applications to be processed by a professional Development Control Officer than by a councillor or part time Administrator.

3.6 Regulatory Resistance

Another issue which would be faced by smaller communities is the fairly widespread public resistance to regulations. Many community representatives indicated that local farmers and other major land owners stated publicly that they feel they should be allowed to do as they wish with their land and they are opposed to local planning. This attitude tends to be strongest in rural areas which have not experienced much growth. Once a major land use conflict occurs residents tend to demand more protection. Also as urban residents move into rural areas their expectation of protection via land use controls is strong. When they find out there is no local zoning protection to protect their investment, they are usually surprised and often upset. Local plans in rural areas tend to start out as very permissive documents which only control “worst case” situations. Over time the level of control tends to gradually increase as issues evolve.

3.7 Family Subdivision

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One of the most difficult issues to address is Family Subdivisions. The enactment of this section of the regulations is perceived as purely political. It has no basis in terms of land use policy; it was simply enacted to placate the concerns of farmers with children. It is most certainly discriminatory and by the admission of the Departmental officials, difficult if not impossible to implement consistently. Monitoring the use and ownership of the lots once approved is problematic. Addressing the application of this section to corporate farms is almost impossible. The regulation was ill conceived and there is some question as to whether it would withstand a court challenge given its discriminatory nature.

Once put in place, however, this regulation is extremely difficult to rescind. Since 1998 farm families have grown to consider these lots as a birthright. Politically it will now be very difficult to remove this lot allowance. It would appear that the only option at this point would be to tighten the regulations, particularly in terms of corporate and subsequent land owners and simply let the regulation run its course until all children as of 1998 are accommodated. Another option would be to set a termination date after which the Family Subdivision allowance would terminate. This would allow a period of adjustment prior to terminating the allowance.

In hindsight this regulation amounts to little more than a knee jerk reaction to a legitimate concern on the part of farm families. It was not well thought out and has left a difficult legacy for the affected communities.

3.8 Provincial Land Use Plan

Many of the community participants in our discussions were surprised to learn how little protection was afforded to them from conflicting land uses by the current Planning Act Regulations. Across the province land owners are constantly disappointed to learn how little protection they have when developments such as intensive livestock operations, asphalt plants, race tracks, C& D sites, compost sites, pits, concert venues, mushroom plants, etc. are proposed in close proximity to their residences. The current Planning Act Regulations establish minimum lot sizes, road access restrictions and some basic environmental controls, but there is no provincial zoning and thus no effective segregation or buffering between potentially conflicting land uses.

As we have seen across the province (other than in the buffer zones) there is also no restriction on the proliferation of unserviced residential subdivisions.

It was clearly evident to all participants in this process that this situation is unacceptable. There have been repeated calls for some form of Provincial Land Use Plan to address these issues for many years. There is a clear need for some basic level of land use planning within the SPA area but this is somewhat pointless if there are essentially no controls in the area just beyond the borders of the buffer zone. Some form of basic Provincial Land Use Plan is long overdue.

4. OPTIONS

4.1 Removal of SPA Regulations

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The buffer zone SPA regulations have been unpopular since they were first put in place. While they have achieved their primary purpose of freezing the development of large scale unserviced residential subdivisions in the buffer zone it is obvious that they have also had many negative impacts. On the surface the simplest solution would appear to be to rescind the regulations - as the previous provincial government had done at the end of its term.

It is the opinion of the majority of the 13 affected communities, however, that lifting the regulations prior to putting some level of alternate land use controls in place would be inadvisable. The location and physical appeal of much of the affected land would undoubtedly result in a dramatic increase in residential and possibly commercial and industrial development. Most of the participants in this process have indicated they were pleased with the slow rates of development in their communities and fear the negative impact of urban style development without some form of control.

4.2 Status Quo

For the numerous reasons noted above, it is apparent to everyone involved in this process that continuing to leave the SPA regulations as they are now implemented is unacceptable. The question is not whether these regulations need to be replaced but rather how and when.

