

# **Inclusionary Zoning in B.C. – Is it Time? Is it Too Late?**

Bill Buholzer FCIP

Planning Institute of B.C.

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# This presentation:

- What's inclusionary zoning?
- Where did it come from?
- Is inclusionary zoning a thing in Canada?
  - Alberta, Manitoba, Ontario
- What about B.C.?
- Would it work here?

# What's inclusionary zoning?

- What's exclusionary zoning?
  - Zoning that excludes low and moderate income residents
    - Unnecessarily large parcel areas for single family homes
    - Unnecessarily large minimum home sizes in residential zones
    - Lack of multiple family residential zoning
    - Excessive zoning for non-residential land uses
- Inclusionary zoning provides housing for low and moderate income residents via:
  - Incentives like density bonuses
  - Mandatory inclusion of housing that low and moderate income people can afford

# Where did it come from?

*There is not the slightest doubt that New Jersey has been, and continues to be, faced with a desperate need for housing, especially of decent living accommodations economically suitable for low and moderate income families. The situation was characterized as a “crisis” and fully explored and documented by Governor Cahill in two special messages to the Legislature.*

Supreme Court of New Jersey, *Mount Laurel I*, 1975

# Where did it come from?

*The legal question before us ... is whether a developing municipality like Mount Laurel may validly, by a system of land use regulation, make it physically and economically impossible to provide low and moderate income housing in the municipality for the various categories of persons who need and want it and thereby, as Mount Laurel has, exclude such people from living within its confines because of the limited extent of their income and resources.*

Supreme Court of New Jersey, *Mount Laurel I*, 1975

# Where did it come from?

*It is plain beyond dispute that proper provision for adequate housing of all categories of people is certainly an absolute essential in promotion of the general welfare required in all local land use regulation. Further the universal and constant need for such housing is so important and of such broad public interest that the general welfare which developing municipalities like Mount Laurel must consider extends beyond their boundaries and cannot be parochially confined to the claimed good of the particular municipality.*

Supreme Court of New Jersey, *Mount Laurel I*, 1975

# Where did it come from?

*It has to follow that, broadly speaking, the presumptive obligation arises for each such municipality affirmatively to plan and provide, by its land use regulations, the reasonable opportunity for an appropriate variety and choice of housing, including, of course, low and moderate income housing, to meet the needs, desires and resources of all categories of people who may desire to live within its boundaries. Negatively, it may not adopt regulations or policies which thwart or preclude that opportunity.*

Supreme Court of New Jersey, *Mount Laurel I*, 1975

# Where did it come from?

*Our opinion is that Mount Laurel's zoning ordinance is presumptively contrary to the general welfare and outside the intended scope of the zoning power ...*

*The Township is granted 90 days ... to adopt amendments to correct the deficiencies herein specified.*

Supreme Court of New Jersey, *Mount Laurel I*, 1975



# Where did it come from?

*After all this time, ten years after the trial court's initial order invalidating its zoning ordinance, Mount Laurel remains afflicted with a blatantly exclusionary ordinance. Papered over with studies, rationalized by hired experts, the ordinance at its core is true to nothing but Mount Laurel's determination to exclude the poor. Mount Laurel is not alone; we believe that there is widespread non-compliance with the constitutional mandate of our original opinion in this case.*

Supreme Court of New Jersey, *Mount Laurel II*, 1983

# Where did it come from?

*Proof of a municipality's bona fide attempt to provide a realistic opportunity to construct its fair share of lower income housing shall no longer suffice. Satisfaction of the Mount Laurel obligation shall be determined solely on an objective basis: if the municipality has in fact provided a realistic opportunity for the construction of its fair share of low and moderate income housing, it has met the Mount Laurel obligation to satisfy the constitutional requirement....*

Supreme Court of New Jersey, *Mount Laurel II*, 1983

# Where did it come from?

- What is a municipality's "fair share" of low and moderate cost housing?
  - New Jersey State Development Guide Plan SDGP
- How can a municipality meet its obligation?
  - Remove excessive restrictions and exactions
  - Use affirmative measures
  - Zone for mobile homes
  - Provide "least cost" housing

Supreme Court of New Jersey, *Mount Laurel II*, 1983

# Where did it come from?

- Use Affirmative measures
  - Subsidies including cooperation with developers in obtaining federal subsidies
  - Inclusionary zoning devices
    - Incentives
    - Mandatory set-asides

Supreme Court of New Jersey, *Mount Laurel II*, 1983

# Where did it come from?

*Incentive zoning leaves a developer free to build only upper income housing if it so chooses. ...those municipalities that relied exclusively on such programs were not very successful in providing lower income housing.*

*The use of mandatory set-asides is not without its problems: dealing with the scarcity of federal subsidies, maintaining the rent or sales price of lower income units at lower income levels over time, and assuring developers an adequate return on their investments.*

Supreme Court of New Jersey, *Mount Laurel II*, 1983

# Where did it come from?

Remedies for non-compliance with court order to revise zoning ordinance to adequately provide for low and moderate income housing:

- Builder's remedy
- Revision of the zoning ordinance by the court
- Appointment of panel of judges to handle all *Mount Laurel* cases

Supreme Court of New Jersey, *Mount Laurel II*, 1983

# Where did it come from?

*Roughly 500 communities in the United States have developed inclusionary housing policies, which require developers of new market-rate real estate to provide some units that are affordable to low- and moderate-income residents.*