4.3 Local Planning

Under the current system the most obvious option for all 13 communities is to adopt individual Official Plans and implementing bylaws. There are already five of these communities which have Official Plans. In our discussions with senior officials at the Department of Communities, Cultural Affairs and Labour there is at least an agreement in principle around the concept of removing the SPA regulations from those communities which have Official Plans under certain pre-conditions. These would have to be finalized but they would likely include a requirement that the Official Plan be professionally prepared, that it generally reflect the legitimate concerns of the Provincial Government and that the Plan and Bylaws be enforced by qualified staff. At least 3 of the communities have indicated that they wish to pursue this approach, at least on an interim basis.

For the balance of the smaller communities this option is simply not financially feasible.

4.4 Revised Regulations

The majority of the communities in the SPA region are not preoccupied with the concept of local control. They are quite content with the reality of having local development controlled by the Provincial Government. The problem is the content of the current regulations and the lack of local input.

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If a new set of regulations could be prepared by the Provincial Government which reflected local interests, were based on sound planning principles and offered solid protection from conflicting land uses, this approach might receive broad acceptance. There would also need to be a vastly improved process for ensuring substantive input from local councils on all permits involving large scale residential developments, industrial, commercial or intensive resource based operations.

The problem with the current regulations is their very ineffective nature and the insignificant level of local input into development decisions. The preparation of a more comprehensive and responsive set of regulations could prove challenging for the Province, however, and there may even need to be some changes to the existing legislation. This might, however, offer a model which could be applied across the province.

4.5 Regional Planning

By far the most promising option for the 13 communities is some form of Regional Planning. The desire for a higher degree of local control over development and the application of sound planning principles is quickly overcome by the realities of the financial and other demands inherent in local planning. While most smaller communities cannot afford these costs individually (see Appendix 2), these costs can be quite comfortably addressed by pooling resources and adopting a regional approach to Official Plan preparation and implementation.

Regional planning is clearly enabled under the Planning Act and the former Southport-

Bunbury Joint Planning Board provides an example of how this option can work well over extended periods. While the villages of Southport and Bunbury were quite different in terms of their character and development aspirations, they found that sharing the responsibility for planning and development control proved both cost-effective and well suited to accomplishing their long term development objectives.

There are several options which could be taken to adopting a regional approach. One is to use the three regions established under the Special Planning Area Regulations ie, the Stratford Region, the Cornwall Region and the Charlottetown Region. The problem with this option is that the Stratford Region does not have the necessary critical mass to be an independent entity.

The preferred option may be to have one large regional board which involves all 13 communities. The experience to date indicates that these communities are able to work together very effectively.

One issue which will need to be addressed is the inclusion of the unincorporated areas included in the SPA region. These areas could either be encouraged to incorporate in order to participate in the regional planning board or, alternatively, the Province could elect to nominate an individual to represent each of these areas.

Another intriguing option would be to take this opportunity to make a very progressive decision to establish boundaries based on watersheds. This would add several other outlying communities and significantly expand the geographic coverage of the regional board. It would, however, allow the new regional plan to take a more comprehensive approach to watershed planning and perhaps represent a model for other regions across the province.

Those communities with existing official plans could either continue to operate with independent plans and administration or these communities' plans could be incorporated into the new regional plan.

Staffing for the new regional planning board could be addressed by employing full time professional staff but given the reduction in work load on the staff of the Department of Communities, Cultural Affairs and Labour, the option of seconding or transferring an existing employee may be a viable option. Administrative support for the board could probably be best provided via expanding one of the existing municipal administrative offices. A central location would be preferable.

If this option is selected it will take up to 2 years to develop a regional plan, address the status of the unincorporated areas and put the new administrative structure and staffing in place. In the interim the current Official Plans and the SPA regulations would need to remain in place, perhaps with some minor improvements. As noted earlier, it would be advisable to immediately remove the communities with Official Plans from the SPA regulations under certain preconditions.

4.6 Provincial Land Use Plan

As noted above, a regional planning approach based on watersheds could represent an excellent model for land use planning across the province. Most communities across Prince Edward Island are too small to support their own local plans and the resultant proliferation of local regulations and standards would be inefficient and probably undesirable. There are also extensive areas which remain unincorporated. Given the repeated calls for some form of Provincial Land Use Plan and the continuing resistance on the part of the Provincial Government to adopt such a plan, this regional approach could be a promising option.

It makes little sense for the large area adjacent to the provincial capital to adopt a sound regional land use plan if the adjacent rural areas remain largely unplanned.

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