Lincoln Institute of Land Policy, *Inclusionary Housing*, 2015

# ZONING PRACTICE

APRIL 2015

AMERICAN PLANNING ASSOCIATION



Ⓢ ISSUE NUMBER 4

**PRACTICE INCLUSIONARY UPZONING**

# ZONING PRACTICE

AMERICAN PLANNING ASSOCIATION September 2004



Ⓢ ISSUE NUMBER NINE

**PRACTICE INCLUSIONARY HOUSING  
PART ONE**

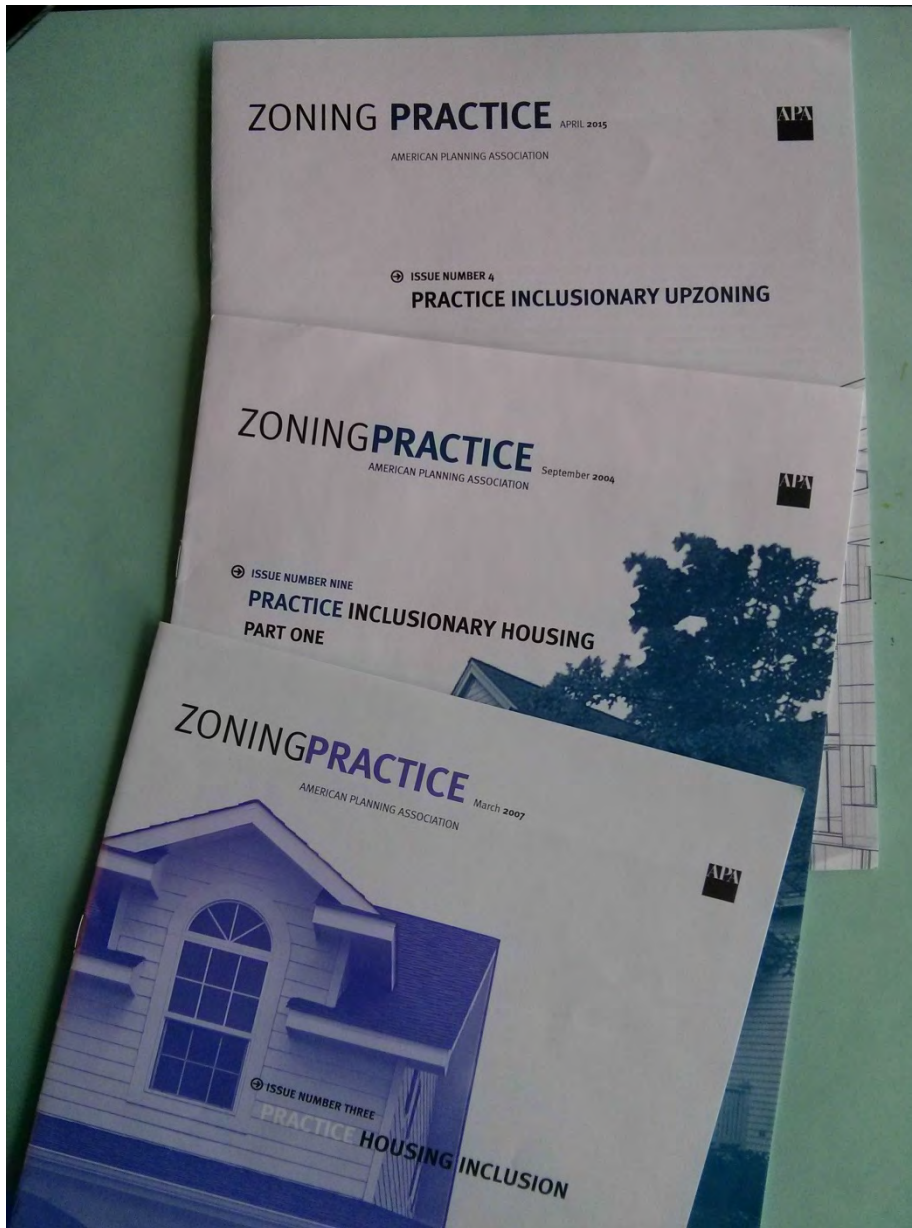
# ZONING PRACTICE

AMERICAN PLANNING ASSOCIATION March 2007



Ⓢ ISSUE NUMBER THREE

**PRACTICE HOUSING INCLUSION**







# Inclusionary Housing

Creating and Maintaining Equitable Communities



RICK JACOBUS POLICY FOCUS REPORT

NATIONAL COMMUNITY LAND TRUST NETWORK CORNERSTONE PARTNERSHIP LINCOLN INSTITUTE OF LAND POLICY

# Where did it come from?

*Called MIH and ZQA, short for Mandatory Inclusionary Housing and Zoning for Quality and Affordability, the new [New York City zoning] codes for the first time put affordable housing, rather than building height or land use, at the center of the new zoning regulations.*

“Zoning at 100”, *Planning* January 2017 (APA)

# Is inclusionary zoning a thing in Canada?

- Manitoba – permits municipalities to require affordable housing in new residential development and exchange density bonuses for affordable housing (since 2013)
- Alberta – Bill 21 (2016) will permit municipalities to require inclusionary housing as a condition of obtaining a development permit or subdivision approval
- Ontario – Bill 204 (2016) mandatory inclusionary housing policies in some official plans, others discretionary, plus concurrency requirements for zoning regulations; no cash in lieu option permitted

# What about B.C.?

## **Should Developers Meet Quotas for Affordable Housing Units?**

‘Inclusionary zoning’ has worked in US cities, but is tricky to get right.

**By Christopher Cheung**

13 Jan 2017 | [TheTyee.ca](http://TheTyee.ca)

# Exclusionary zoning in B.C.

- Minimum lot sizes for single family dwellings
- Minimum sizes for single family dwellings and multiple-family residential units
- Lack of zoning for multiple family dwellings
- Mobile home prohibitions and minimum dwelling width requirements

# Affordable housing in B.C. municipal enabling legislation

- OCP designation of 5 years' supply of land for anticipated housing needs – no reference to whose housing needs
- Mandatory policies in OCPs regarding affordable, rental and special needs housing
- Mandatory consideration of effect of DCCs on construction of “reasonably priced housing”
- DCC waivers for “eligible development” including various types of affordable housing
- Permissive property tax exemptions for non-profit housing corporations

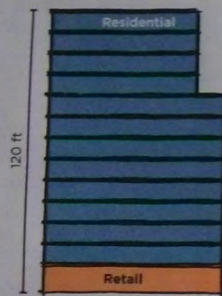
# Affordable housing in B.C. municipal enabling legislation

Authority to encourage or require affordable housing:

- ✓ Designation of affordable housing areas within zones (with consent of property owner)
- ✓ Housing agreements
- ✓ Incentives to provide affordable housing
  - Density bonuses
  - Phased development agreements
- ? Mandatory set-asides

# HA-1B & HA-1C Inclusionary Zoning Area (Chinatown South)

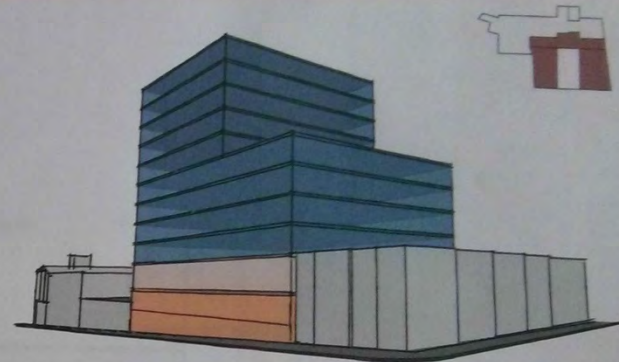
新型項目南華埠



Current Zoning



Proposed Improvements



	Current Zoning	Proposed Improvements
<b>Density</b>	No maximum	6.65 maximum
<b>Use</b>	Choice of use	Require 1.20 FSR to be non-residential, relaxable up to 1.85 for laneway retail and commercial mezzanine*
<b>Frontage</b>	75 to 125 ft	125 to 200 ft for corner sites 150 to 200 ft for mid-block sites 50 ft maximum retail frontage
<b>Height</b>	120 ft maximum	Maintain current 120 ft maximum
<b>Floors</b>	No maximum	11 floors maximum
<b>Seniors' Housing</b>	Negotiated as part of the rezoning process	Required 20% of units to be seniors' housing to achieve additional height and density

HA-1B and HA-1C provide density and height bonuses for social housing. HA-1B differs from HA-1C because it provides a transition between the historic HA-1 subarea and the remainder of Chinatown by permitting only one density and height bonusing site per block.

\*Second floor commercial is not required when social and/or seniors' housing is provided



# What about the zoning power?

*No person shall use any land, building or structure for a multiple family residential use permitted by this bylaw unless the owner has provided within the multiple family residential development the number of off-street motor vehicle parking spaces specified in Table 1.*

# What about the zoning power?

*No person shall use any land, building or structure for a multiple family residential use permitted by this bylaw unless the owner has provided within the multiple family residential development the number of square metres of on-site amenity space specified in Table 1.*

# What about the zoning power?

*No person shall use any land, building or structure for a multiple family residential use permitted by this bylaw unless the owner has provided within the multiple family residential development the number of affordable housing units specified in Table 1.*

# What about the zoning power?

- Amending the zoning power to expressly include authority for inclusionary zoning – legislation required
- Additional powers for particular municipalities or classes of municipalities e.g. cities – no legislation required, Cabinet can authorize

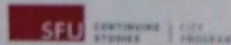
# Could inclusionary zoning work here?

- Development economics
  - CAC regimes
- Maintenance of affordability over time
  - Housing agreements
- Stewardship of affordable housing over time
  - Regional and municipal housing corporations
  - Non-profit sector
  - Community land trusts
- Cash in lieu of affordable housing



## Community Land Trusts for Affordable Housing

September 9, 2016, CITY253-VA1164



Questions?

[buholzer@younganderson.ca](mailto:buholzer@younganderson.ca)